



Dear reader,

I am pleased to present the tenth issue of Eurojust News. This issue focuses on environmental crime. We begin by introducing the difficulties encountered in defining environmental crime. This definition is not as straightforward as it may seem, and different agencies have different views of what the definition of environmental crime should include; these divergent views lie at the heart of a topic that remains divisive. Its divisive nature stems from the different treatment environmental crime receives in each Member State; some acts may not be considered criminal offences, whereas others may fall within categories that deny that the acts have an environmental aspect, with the result that they go unrecorded as environmental crimes.

Criminal sanctions are also the subject of much debate in the European Union, particularly whether those convicted of environmental crimes should be given jail sentences. The case examples we include clearly demonstrate the varieties of environmental crime. Unfortunately, the example of the Prestige sinking also demonstrates the difficulties and frustrations encountered in bringing these cases to court.

All of the above reasons make the Eurojust strategic meeting of 27 and 28 November 2013, "Towards an Enhanced Coordination of Environmental Crime Prosecutions across the EU: the Role of Eurojust", hosted by Eurojust and co-organised by the ENPE, extremely timely, raising awareness of a range of important issues to those who may be able to bring changes in their home countries.

Our interviews in this issue are, as ever, leading figures: Dr Janez Potočnik, Commissioner, DG Environment; Jonathan Robinson, Head of Legal Services, UK Environment Agency; Anne Brosnan, Chief Prosecutor, UK Environment Agency; Professor Dr Ludwig Krämer, Director of ClientEarth's European Union Aarhus Centre; Catherine Alfonsi, First Officer in the Financial and Property Crimes Unit of Europol; Jean-Philippe Rivaud, Vice-President, ENPE, Deputy General Prosecutor and Senior Prosecutor, Head of the Environmental Crimes Department of France; Rosa Ana Morán Martínez, Head of International Cooperation in the Prosecution Service of Madrid; Alvaro Garcia Ortiz, Environmental Crimes Prosecutor, Galicia, Spain; Leif Görts, National Member for Sweden and project manager of Eurojust's strategic project on environmental crime; Jarmo Rintala, District Prosecutor, Pohjanmaa, Finland; and Kate Fleming, Specialist Prosecutor, Crown Office and Procurator Fiscal Service, UK.

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Michèle Coninx, President of Eurojust

Environmental crime

Eurojust and environmental crime

Strategic project on environmental crime

The limited number of prosecutions in the Member States for environmental crimes is not commensurate with its cross-border, serious and organised nature. The Council Conclusions on the Prevention and Combating of the Illegal Trafficking of Waste, as well as the European Network of Prosecutors for the Environment (ENPE) and the European Union Network for the Implementation and Enforcement of Envi-

ronmental Law (IMPEL), have suggested the possibility for Eurojust to play an enhanced coordination role in this field. Practitioners have also pointed to the value of joint investigation teams and coordination of the roles of specialised units. In recognition of this situation, and in an effort to become more fully involved in the phenomenon, in April 2013, the College of Eurojust approved a strategic project on environmental crime. The goals of the project are: to assess the status of judicial cooperation; to assess the needs of practitioners; to identify obstacles and best practice;

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to suggest improvements in the use of existing legal instruments, with special focus on penalties, illegal cross-border shipment of waste and trafficking in endangered species; to intensify efforts to prosecute environmental crimes at national level; and to raise awareness of the added value of Eurojust.

Strategic meeting on environmental crime

The 27 and 28 November 2013 Eurojust strategic meeting, “Towards an Enhanced Coordination of Environmental Crime Prosecutions across the EU: the Role of Eurojust”, was co-organised by the European Network of Prosecutors for the Environment (ENPE).

The strategic meeting followed up on Eurojust’s questionnaire to practitioners addressing issues at national level related to the investigation and prosecution of environmental crime, illegal trafficking of waste and trafficking in endangered species. An evaluation report will provide results of the meeting.

The field of environmental crime, as the range of definitions below demonstrates, covers a great many areas, and a comprehensive discussion of these areas is simply not possible. However, the strategic meeting addressed a number of concerns, including the legal frameworks present within the European Union; the trans-frontier

shipment of waste; the links between environmental crime and organised crime; the Habitat and Birds Directive; and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Convention, also known as the Washington Convention, signed in 1973 and entered into force in 1975).

That Eurojust has not registered a large number of cases in this area reflects the limited ability of law enforcement officers to recognise what constitutes environmental crime and to report it as such.

The goal of the strategic meeting was to identify common obstacles and difficulties encountered in investigating and prosecuting environmental crime, gather best practice, and raise awareness amongst practitioners concerning the added value of Eurojust’s involvement in such cases.

National prosecutors, representatives from the EU agencies and institutions, international organisations, networks and academia participated.

Workshops were held on trafficking in endangered species, illegal waste trafficking, and serious crimes related to surface water pollution.

The meeting highlighted the links between environmental crime and organ-

ised crime, as well as the need for closer international cooperation, enhanced use of Joint Investigation Teams (JITs), exchange of case law, training, a multidisciplinary and international approach to fight crime more effectively, harmonisation at EU level of definitions and level of penalties, confiscation of assets, use of networks, partners and specific initiatives, and a greater focus on money laundering.

Eurojust’s potential added value was noted in the following areas: facilitation and coordination of MLA requests, gathering and sharing of best practice, awareness-raising of environmental crime, and facilitation of judicial cooperation with third States. Coordination of investigations and prosecutions should be done on a more regular basis through the early involvement of Eurojust.

Defining environmental crime

At first glance, a definition of this crime type may seem obvious, but the picture blurs on closer inspection.

The recitals of Directive 2008/99/EC provide a useful starting point for a definition of environmental crime:

In order to achieve effective protection of the environment, there is a particular need for more dissuasive penalties for environmentally harmful activities, which typically cause or are likely to cause substantial damage to the air, including the stratosphere, to soil, water, animals or plants, including to the conservation of species.

Article 3 of the same directive (too long to reproduce here) provides more thorough definitions of what constitutes a criminal offence.

The following definition comes from the European Union’s webpage on environmental crime:

Environmental crime covers acts that breach environmental legislation and cause significant harm or risk to the environment and human health. The most known areas of environmental crime are the illegal emission or discharge of



Swedish National Member Leif Görts and Eurojust President Michèle Coninx (© Eurojust)

substances into air, water or soil, the illegal trade in wildlife, illegal trade in ozone-depleting substances and the illegal shipment or dumping of waste. Environmental crimes cause significant damage to the environment in Europe and the world. At the same time they provide for very high profits for perpetrators and relatively low risks of detection. Very often, environmental crimes have a cross-border aspect.

