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Subject : Report of the Strategic Meeting towards an enhanced coordination of
environmental crime prosecutions across the EU: The role of Eurojust

Delegations will find enclosed the "Report of the Strategic Meeting towards an enhanced coordination of environmental crime prosecutions across the EU: The role of Eurojust".

**Strategic Meeting towards an enhanced coordination of environmental crime
prosecutions across the EU: The role of Eurojust**

The Hague, 27-28 November 2013

Report

1. Introduction

This strategic meeting was organised jointly by the European Network of Prosecutors for the Environment (ENPE) and Eurojust in The Hague on 27 and 28 November 2013. Around 100 participants from the national prosecution services as well as from European Union and international institutions came together to consider challenges in the successful prosecution of environmental crimes as well as possible solutions and best practices.

The first day focused on a general introduction of the state of play of environmental crime and its prosecution in the EU from different perspectives. The second day aimed at a more in-depth discussion among participants to look into three different aspects of environmental crimes: illegal trafficking of waste, trafficking of endangered species and surface water pollution. The key findings of the workshops were taken into account to conclude the meeting and to look into future perspectives in the area of environmental crime.

2. Day 1: Presentations and discussions

The general introduction of the meeting was jointly provided by *Michèle Coninx, President of Eurojust and National Member for Belgium, and Jonathan Robinson, Presidency of ENPE*. The importance of the effective fight against environmental crime was highlighted as it is a crime which affects society as a whole as it damages not only the health of humans, fauna and the state of flora but also the quality of air, soil and water. It was also identified as a specific emerging threat which requires intensified monitoring by the 2013 SOCTA. As the nature of environmental crime is rather technical, the establishment of contacts and the exchange of expertise were considered crucial to more effectively fight against it. The closer involvement and cooperation of Eurojust and ENPE in this particular field should ensure not only a more efficient prosecution of cases but also the sharing of knowledge and best practices to create a bigger pool of experts in environmental crime across Europe.

The meeting was chaired by Leif Görts, National Member for Sweden and Project Manager of the Environmental Crime Project, who stressed in his overall introduction that it was the first time that Eurojust organised a meeting on environmental crime. Even though environmental crime is a broad area, it concerns everyone and a coordinated response is crucial to effectively combat it.

International law as well as extensive European Union legislation regulates this area; however, questions are still open as, for instance, to how a “*serious infringement*” or a “*substantial damage*” should be understood. Another issue relates to the way in which domestic legislations interpret the EU obligation to have “*effective, dissuasive and proportionate*” penalties. Within this context, Mr. Görts recognised that very different implementations of the Directive on environmental crime in the Member States would be problematic to effectively fight these offences and that interface between administrative control and sanctions on the one side and criminalization on the other side should be discussed. Leif Görts stressed further that prosecution services have, in recent years, been more and more involved in fighting environmental crime, thereby joining an existing “archipelago of stakeholders”. This stronger involvement of prosecution services also confirms the need to urgently fight serious environmental crimes in particular as clear indications exist as to the growing involvement of organized crime. Finally, it was noted that this is where the added value of Eurojust becomes obvious, namely in the coordination of a multitude of actors and countries involved and in further developing and sharing working methods in environmental crime investigations.

ENPE, the co-organiser of the meeting, was introduced by Anne Brosnan, Chief Prosecutor from the Environmental Agency in England and the Presidency of the ENPE. ENPE is a network of practitioners with the purpose of promoting the enforcement of environmental criminal law in addition to supporting the operational work of the prosecutors for example by sharing best practices and knowledge. It was underlined that legislation such as the Environmental Crime Directive 2008/99 sets general standards; but the prosecutors must be familiar with the legislation for a successful prosecution. Moreover, in environmental cases the aspect of protection and prevention is particularly important, thus preventing the crime from occurring should always be considered a priority. This is crucial as convicting a criminal is only done after the damage to the environment has already occurred and cannot be undone in many cases. In order to successfully fight this crime it is vital that cooperation and coordination between prosecutors, judges and other competent

authorities is enhanced at the national and European Union levels. It is also crucial that professionals in the field share best practices and learn from the experience and knowledge of each other. In this respect the assistance of Eurojust is particularly useful concerning, for example, the setting-up of Joint investigation Teams, the facilitation of Mutual Legal Assistance request and the execution of European Arrest Warrants.