The United Nations Division of Environmental Law and Conventions defines environmental crime as follows:

Transnational environmental crimes are criminal activities undertaken by persons acting across national borders including illegal logging and timber smuggling, species smuggling, the black market in ozone depleting substances, the illegal movement of toxic and hazardous waste and other prohibited chemicals etc. In addition to the serious environmental consequences, these forms of illegal activity across borders can involve corruption and financial crime, loss of tax revenue, parallel trading with other forms of criminal activity, and distortion of the licit market.

INTERPOL's Environmental Crime Programme defines environmental crime by stating:

Environmental crime is not restricted by borders, and can affect a nation's economy, security and even its existence. A significant proportion of both wildlife and pollution crime is carried out by organized criminal networks, drawn by the low risk and high profit nature of these types of crime.

The EU Serious and Organised Crime Threat Assessment (SOCTA) 2013, produced by Europol, identifies environmental crimes and, more particularly, illicit waste trafficking and trafficking in endangered species as emerging threats due to their rapid evolution,



involvement of organised crime groups and high profitability, and stresses a need for follow-up.

Organised crime and the environment

Organised crime groups, especially those operating in Italy, are very active in the environmental field, and where the mafia leads, others will undoubtedly follow. As Domenico Fontana, head of the Sicilian branch of *Legambiente*, Italy's largest environmental group, told *TIME Magazine*, "The mafia goes where the money is". This 2011 article described a seizure made by the Italian police of assets worth USD 1.9 billion, including 43 wind and solar companies and approximately 100 properties.

A threat assessment published by Europol in June 2013 on Italian organised crime read as follows:

... 95 'Ndrangheta clans were amongst 296 clans involved in illegal waste dumping; 346,000 tonnes of waste [was] seized heading for 10 European, 8 African and 5 Asian countries in 2011. (Of the other clans involved: 86 Camorra, 78 Mafia and 23 Apulian.)¹

Speaking in Britain's *Telegraph* newspaper, Senator Costantino Garraffa, a member of Italy's parliamentary anti-mafia committee, said the mafia was trying to break into the "new economy" of alternative energy as it sought out virgin ventures to launder money from drugs and other rackets.

In Italy in 2000, the Parliamentary Committee to Investigate the Waste Cycle stated that:

108 million tons of waste are produced every year in Italy and about 35 million of them are disposed of incorrectly or illegally, with an estimated turnover of about EUR 7 billion and a tax loss of at least EUR 1 billion.²

The same author quotes the Prefect of Naples as saying that "90% of all companies involved in waste collection and transportation in the Naples area have ties with organised crime."³

This move into the environmental business demonstrates the level of entrenchment of organised crime in Italian society and echoes Fontana's statement. Antonio Nicaso, an Italian writer and expert on Italian organised crime, said at a recent

¹ EUROPOL, Threat Assessment: Italian Organised Crime, 2013, p 11.

² Fijnaut, Cyrille and Paoli, Letizia, *Organised Crime in Europe: Concepts, Patterns and Control Policies in the European Union and Beyond*, Springer, Dordrecht, the Netherlands, 2006, p 286.

³ Id. at 287.

conference that “there is no political will to fight these criminals; we will tickle them but we won’t be able to take them down.”

European Network of Prosecutors for the Environment (ENPE)

The ENPE, established in 2012, is a non-profit association based on an informal agreement between prosecutors who deal with cases of environmental crime from several Member States: Belgium, Finland, Germany, Italy, Spain, the Netherlands, Sweden and the UK.

The objective of the network is to assist practitioners in connecting, sharing experiences and data on environmental crime, and looking at crucial issues linked to the environment and human health. It supports the work of the Secretariat of the Basel, Rotterdam and Stockholm Conventions, INTERPOL, Europol, UNEP and INECE.

Council conclusions on setting the EU’s priorities for the fight against serious organised crime between 2014 and 2017

The Justice and Home Affairs Council meeting in Luxembourg on 6 and 7 June 2013 set the EU’s priorities between 2014 and 2017 for the fight against serious and organised crime. Although environmental crime was mentioned in the introduction to the conclusions,⁴ it was not set as a Council priority for the 2014 to 2017 policy cycle.

Rather, the EU’s focus will be on the disruption of organised crime groups (OCGs) that facilitate illegal immigration and

human trafficking; distribute counterfeit goods; produce synthetic drugs; facilitate the distribution of cocaine and heroin in the European Union; are involved in cybercrime; and are involved in property crime. An additional priority concerns firearms, including combating their illicit trafficking.

One Council priority, however, has the potential to include an environmental aspect, namely to “disrupt the capacity of OCGs and specialists involved in excise fraud and Missing Trader Intra Community MTIC fraud.” MTIC fraud will be dealt with in the next issue of *Eurojust News*, but as this type of fraud includes carbon-trading fraud, we can see a direct – if limited – link to environmental crime.

The absence of environmental crime in the Council priorities reflects the thoughts of Professor Dr Ludwig Krämer in this newsletter: “Administrations must learn that environmental protection is, in the long term, beneficial to the economy and to society as a whole; at present, it is all too often considered that the protection of the environment is hampering economic progress.”

Environmental protection can also bring economic growth and, more importantly, contribute to our well-being.

The interviews below clearly demonstrate that environmental crime is of such central importance to us all that it cannot be ignored. We hope that highlighting the topic in Eurojust News will help to focus the attention of prosecutors and legislators. The interviews also show that national authorities can only do so much. Without political will to fight those ultimately responsible for environmental crime, cases will not progress. ■

Interview with Dr Janez Potočnik Commissioner for Environment

Dr Janez Potočnik became a Member of the European Commission on 1 May 2004. In his first mandate (2004 – 2009), he was responsible for Science and Research. In February 2010, he began a second mandate as a Commissioner for Environment. In September 2013, Commissioner Potočnik received the United Nations’ 2013 Champions of the Earth Award.

Eurojust News: *In late 2011, you stated that Member States needed to better implement EU rules, to move from “remediation to prevention of environmental degradation”. Has any progress been made by Member States in the prevention of environmental damage?*

Commissioner Potočnik: “We make progress all the time – even if it should be rather faster than it has been in recent

years. If we take basic issues like air pollution, waste disposal and urban waste water treatment, they are often expensive to deal with and slow to be resolved. However, progress can be demonstrated in terms of new investments. If you look at the recent report on urban waste-water treatment, for example, the improving trends are clear. In many places the investments are being made, and when that happens, the state of the environment improves accordingly.

⁴ “NOTING that all actors involved must retain a margin of flexibility to address unexpected or emerging threats to EU internal security, in particular regarding environmental crime and energy fraud”, *Council conclusions on setting the EU’s priorities for the fight against serious and organised crime between 2014 and 2017*, Justice and Home Affairs Council meeting, Luxembourg, 6 and 7 June 2013.



But there is no room for complacency, and air pollution, for instance, is a long-term problem that will take some time to resolve. But I am cautiously optimistic about these trends.”

What can be done to enforce the application of EU environmental rules by Member States?

“Member States are responsible for ensuring that EU environmental laws are implemented in their countries. The Commission’s role is to check that Member States’ commitments are respected and take action if they are not.

One tool for ensuring application of the rules is the courts – when we have run out of options, we can and do take infringement procedures to their final conclusion, and that means going to the courts for a second time and asking for fines.

Until now, there have been five court judgements imposing penalty payments on Member States for failure to comply with a previous judgement in the field of the environment, so it does happen, but that is a tiny fraction of the number of cases we have opened against Member States for failing to comply with EU environmental laws. The vast majority of cases are resolved by encouraging Member States to work on the causes of the infringement, and find solutions to meet their obligations as soon as possible.

A number of ways in which we are proposing to strengthen implementation will be set out in the new 7th Environment Action Programme. I am very pleased that political agreement was reached with the Council and Parliament before summer and we are awaiting its formal adoption in November.

Proposed improvements include getting more information about implementation online to give citizens a clear sense of what is being done, making sure citizens have effective access to justice to challenge poor implementation, in line with the Aarhus Convention, and strengthening inspections and surveillance powers to make it more likely that non-compliance will be identified and tackled.

During the remainder of my mandate, I hope that the recent proposal to include more detailed provisions on inspections in the Waste Shipments Regulation will be adopted by the Council and the Parliament.”

Protecting the environment is one of the most important tasks facing the European Union. Given that it is just one of many actors, do you think the European Union can really do anything substantive? Can you explain what you are doing to protect the environment?

“The need for action on the environment at European level has been consistently supported in public opinion surveys over many years. Most people understand that it only makes sense to deal with environmental issues through close cooperation right across the European Union. That is why Member States have long recognised the need to set common European objectives and they have agreed legislation to make sure that the environmental benefits are delivered. Some of the legislation dates back a long time – the Birds Directive is from 1979 – so the tradition of working together is well established.

The achievements are there for all to see. If we take the example of Natura 2000, the EU’s network of protected natural areas, thanks to a unique partnership with all Member States, the European

Union now has the largest coordinated network of protected areas in the world. Natura 2000 comprises some 26 000 sites – almost 18% of the EU’s land mass – and substantial marine areas as well.

Targeted conservation actions are also proving effective. The Birds Directive has brought significant improvements by protecting many of Europe’s most threatened birds from further decline. The 2009 Habitats Directive health check confirmed that conservation action has led emblematic species, such as the wolf, Eurasian lynx, beaver and otter, to return to their traditional range.

Much work has also been done to protect water quality, cut air pollution, open up opportunities for recycling and cutting waste, and promote safer alternatives to toxic chemicals. And we are still looking to the future. The EU policy framework on air pollution, for example, has been developed over 30 years and has led to successes such as the virtual elimination of ‘acid rain’.

But we are still under significant threat from certain types of air pollution, so we are modernising and updating all the time: we have taken action to cut a significant source of air pollution by improving the quality of shipping fuel, and are reviewing our air quality strategy to secure further benefits for people’s health and the environment.”

What are the biggest challenges facing you and are these persistent challenges or constantly changing? What are you doing to address these challenges?

“With a few exceptions, the legislation we need to protect the environment is basically in place. The biggest challenge is making sure that Member States implement the legislation effectively. We try and do that in various ways, as I explained above, but another way of making the point is to show how we are missing out by not applying the legislation properly.

Studies have shown that failing to implement environmental legislation probably costs the EU economy around EUR 50 billion every year in health costs and direct costs to the environment.

How can we afford that, under the present circumstances?

The 2012 Communication on better implementation of EU environmental law shows that environmental legislation can bring advantages to industry: full implementation of EU waste legislation would generate an additional 400 000 jobs, for example, with net costs that are EUR 72 billion less than the alternative scenario of non-implementation.

The Communication also outlines measures to help Member States achieve a fully systematic approach to knowledge collection and dissemination, including ways to encourage more responsiveness on environmental issues. That is where the real challenges lie at the moment, I think – and I am pleased that agreement on the 7th Environment Action Programme creates an impetus for real initiatives.”

Can you describe a success story since you took over your role?

“I would talk about two types of success: in terms of new initiatives, and in terms of delivering results under previous initiatives.

As regards new initiatives, I see political agreement on the 7th Environment Action Programme as a significant achievement, since it represents an outline of how Europe will collectively work to improve implementation between now and 2020. Having a multi-annual direction is important for the environment, especially in a period of deep economic uncertainty.

In terms of delivering results under previous initiatives, this is a matter of working on numerous files and constantly engaging with Member States.

Success often amounts to getting a Member State to catch up on a missed deadline: to adopt missing legislation or complete missing environmental infrastructure, for instance, or granting citizens access to information about the environment, or putting in place extra conservation or environmental protection measures. I do not want to single out individual cases since the point

“Most people understand that it only makes sense to deal with environmental issues through close cooperation right across the European Union.”

is to work steadily across a wide front and not just mention what gets into the news (most cases do not).”

Have you been able to apply the experience you gained in this case to other cases or do you find that each case is very different?

“I have certainly managed to build up experience over my mandate and to see the comparisons and common elements across different cases and situations. But each case is indeed different. Perhaps one thing I have learned is the importance of encouraging structural changes in Member States so that the same problems do not keep being repeated.”

We have seen reports of organised crime groups going “green”, meaning simply that they have business interests in the environment. Have you seen this occurring outside of Italy? What is being done to contain or counter this activity?