Another very active and well established network in this field is the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), which was introduced by Rob de Rijck, Prosecutor from the Netherlands and Chair of the IMPEL Trans-frontier Shipment Prosecutors' Project (TFS). IMPEL is a network created for the implementation and enforcement of environmental law and its members are Member States, acceding and candidate countries to the European Union, EEA and EFTA countries. IMPEL's main focus is the administrative enforcement of environmental law, such as inspectorates. A priority area for the network is the illegal shipment of waste which is an important environmental problem. Mr. de Rijck noted that despite the fact that the regulations on shipments of waste are regulated at an EU level, this crime area is far from being harmonised as the enforcement is done at national level, *i.e.* in each of the 28 Member States. With different criminal law systems in each Member State dealing with the enforcement of the waste shipment regulation it is easy to see the need for a systematic exchange of information and practices among countries. To this end, IMPEL is working on the establishment of a case law database. The importance of such a database and information was demonstrated with a few concrete examples at a judicial level: an English appellate court made references to a Dutch case concerning the definition of "transport" and a court in Göteborg, Sweden, used the Dutch experience as a tool to establish an appropriate penalty in a case concerning the illegal shipment of waste.

The issue of environmental crime from a law enforcement perspective was tackled by two presentations: Roel Willekens, Programme Manager Environmental Crime from the Netherlands, presented the EnviCrimeNet. This informal network was created in 2011 in order to connect police officers and other experts in the field of environmental crime all over Europe. It aims at sharing non-operational information to improve the fight against environmental crime and to build up expertise in this complex crime area. It also aims at establishing relevant risk assessments that can be exchanged among the participants and at raising awareness of the fight against environmental

crimes in the Member States at strategic level. The state of play and latest developments concerning environmental crimes in the European Union and the recently published Environmental Crime Threat Assessment 2013 were presented by *Sascha Strupp from Europol*. It showed that environmental crime covers a wide range of offences and that it is frequently linked to different fraud and financial offences and the use of fraudulent documents and certificates. The most prominent aspect of environmental crimes is the involvement of organised crime in the area of trafficking in illicit waste and the trafficking of endangered species. The presentation provided an insight into the *modus operandi* of trafficking of illicit waste and showed that a large market exists for the illegal disposal of waste with low prices and little oversight, also due to the growing demand for illicit waste disposal services. It also highlighted the regional dimension and the link to organised crime groups. As to the crime-relevant factors, corruption, trade and transportation, internet and e-commerce were mentioned.

The outcome of the questionnaire sent by Eurojust to Member States and to the USA and Norway was presented by *Nadja Long, Analyst, Eurojust*. The aim of the questionnaire was to prepare the Strategic Meeting by asking practitioners questions relating to both substantial and practical issues. This questionnaire and the Strategic Meeting as such fall within the Strategic Project initiated by Eurojust before the summer of 2013 on the fight against environmental crime. Although the agreed scope of the Strategic Meeting was environmental crime in general, illicit trafficking in waste, trafficking in endangered species and surface water pollution in particular, the questionnaire does not cover the last sub-topic. The great number of replies to the questionnaire (27) was noted.

Common elements were first analysed:

- environmental crime cases represent a minority of cases dealt with by judicial authorities. Those cases are however, more and more complex and links with organised crime are confirmed by a majority of ‘replying’ countries;
- fighting environmental crime requires a multidisciplinary approach and multiple types of expertise from the start of the cases;
- environmental crimes are not considered serious crimes in all countries consulted. As a consequence, investigative techniques used in other serious crime areas can often not be used in environmental crime cases. Consequences can also be felt on the level of penalties generally considered too low and on the strong need to strengthen the knowledge of stakeholders in this – often technical – area.