“The main responsibility for fighting organised crime is with the Member States, although the European Union has agreed to support them through a number of instruments, such as financial investigations to dismantle networks, and confiscation of assets. Europol concluded in 2011 that international waste smuggling was one of the fastest-growing new areas of organised crime activity, driven by low risks and high profits.

One result of this support was a platform for experts, which now holds annual meetings with specialists from agencies that deal with environmental crime. The European Union also helps through a Directive that requires Member States to have dissuasive criminal sanctions for serious environmental offences.

Regarding the more general problem of illegal traffic in hazardous waste across the European Union, the Commission

recently proposed strengthening inspections of waste shipments. That proposal will now be examined by the Council and the Parliament and I hope it is rapidly adopted – the need is clearly there.

I also hope that a new initiative on inspections and surveillance – mentioned in the 7th Environment Action Programme – will help. Current provisions on inspections relate to controls on fixed industrial installations. These are valuable but we need to target the biggest risks to the environment much more effectively and develop the capacity to deal with illegal activities in the countryside, waste and wildlife trafficking, and so on.”

What is the role of Eurojust in assisting DG Environment?

“We appreciate that environmental crime features amongst the crime areas covered by Eurojust. Eurojust’s role in promoting cooperation and coordination between the competent judicial authorities in investigations and prosecutions of serious cross-border criminal cases is a valuable one: police and prosecutors working in the area of environmental crime have stressed to us the importance of sharing intelligence across frontiers to tackle problems such as trafficking in waste and wildlife.

I am sure that your strategic meeting was very useful in that context, and I look forward to a full report from my services, who attended.

The 7th Environment Action Programme specifically recognises the role of professional networks – inspectors, prosecutors, judges – in helping to improve implementation. DG Environment already has good cooperation with several professional networks, but there is room for further development. The assistance of Eurojust will be greatly appreciated in that context.” ■

Interview with Jonathan Robinson

Head of Legal Services and Resources, UK Environment Agency; President of ENPE

Jonathan Robinson is President of the ENPE and Director of Resources and Legal Services at the UK Environment Agency, where he was appointed Head of Legal Services and Resources in 2009. Previously, he has worked with DEFRA, the European Commission, and the New Zealand government.



Jonathan Robinson

***Eurojust News:** According to the UK Environment Agency, what constitutes environmental crime? What falls within the remit of your organisation in this regard?*

Jonathan Robinson: “We are the largest of the UK environmental regulators, with responsibility for pollution control and flood defences in England. We have close links with the UK’s other environmental regulators, in particular Natural England (which deals with nature protection in England), the Scottish Environmental Protection Agency, and Natural Environment Wales. We also work closely with a wide range of partners, including government, business, local authorities, other agencies, civil society groups and the communities we serve. As Head of Legal Services and Resources, I am ultimately responsible for our specialist prosecutors who are locally based, and advise investigators and prosecute appropriate cases in court.

The agency has a wide remit as regulator for all environmental media, mainly through an integrated permit system through which we strive to improve air, land and water quality

and protect them from pollution, applying the environmental standards within which industry can operate. Each year we prosecute companies and individuals who cause pollution or operate unlawfully without the necessary permit or who breach their permit. Examples include the dumping and inappropriate handling of hazardous and other wastes, illegal exports of waste, pollution of water courses, or major industrial accidents which cause or risk serious damage to the environment.”

What are you doing to address the challenges you face?

“We have to be proactive as a regulator, taking action to support the legitimate waste and recycling sector in the UK, which generates over GBP 12 billion per year and employs over 128 000 people. Waste crime undermines the legitimate waste industry and public confidence in the regulatory regime which governs it.

During 2012 and thus far in 2013, our Illegal Waste Taskforce, a specialist national team, managed to stop 1 279 illegal waste sites. We prosecuted 171 waste-related cases and have many more cases in progress. We’re putting in the time and resources to tackle this problem. But it’s not just about prosecuting people: in most cases we stop offenders and bring them back into regulation through the use of statutory notices, warnings, formal cautions, injunctions, use of disruption techniques, and by providing advice and guidance.”

Can you describe a success story since you took over your role?

“I’m particularly proud of the fact that since 2011 our prosecutors have secured confiscation orders in the courts against waste offenders in England totalling GBP 3 533 937. This power was rarely used before then.”

Have you been able to apply the experience you gained in these cases to other cases?

Yes, we’re proactive in this area. Recently, two offenders who tried to evade payment of confiscation orders have been sent to prison - one for 1 211 days and the other for 1 036 days. They’ll both still owe the amounts outstanding when they’re released.” ■

“Waste crime undermines the legitimate waste industry and public confidence in the regulatory regime which governs it.”

Interview with Anne Brosnan

Chief Prosecutor, UK Environment Agency; ENPE Presidency member

Anne Brosnan is a member of the Presidency of the ENPE and Chief Prosecutor at the UK Environment Agency. She has been a qualified solicitor for twenty-five years. She previously headed the Agency's Serious Casework Group. In 2005, she spent a year in Sydney, Australia, on a working exchange to the then Department of Environment and Conservation of New South Wales.



Eurojust News: Has your remit changed since you took over your role?

Anne Brosnan: “We now undertake fewer but more complex and difficult cases. This may be because we can apply civil or administrative sanctions as an alternative to prosecution in less serious cases. We now consider the use of alternative methods of disposal in all cases where civil sanctions are available. I am a firm believer in retaining prosecution for serious cases but allowing less serious matters, where the offender is genuinely contrite, to be dealt with outside of the court framework where the emphasis can be on remediation and reparation.”

What are the biggest challenges facing you? Do these challenges tend to be persistent or recurrent challenges or are they constantly changing?

“We undertake both reactive and intelligence-led investigations. These can be complex and require support in many

cases from investigators and experts who have detailed knowledge of the subject matter of the investigation.

We have our own national laboratory service, which undertakes analysis of samples taken as part of any investigation, and it is essential to have a good grasp of the science of environmental protection when taking forward any investigation of note.

However, it is equally important to be familiar with the requirements of the rules and procedures which govern the investigation and prosecution of criminal offences generally. We find that the challenges we face often relate to admissibility of evidence and general criminal procedures such as the handling and disclosure of unused material.

We have recently faced significant abuse of process challenges in relation to our use of surveillance material and also our use of evidence obtained by a potential co-accused in criminal proceedings.

We currently face many significant challenges in relation to waste crime. We use an extensive array of investigative methods in these cases, including, for example, covert surveillance, seizure of documents and materials, sampling and analysis, and cloning of computers.

We are constantly being challenged by defendants as to the legitimacy of our investigations, in particular the nature and extent of our powers and how these are exercised by our enforcement officers on the ground.”

Of all the aspects you mention, what presents the greatest threat? What are you doing to address this threat?

“The greatest difficulty for us is keeping ahead of criminals and establishing where new areas of criminal activity are arising. At the moment, this is waste crime, but fraudsters and illegal operators will very quickly move their activities to new and lucrative areas of environmental activity and we have to be vigilant to keep up with them.

We are committed to intelligence-led policing and have a national environmental crime team which leads major investigations into areas of fraud and organised crime. We work in conjunction with a number of partners in the management of environmental protection such as Natural England and local authorities who have some powers and duties which complement or correspond with our own.

We also work with other law enforcement agencies including the police and the UK Border Agency. We have undertaken joint prosecutions with our UK Health and Safety Executive and the Crown Prosecution Service.”

Can you describe a success story since you took over your role?

“In a recent big, multiple defendant prosecution involving the illegal export of waste, we faced a number of challenges in the Court of Appeal from some defendants. The case involved a six-week jury trial. We were taken to

“It is also important to recognise the demands of difficult and complex cases, particularly those where there may be new issues of law arising.”

the Court of Appeal three times, twice during the case and once after conviction and sentence.

It was important to be successful as this was very much a test case on different aspects of the legislation. It is also important to recognise the demands of difficult and complex cases, particularly those where there may be new issues of law arising.”

We have seen reports of organised crime groups going “green”, meaning simply that they have business interests in the environment. Have you seen evidence of this occurring in the UK?

“Yes, wherever there is money there is crime and the environmental world is no exception. The current hot spot for us is waste crime. Illegal waste sites pose a threat to the environment and local communities, by risking the contamination of land, rivers and underground waters with oil and chemicals and also by undermining legitimate business. A number of those acting illegally are

professional criminals and likely to be involved in other criminal activity. Between April 2012 and December 2013, we will have invested an additional GBP 4.9 million in a waste-crime task force.

The eventual destination of much illegal waste activity is overseas, in third States, so we are actively looking at the trans-frontier shipment of waste to establish the extent of illegal activity and to work out strategies for closing it down.”

What is being done to contain or counter this activity?

“Our practices are constantly evolving and improving. We have many dedicated teams of environmental investigators, an in-house intelligence team, financial investigators and prosecutors, all with increasing experience in multiple defendant, complex and often cross-border investigations.

We have been able to establish and maintain networks with other European investigators and prosecutors. This

helps us to appreciate the nature of offending on a larger scale.

We have provided and received assistance and training in Europe and further afield in countries such as China and for organisations such as the UN Basel Secretariat and the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL). Our involvement with the ENPE and the IMPEL Transfrontier Shipment of Waste (TFS) group allows us to share ideas and develop and enhance best practice in investigating and prosecuting environmental crime.”

Now that you have attended the strategic meeting, how do you envisage future cooperation with Eurojust?

“My colleague, Jonathan Robinson, and I believe that this joint conference between the ENPE and Eurojust will lead to much greater contact and cooperation between EU prosecutors and law enforcement agencies with facilitation from Eurojust.” ■

Interview with Professor Dr Ludwig Kramer

Director, ClientEarth’s European Union Aarhus Centre

Professor Dr Ludwig Krämer is widely regarded as among the top experts on environmental law and policy in the European Union. He is Director of ClientEarth’s European Union Aarhus Centre. A judge in Germany from 1969 to 2004, he served on secondment as the European Commission’s Chief Counsel on the environment, working with the Commission for three decades. He has written more than 200 articles and 20 books on EU environmental law. He has lectured on the subject of environmental rights and law in more than 50 universities in Europe and North America.

Eurojust News: What does environmental crime mean to you? How has the perception of environmental crime changed over your lifetime?

Professor Krämer: “Environmental crime is the deliberate or negligent impairment of environmental assets. My perception of environmental crime has not significantly changed over my lifetime; I was already involved in environmental crime cases at the end of the 1960s.”

Have the laws and policies of the European Union improved the environment?

“The laws and policies of the European Union created greater awareness and greater prudence by economic operators and by national administrations (that also commit environmental crimes by turning a blind eye to environmental impairment, pollution, etc., by not suing polluters, by not collecting data that would reveal environmental crimes, by granting permits contrary to existing legislation, etc.).

The rights and obligations of economic operators are clearer, national administrative discretion has been reduced, and thus the agreements between national administrations and economic opera-

tors to the detriment of the environment are more difficult to establish.”

What could be done to achieve true or greater environmental protection?

“Public authorities should be the first bodies to respect environmental legislation. Greater transparency, better accountability of national administrations and serious sanctions in cases of breach of environmental rules are necessary. Public authorities, starting with the heads of government, should take the protection of the environment seriously and be a model – and not ridicule

“The policy to look at growth and jobs and neglect the environment is popular in a good number of Member States, probably the majority.”

it. Environmental education in kindergartens, schools and universities appears necessary. The State should treat the protection of the environment in the same way as the protection of human rights: actively promote it, react to breaches and remain credible in its environmental policy.”

Do you consider that the financial crisis has distracted those tasked with environmental protection, that it has caused them to focus more on the financial side?

“Yes, quite obviously. A good example is the European Union: the Lisbon Treaty states in Article 3(3) that the European Union:

... shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and social advance.

Yet, in 2011, the Commission adopted a Europe 2020 strategy (COM (2011)) that fixes as priorities ‘growth and jobs’. Since then, any environmental measure, in order to be approved by the Commission, must show that it contributes to growth and jobs. This policy approach is not in Article 3; it is a consequence of the financial crisis.”

Will the Commission’s “Proposal for a Decision on a general Union environment action programme to 2020” have a serious effect on environmental crime?

“In my opinion, not at all.”

You also stated that “if the European Union is not ready or willing to efficiently protect human health and the environment, it should say so and transfer this responsibility back to the Member

States”. Would transferring responsibility back to Member States be wise given that you also stated “whereas the European Parliament wanted precise and well-defined actions to be laid down in the action programme, the Council and the Commission preferred vague terms and general orientations”?