- establishing the material damage in such cases can be challenging, also in terms of gathering of evidence.

Then, specific issues linked to illicit trafficking in waste and trafficking in endangered species as well as organisational features of investigative and prosecutorial structures dealing with environmental crime at national level were detailed. The replies to the questionnaire suggested possible roles for networks and the enhancement of current activities and possible new roles for Eurojust. Finally, suggestions for other environmental crimes sub-topics were made for future discussions.

The current state of play of the implementation of Environmental Crime Directive 2008/99 based on a study commissioned by the Commission was presented by Jeroen Blomsma and Heiko Wagner from Directorate General Justice of the European Commission. It showed that many Member States have not yet fully implemented the Directive, in particular due to the incomplete criminalisation of environmental crimes. The interpretation of notions such as *significance*, *deterioration*, *substantial damage* or *non-negligible quantity* was found to be inconsistent among Member States. It also showed that the severity of sanctions differ in the Member States. This can hamper international cooperation if the same offence is not punishable by a maximum penalty of at least one year of imprisonment in both Member States. As it concerns the enforcement of environmental crimes in practice, the study of the implementation of the Environmental Crime Directive also revealed that national authorities seem to prefer to apply administrative law where possible or consider the application of criminal law rather as a last resort. Obstacles might also be an insufficient involvement of and flow of information to prosecutors and also to an insufficient level of expertise and training of the personnel involved. With regard to the cases brought to court, the preservation of evidence is particularly challenging for instance due to the quick dilution of pollutants in water but also to the lack of technical expertise and to limited resources. As possible room for improvement, the following areas were highlighted: training, specialisation, reinforcing cooperation between prosecution and environmental authorities and the publishing of convictions.

The challenges concerning the protection of birds and habitats and its regulation by European Union legislation was introduced by *Mr Joseph van der Stegen from DG Environment*. Natura 2000 is an EU wide network of protected areas, the legal framework of which consists of two Directives: the Birds and the Habitats Directives. The aim of the Directives is to preserve species and habitats across the European Union. They offer a strong legal protection but also a certain degree of flexibility. Considering the importance of the network (18% of the EU terrestrial territory) and the need for managing the Natura 2000 sites, the stakeholders are key to succeed in reaching the goals of the directives. The objective of these Directives is furthermore to avoid within Nature 2000 sites activities that could deteriorate the habitats or disturb the species for which the site has been designated. Regarding the implementation of Directives it was noted that the transposition by Member States has been done. The designation of sites has also been carried out except for the sea where it is still on-going. Some achievements of Natura 200 were presented: protected areas in the European Union have more than tripled, some endangered species have been brought back from the brink of extinction, some large-scale destruction of high value areas has been halted and greater cooperation between countries has been initiated, to mention a few. Enforcement of the Birds and Habitats Directives is primarily a responsibility of Member States and is key for the success of Natura 2000.

The key note speaker, *Professor Richard Macrory*, invited the participants to “re-think environmental sanctions”. In order to determine the most adequate and efficient sanctions for breaches of environmental law he suggested one should start by recapitulating the goals of sanctions: to change behaviour, to eliminate financial gain if applicable, to be responsive and proportionate, to restore the harm caused if applicable and to deter future non-compliance. The regulator and other law enforcement bodies must consider how to best achieve these aims. In this context, Professor Macrory presented the advantages of an “integrated approach” which considers the application of criminal and administrative sanctions within a single system of responses to breaches of environmental regulation. In some cases (where for example a legitimate industry had breached regulations through negligence at the most) it may be appropriate that offenders offer their own ‘self-imposed’ sanction by formal undertakings in lieu of an imposed sanction. These could include payments to third parties such as environmental charities to ensure no profit was made by

the industry from non-compliance. Such undertakings must be made public. Equally, enforcement policies should be published which reflect the full range of sanctions. A more integrated approach would focus penal investigations and sanctions to environmental offences constituting “true criminal behaviour” while allowing for the use of non-criminal sanctions in appropriate cases. In most countries this type of integrated approach will require new levels of cooperation between those responsible for enforcing criminal law and regulatory bodies handling administrative responses.