“The European Union is in a dilemma: it appears that it does not wish, at present and until 2020, to seriously ‘preserve, protect and improve the quality of the environment’, as stated in Article 191 of the Treaty on the Functioning of the European Union. The policy to look at growth and jobs and neglect the environment is popular in a good number of Member States, probably the majority. However, the environment cannot remain unprotected, as we have only one and the challenges (e.g. climate, biodiversity loss, chemicals, resource management, eco-refugees, poverty eradication) are enormous, go beyond the capacity of one single State and require concerted action.

Thus, when the European Union is not capable or not willing to seriously tackle the environmental challenges which lie before us, what options remain? One option is – and to that I had alluded – to accept that the integrative capacity of the European Union is not strong enough to respond to the challenge, and then allow Member States –individually or in joint actions – to take environmental matters forward. This would have very serious repercussions on the internal market and on EU integration in general (energy, transport, agriculture, fisheries, competition, etc.).

However, this discussion needs to take place within the European Union. When the European Union claims competence in environmental matters – including the integration of environmental requirements into its other policies, as required by the Lisbon Treaty – then it must not, *de facto*, reduce environmental protection to Sunday speeches.”

What can be done to enforce the application of EU environmental rules by Member States?

“First, there needs to be political will at Member State level and at the level of the Commission to ensure application – which is nothing other than the ‘rule of law’. At present, this political will does not exist with all responsible public authorities of all Member States.

Second, this must go hand in hand with making administrations understand why the application of existing (environmental) rules is relevant in society. As long as there are proverbs such as ‘*fatto la legge, si trova l’inganno*’ (when legislation is made, there will be a way to bypass it) and ‘*quien hace la ley, hace la trampa*’ (the lawmaker finds a way to avoid its application), there is a long way to go to adapt the legal cultures within the European Union to a more or less equivalent application of EU legislation. Administrations must learn that environmental protection is, in the long term, beneficial to the economy and to society as a whole; at present, it is all too often considered that the protection of the environment is hampering economic progress.



Ludwig Kramer

Third, EU environmental law should no longer be treated as imported law, but should be applied and enforced in the same way as national law. This requires education, training, information, and a model role of government and other public authorities.

Fourth, enforcement should be serious, and sanctions adequate and credible. Criminal sanctions, in particular in cases of deliberate and/or repeated pollution, appear necessary. All too often there is a tendency to treat environmental pollution as a gentleman's crime.

Fifth, the monitoring of the application of environmental law should not be the monopoly of public administrations which, for reasons indicated above, are sometimes reluctant to enforce environmental legislation. Access to courts for NGOs and individual citizens should be made easier.

Sixth, police agents, inspectors, prosecutors and judges need to learn about the existence of environmental law and the importance of applying it in day-to-day practice.

Seventh, a policy of naming and shaming environmental polluters should be pursued. There is not much use in having a register that indicates industrial emissions, when at the same time administrations do not inform the media and the public that technology would allow reductions, that competitors reduce much less, and develop plans and programmes to bring environmental impairment down.

There are probably a considerable number of other measures which should or could be added to this list. Compared to other sectors of law - social law, competition law, trade law, agricultural law, etc. - environmental law is in a worse situation, as the environment has no voice and cannot protect its interests. As previously stated, it requires political will to improve application of environmental legislation and I cannot see this happening any time soon." ■

Interview with Catherine Alfonsi

Head of EnviCrimeNet Secretariat, Europol

Catherine Alfonsi is a French Customs Superintendent recruited by Europol to deal mainly with Customs cooperation. Prior to working for Europol, she worked for the French Customs national board of investigations. At Europol, she was a Liaison Officer for eight years prior to her current post, in charge of the Secretariat of the EnviCrimeNet network specialising in environmental crime and mass marketing fraud.



Catherine Alfonsi (© Eurojust)

***Eurojust News:** As far as Europol is concerned, what constitutes environmental crime? What falls within the remit of your office?*

Catherine Alfonsi: "The Annex to the Europol Decision of 6 April 2009 establishing the European Police Office (Europol) (2009/371/JHA) stipulates: 'illicit trafficking in endangered animal species, illicit trafficking in endangered plant species and varieties, and environmental crime'. The first two items refer to the CITES Convention, while the third item would cover all infringements to international and national rules adopted to preserve a secure and safe environment (air, ground and water) for people and their societies.

The term 'environmental crime' is general, because it covers a wide range of activities which can have an impact on our lives. To name some examples: the lack of proper treatment of domestic and industrial wastes dumped next to habitations despite the fact that they may be highly toxic and pollute the soil and water; the illegal trafficking and exporting of the same waste that could be used as fuel with devastating effects on the air; the use of banned products due to their toxicity, but nevertheless still attractive to use because of their low cost.

All these examples of activities could fall within the remit of Europol, provided that they are a form of serious crime affecting two or more Member States in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offence.

And, of course, all activities related to the illegal trafficking of endangered species, be it animals or plants and their products. The most famous are the booming trafficking in ivory and rhino horns, as well as the trafficking in precious and rare wood species, plants for the production of luxury furniture or musical instruments, perfumes and diet products, among others."

Of all the aspects you mention, which presents the greatest threat?

"To my mind, the main threat would be a lack of awareness of the crime and its consequences on people, in our countries and abroad. And then, to consider it as a minor offence, to underestimate its impact, the profits generated by a criminal economy to the detriment of an entire economic sector abiding by the law, and to ignore the fact that these criminal profits may be used to finance other crimes.

But in times of economic crisis, when it comes to allocating resources to combat different forms of criminal activity, one has to bear in mind that environmental crime is not really 'sexy'. Stopping this type of criminal activity does not attract the attention of media and the people in the way that the seizure of drugs can.

One also has to bear in mind that the consequences of criminal activities such as the pollution of soil, water and the air

may take time to manifest and be identified as causing destruction of the environment and possibly even casualties. There is also the increased difficulty of linking the facts to bring evidence to court.

Hence, because the crime does not speak loudly and immediately, the resources needed to investigate are redistributed to other priorities. And lack of investigation and attention are exactly what criminals thrive upon: a perspective of low risk, low penalty, be it of a financial nature or imprisonment, and a good profit: it is commonly agreed that it is more risky to smuggle one kilogramme of drugs compared to the risk of smuggling one ton of waste.”

What are you doing to address this threat?