The issue of trafficking in endangered species was presented by Cornelis Van Duijn from Interpol. The role of Interpol in fighting international offences against environmental crime was explained and illustrated with case examples. Interpol has set up an Environmental Crime Programme covering various fields such as wildlife, pollution, forestry, natural resources and climate change. Organised crime is often involved in trafficking endangered species according to Interpol’s experience. Also, it is linked to other types of crimes such as money laundering, tax evasion, theft, corruption, terrorism and murder. Even though crimes against endangered species are often committed outside of the European Union (e.g. killing of elephants or rhinoceros), the European Union is a transit and destination zone and constitutes a market as far as wildlife is concerned. Interpol uses its ‘notices’ system (in particular red notices) against environmental criminals. Fighting trafficking in endangered species requires a multidisciplinary approach although sharing of information can sometimes be problematic.

The role of Eurojust and added value of its involvement was illustrated by a case example presented by Koen Hermans, Assistant to the National Member for the Netherlands, Eurojust. In this case, involving five Member States, a number of persons linked to numerous companies traded in and transported animal manure both inside the Netherlands and abroad. In The Netherlands, manure transport and the discharge of fertilizer require transparent records. Recurrent breaches of the *Fertilizers Act* had put the investigated actors in a position where they could compete below the market price. Dutch authorities observed that in the region of Brabant, regulations were not adhered to. This led to the suspicion that stocking up and de-stocking animal manure in silos had been taking place, that proper accounts were missing, thus avoiding the payment of tax related to the *Fertilizers Act*. The illegally obtained advantage was estimated at about €8-9 million.

Eurojust facilitated coordination of the investigative and prosecutorial actions by setting up a Level II meeting within Eurojust before organising a Coordination meeting (Level III) bringing together investigators and prosecutors from the different Member States involved. An action day was planned and Eurojust also provided assistance by facilitating mutual legal assistance before, during and after the planned action day. Several seizures of illegally obtained assets and administrative documents were made. Witnesses were heard in order to collect evidence. Eurojust set up and ran an operational coordination centre, in order to monitor the ongoing actions in the respective countries. Eurojust assisted solving legal and practical obstacles in the respective meetings but also during the action day.

3. Network activities

After the official end of day one, the participating networks ENPE and IMPEL invited the participants to attend their general assembly (ENPE) and the presentation of a database of case-law on trans-frontier shipment of waste (IMPEL).

Firstly, the ENPE general assembly provided information on the mission and mandate of ENPE which was created in October 2012. The activities of the ENPE included for instance the establishment of contacts with Interpol and the US Federal Prosecution Services and the US environmental agency and the participation in a round table on the Access to Justice Convention. Also, meetings were held with the Fiscal General de Yucatán and the International Criminal Court, as well as with the Flemish High Council of Environmental Law. Ongoing initiatives include the establishment of a Secretariat and the setting up of a website. As for future perspectives, a close cooperation with IMPEL is planned concerning the implementation of EU Regulations and Directives, as is a connection with the Latin American Prosecution Network for the protection of the Environment and ongoing work with acceding states in the implementation of European Union Environmental legislation will be continued. ENPE aims furthermore at collecting relevant data in this area and envisages close cooperation with the European Commission.

Secondly, IMPEL presented its ongoing project to create a database of case-law on environmental crime, with a special focus on trans-frontier shipment of waste and the enforcement by the different Member States of the European Waste Shipment Regulation 1013/2006. The database will be operational as of spring or summer 2014 and will comprise a collection of national judgments submitted by the prosecutors in the network. The full text of each judgment will be available in its original language, accompanied by a short summary in English provided by the submitting Member State (names of defendants will be omitted). The database will also allow the use of keywords and some additional information (e.g. domestic reference of the case, the name of the prosecutors involved, etc.). In its initial stage, the database shall be accessible only to the prosecutors who are part of the IMPEL network. However, in the long term, the aim is to make it accessible to prosecutors around Europe to share knowledge and experience, and to establish common practices in the fight against environmental crime across European countries.

4. Day 2: Workshops

4.1. Workshop 1: Trafficking in endangered species

Chair: Leif Görts, National Member for Sweden

Co-chair: Kate Fleming, Specialist Prosecutor, Crown Office and Procurator Fiscal Service, United Kingdom

Kate Fleming and Leif Görts presented the Scottish and the Swedish sides of a cross-border case involving illegal trafficking of protected birds' eggs. The Scottish and Swedish investigations were then followed by a Finnish investigation linked to the same network of criminal collectors.

This case triggered a discussion amongst participants first with regard to the expertise needed to identify the protected species and throughout the trial and the availability of this expertise. Indeed of a large quantity of eggs, only a few hundred could be identified as protected under the CITES convention (and its European Union mirroring provisions) or under national legislation.

Participants also discussed the difficulty in assessing the value of protected species in general and recognised that the damage to the environment can still be huge even if protected species are traded without payment. Some countries have established a pricing of endangered species but there is no common pricing system across the European Union, even though some sources exist (such as the EU TWIX database).

Participants stressed the need to exchange knowledge and best practices amongst law enforcement and judicial authorities of different countries. Intelligence should be gathered systematically in the field of environmental crime as it is in other crime areas. There is also a need for coordination of investigations and prosecutions which could be fulfilled by Eurojust. Indeed, rather than working only nationally and exploiting the international links of a case at a later stage, coordination meetings at Eurojust or the setting up of joint investigation teams supported by Eurojust, could enhance the information exchange and the prosecutorial needs/directions.

Finally, participants regretted that although these cases are very technical and resource intensive, they do not necessarily lead to deterrent penalties. This situation creates an imbalance with other crime areas in terms of investigation techniques but also in terms of resources dedicated to solving the criminal cases.

4.2. Workshop 2: Illegal Trafficking of Waste

Chair: Renske Mackor, Public Prosecutor Functioneel Parket, The Netherlands

Co-chair: Francesco Lo Voi, Eurojust National Member for Italy

The participants of this workshop, which also comprised the IMPEL prosecutors' workshop 2013, discussed the main obstacles identified in the prosecution of environmental crimes after introductory presentations by Maurizio De Marco from the Procura della Repubblica di Napoli and Leonora Mullet from Dublin City Council, both IMPEL members, on the legislative framework of the illegal shipment of waste in Italy and Ireland respectively... The problems included in particular:

a) Differing definitions and interpretations of the legal framework, *e.g.* in respect of the categorisation of waste, but also the different level of penalties foreseen in national legislation and which are subsequently domestically enforced;

- b) Prosecutions often focus on the producer alone and with a purely national perspective which can hamper an effective fight against this criminal phenomena which has by nature cross-border elements;
- c) Mutual legal assistance, especially outside the European Union, and international judicial cooperation can be difficult and time consuming;
- d) Links between waste trafficking and organised crime, and the involvement of Organised Crime Groups but also the engagement of legitimate companies in the illicit trafficking of waste;
- e) Environmental legislation proves to be complex and technical. This can be challenging to non-specialised law enforcement and judiciary personnel.

The participants also discussed possible solutions such as closer international cooperation (including a list of contact points), the use of Joint Investigation Teams, the exchange of case law (IMPEL database), the involvement of Eurojust, a multidisciplinary and international approach, the harmonisation of definitions and penalties and the confiscation of the proceeds of criminal gain, including a focus on money laundering. The closer involvement of Eurojust and the participating networks (IMPEL and ENPE) in order to build up expertise and gather best practices was considered essential.