“A dedicated and informal network was launched in 2011: EnviCrimeNet. Its objective is to gather specialists from all horizons, but especially investigators, to identify the major common threats. It may very well be that some infringements of environmental legislation have been identified in one Member State and are expanding abroad. It may also be that the crime can easily be committed because investigating it would require cooperation between different agencies – which do not necessarily benefit directly from such

“it is commonly agreed that it is more risky to smuggle one kilogramme of drugs compared to the risk of smuggling one ton of waste.”

cooperation – of law enforcement powers, at national or international level. So awareness of who is doing what and how to get the best cooperation is necessary. Hence, linking people and providing them with the tools of secured communication and a platform for exchange is crucial to enhancing good and effective cooperation.”

What are the biggest challenges facing you? Are they persistent challenges or constantly changing?

“As I mentioned earlier, resources are being reallocated at national level according to priorities and budgetary constraints to start with. In addition, a European overview of the different criminal activities linked to these topics is needed. This requires recognition, cooperation, exchange and sharing of information without impairing any national and legal proceedings.”

What are you doing to address these challenges?

“We will keep developing EnviCrimeNet

at Europol. The network’s members attend meetings to upgrade their expertise and knowledge about Europol. In this way, we have a chance to reach the specialists from other administrations and services. As I said, sharing is a key word.”

Now that you have attended the strategic meeting, what are your thoughts on future cooperation with Eurojust?

“There is no doubt in my mind that cooperation between Europol and Eurojust is essential in the broad area of environmental crime.

By collecting information and intelligence from different sources and origins, Europol assists national, European and third States’ investigations. The SOCTA provides a unique overview and a unique occasion to identify criminal trends and where precisely criminal groups would try to keep a low profile and escape attention. Eurojust can take over the findings of the analysis and investigation more easily. It can then amplify the results and outcomes by its actions. It is team work, indubitably.” ■

Interview with Jean-Philippe Rivaud

Vice-President, ENPE

Jean-Philippe Rivaud is a former judge, Senior Prosecutor, Head of Environmental Crimes Department, and Deputy General Prosecutor of the Court of Appeal, Amiens, France.

Eurojust News: It is early days for the ENPE. Can you tell me something about its history?

Jean-Philippe Rivaud: “Yes, it’s fairly new, officially established in September 2012. It was set up as a non-profit organisation on the same model as the Association of Judges of the Environment, which was established ten years ago. It’s an association under Belgian law,

with headquarters in the IMPEL office in Brussels. The ENPE is an association of prosecutors whose goal is to gather prosecutors dealing with environmental crime from all over Europe, the European Union as well as the Council of Europe. For example, Norway is a member, so not only the European Union. It is a fairly new topic in Europe; some countries – such as Norway and Spain – have specialised prosecutors, while in

countries such as France there are none, even if some prosecutors deal with this topic. We need to share experience, share knowledge, material means, and data regarding case law, and implement a stronger policy in the environmental field through criminal law.”

How important is a meeting such as this in developing those aims?

“It is very important, because Eurojust is a central organisation in Europe regarding the coordination of prosecution services, and is essential to European

prosecutors. Eurojust provides huge legitimacy to the ENPE, but the ENPE can also provide experience to Eurojust, as Eurojust had little experience in environmental law up until now. It's a kind of exchange. Eurojust has huge legitimacy, and provides a good opportunity for us to meet colleagues from all the Member States, colleagues who do not have experience in this field; we are now talking with colleagues from Hungary and Bulgaria and across Europe."

What is the added value of Eurojust's involvement?

"The added value is that Eurojust is an official institution with an important structure; it is very well organised, very professional. It's very identifiable among prosecutors as well as among other institutions such as INTERPOL, Europol and prosecution services all over the world. Eurojust is very visible."

meeting of this network in Bogota last week and am now a member. We would like to develop this policy of connecting, and extend it to prosecutors from Africa, the Middle East and Asia, because the most important cases in the field of the environment are all international cases. Pollution ignores borders."

Will training prosecutors bring consistency in sentencing regimes across the countries?

"I hope so, because prosecutors are prosecuting, of course, but we are also strongly connected with judges. I was a judge in the past myself, so I understand them. Judges are absolutely essential as they make the final decisions, but prosecutors have a key role between police forces, law enforcement authorities and the judges. This is our normal position, to be at the junction between the police forces and



Jean-Philippe Rivaud and Eurojust President Michèle Coninx

"We need to share experience, knowledge, material means, and data ... "

Does Eurojust influence your work in any way?

"It helps. In some cases, for the most important cases - because Eurojust does not only deal with the most important cases - I think in this field the presence of Eurojust will help, but the ENPE is very new, and I will not be able to say more on this topic for a while. Eurojust is a very good example, a success story."

Do you see the ENPE influencing the development of legislation in the future?

"We would like to involve ourselves in the training of prosecutors, that's very important, and in connecting prosecutors all over the world.

For example, we are now strongly connected with the Latin American Network of Prosecutors for the Environment, which has been in existence since 2008. It's very well structured and has more than 300 prosecutors from all over Latin America. I participated in a

the judges. We can help in investigating cases in order to prepare perfect case files for judges."

What did you take away from this meeting?

"I was able to connect with many colleagues that I didn't know until today, especially with Central and Eastern European colleagues from Latvia, Romania, Bulgaria and Hungary. I have just spoken with my colleagues from Budapest and I think the next meeting of the ENPE's board will take place there. This will be the first time that the board will meet in Central and Eastern Europe."

Do you see Central and Eastern Europe as areas that have perhaps been neglected in the past in terms of judicial cooperation?

"Yes, as you know, most of our members from this region are new, and we sometimes feel they are a little shy due to their histories. We should not force,

but make them more comfortable with us, and we need to help them connect, to talk with us. They have a right to be members, the same right as Western European countries, and Europe is both east and west. In the field of environmental criminal law, it is absolutely essential to connect with Central and Eastern Europe. There is also a lot of trafficking in the Balkans connected with Russia and the Middle East, and it's very interesting and important to connect with them."

How do you see future cooperation with Eurojust?

"I think that Eurojust is now aware of this topic and has more knowledge and that the representatives of the Member States will pay more attention to this topic, a very specific area of criminal law. We will meet more and more with Eurojust. As we now have contact with the central organisation of Eurojust, it's obvious that we will continue our cooperation." ■

Examples of three environmental crime cases, in which Eurojust was involved, follow. Two take the form of interviews.

The Prestige case

The *Prestige*, a 26-year-old oil tanker owned by a Greek firm and registered in the Bahamas, broke up off the coast of Galicia in 2002, resulting in the spillage of 77 000 tonnes of heavy fuel, the most serious oil spill ever to occur in European waters, fouling thousands of kilometres of mostly Spanish coastline and forcing the closure of Spanish and French fishing grounds.