4.3. Workshop 3: Surface Water Pollution

Chair: Lorna Dempsey, Head of Legal Services, Environmental Protection Agency, Ireland

Co-chair: Henri Tillart, Assistant to the National Member for the Netherlands, Eurojust

After an introductory presentation by Lars Magnusson, Senior Prosecutor from Sweden and Secretary General of ENPE and Katalin Serfőző from the Prosecution Office of Szeged, Hungary, the participants discussed the nature of surface water pollution and the character of this particular crime which is rather different from other environmental crimes. Water pollution is generally not a profitable crime, unlike, for instance, the illegal trafficking of waste. It was therefore considered unlikely that it would attract organised crime groups. However, those who pollute water make significant financial savings by not complying with regulations.

When investigating and prosecuting surface water pollution, prosecutors face many challenges which were touched upon in the workshop. Firstly, the need for experts to determine what kind of pollution or chemical etc. has been emitted, assessing the damage caused. Also the identification of the source of the pollution was mentioned. An additional difficulty is furthermore when there are several sources making emissions to the same water body. Also, there are often several regulators and numerous regulations coupled with a lack of clarity about the roles which each regulator has to play in each case. As a result of these obstacles (which are often very expensive to solve) the prosecutors of such cases would choose to prosecute another, perhaps lesser crime that is easier to prove. For example, instead of prosecuting a case of pollution in the river, factories have been prosecuted for exceeding their emission limit values. Finally, different enforcement actions and a variety of defences are available in different Member States. While some prosecutors can only prosecute individuals, others can also prosecute companies or municipalities.

5. Conclusions and future perspectives

The meeting was closed by Michèle Coninx, the President of Eurojust, Jonathan Robinson, from the presidency ENPE and Leif Gorts, Eurojust National Member for Sweden, who presented the final conclusions of the two days meeting and future perspectives:

- The seriousness of environmental crime is still underestimated even though it affects society as a whole and damages the health of humans, fauna and the status of flora. It should be considered a serious crime area as any other “traditional crimes” such as drug trafficking or human trafficking, in particular when it includes a cross border element.
- Environmental crime is often linked to organised crime, in particular in illegal trafficking or dumping of waste and trafficking of endangered species. Similar techniques and routes are being used by traffickers as in other crime areas (such as drugs). When it is not linked to organised crime (*e.g.* surface water pollution) it should still be considered a serious crime due to its grave consequences and because the nature of such cases often merit cross-border handling.

- Environmental crime attracts organised crime groups in particular due to the high profit it can generate, the relatively low risk of detection and the low level of penalties. In order to fight the crime more effectively, further focus on asset confiscation should be considered.
- The legislative framework is very complex and technical which requires expert knowledge from the authorities involved. An increasing level of training and/or facilitating the access to expertise is essential. This is a multidisciplinary area which benefits clearly from cross agency collaboration and coordination.
- Penalties are applied very differently from one Member State to the other. This can impede the effective fight against environmental crimes. The lack of a harmonised approach concerning the level of penalties hampers the effect of proportionate and dissuasive sanctions across the European Union.
- Because the legislation of the different Member States is not harmonised, in particular in terms of penalties, Member States often cannot use similar investigative techniques as they would use in other serious crime areas. The investigation of those crimes under the label "organised crime" or the use of specific tools such as the Naples II Convention could enable the use of a broader spectrum of investigative techniques.
- The sharing of best practices and of expertise is essential in those cross border cases. A coordinated approach should be adopted to maximize results. The coordination of investigations and prosecutions should be done on a more regular basis through the early involvement of Eurojust.
- The further use of joint investigation teams, coordination meetings and coordination centres would contribute to a more efficient handling of cross border environmental cases.
- The networks involved, such as ENPE, and specific initiatives such as the IMPEL transfrontier shipment of waste case database should be used by practitioners to increase their knowledge, raise awareness, share best practices and facilitate cooperation amongst practitioners.
- Eurojust will continue its work in this particularly important field, in collaboration with Europol and all relevant partners.