Rosa Ana Morán Martínez is the Head of International Cooperation in the Prosecution Service of Madrid.

Alvaro Garcia Ortiz was the prosecutor in charge of the Prestige criminal case and is the prosecutor delegated for environmental crimes in Galicia.

Eurojust News: *You were heavily involved in the famous Prestige case. What was your role?*

Rosa Ana Morán Martínez: “I was working in the Spanish General Prosecutor’s Office as the prosecutor responsible for international cooperation matters. The Spanish investigating judge needed to prepare some MLA requests to send to France and Greece, and I worked with my colleague from La Coruña, Alvaro Garcia Ortiz, the prosecutor in charge of this case, to resolve some problems regarding this international request.

We also worked very closely with Ruben Jimenez, the Eurojust National Member for Spain at the time, and with the French liaison magistrates, Samuel Vuelta-Simon and Patrice Ollivier-Maurel. When the Spanish investigations started in the court of Corcubión, we were aware that France had carried out some criminal investigations in this affair because the coast of France was also affected by the toxic spill. The French prosecutor wanted to interrogate the captain of the *Prestige* as one of the principal parties responsible for the disaster, but the captain was already imprisoned in Spain for the same case. Eurojust organised the

first meeting between France, Spain and Portugal, trying to share the information from each Member State.

We all agreed that only one process should take place and, given the circumstances, Spain was in the best position to conduct the investigations and hold the trial. Once we received Eurojust’s recommendation, I prepared the Spanish General Prosecutor’s decision, recognising that Spain would accept Eurojust’s recommendation and that the Spanish General Prosecutor was willing to prosecute this case and take all measures needed to protect both the Spanish and French victims.

The issue of the position of the French victims was perhaps the most sensitive issue in accepting the case. I wrote a complete report on the rights of the French victims in the Spanish criminal procedure. Of utmost importance for all of us, but especially for the French authorities, was the assurance that French nationals would be protected by the Spanish General Prosecutor’s Office.

Then, once both the Spanish and French decisions had been taken, we worked with the Brest Prosecutor and the Investigating Magistrate of Brest to organise the sending of an enormous amount of documentation and all the French proceedings. We studied how to present the documents and which documents needed to be translated into Spanish. The result of this cooperation was the treatment of the French victims as if they were Spanish victims. The French Public Prosecutor participated in the oral proceedings, sitting beside the Spanish

prosecutor, and hearing the statements of some French victims.”

Can you describe the value of Eurojust’s involvement in the Prestige case?

“Eurojust played an important role in organising the first meetings. Eurojust’s added value was its recommendation to resolve the likely conflict of jurisdiction. The recommendation helped the Spanish authorities to accept the entire case. In addition, I think that Eurojust’s position helped the French authorities to accept that the proceedings should take place in Spain and convinced them that the French victims would have full guarantees under Spanish jurisdiction and receive the protection of the Spanish Prosecution Service.”

Questions answered by Alvaro Garcia Ortiz, prosecutor in charge of the case:

Eurojust News: *Do you think that the Prestige case has raised the awareness of the European public and legislators of the effect of environmental crime?*

Alvaro Garcia Ortiz: “I am quite sure. In addition, the *Prestige* case happened shortly after another environmental disaster, the *Erika* case, on the French coast, and caused a social and legislative reaction in all countries affected.”

How does Spain define environmental crime?

“The Spanish Criminal Code defines offences against natural resources and the environment as: “Whoever, breaking the laws or other provisions of a general



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nature that protect the environment, directly or indirectly causes or makes emissions, spillages, radiation, extractions or excavations, filling with earth, noises, vibrations, injections or deposits, in the atmosphere, the ground, the subsoil or the surface water, ground-water or sea water, including the high seas, even those affecting cross-border spaces, as well as the water catchment basins, that may seriously damage the balance of the natural systems.... or should there be risk of serious damage to the health of persons.”

What are the biggest challenges facing you in the area of environmental crime? Are these challenges persistent or constantly changing?

“There is not only one challenge, there are many, as offences related to waste or residues that are toxic and hazardous, offences concerning territorial and town planning, offences related to flora, fauna and pets, and, especially, in some Spanish regions, forest fires. Some of these are isolated events and others are structural.”

What are you doing to address these challenges?

“I work with police investigators in coordination with my colleagues and Spanish prosecutors specialised in environmental crime, seeking to be effective in the fight against environmental offenders. The challenge of reducing environmental damage is a crucial endeavour.”

Since conducting these interviews, the final verdicts were delivered in the Prestige case. The three judges of the Galician High Court concluded that establishing criminal responsibility was impossible. Captain Apostolos Mangouras, Chief Engineer Nikolaos Argyropoulos and the former head of Spain’s Merchant Navy, Jose Luis Lopez, were found not guilty of crimes against the environment. Lopez was the only government official charged in the case. Mangouras, 78, was found guilty of a lesser charge of disobedience and given a nine-month suspended sentence. (Source: Reuters International) ■

The Bird-Egg case

This case involves three jurisdictions: Sweden, the UK and Finland. A criminal network is suspected of having illegally traded wild bird eggs on a large scale. Over 200 wild bird eggs were found at the residence of one of the persons charged. In the UK, a person was charged with several offences: purchasing eggs, selling and offering eggs for sale, and possession of bird eggs in breach of UK national wildlife legislation. This person pleaded guilty and was sentenced to 220 hours of community service for trading illegally in wild and rare bird eggs.

In Sweden, an indictment has been issued for hunting offences, receiving the proceeds of hunting, and offences against the protection of endangered species. It is believed that the criminal activities took place between 2003 and 2010. The eggs from, in particular, the hunting offences, are protected under EU legislation implementing the CITES Convention into EU law (Council Regulation 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein).

Eurojust played an essential role in the case. It assisted in setting up, and participated in, a JIT between Finland and Sweden and provided crucial funding. In addition to its coordination role, where it facilitated the communication of sensitive information, Eurojust’s funding of the JIT provided clear added value by enabling an external expert – an ornithologist – to be attached to the investigation.

Jarmo Rintala, District Prosecutor in the Prosecutor’s Office in Pohjanmaa, Finland, and Kate Fleming, Specialist Prosecutor with the Crown Office and Procurator Fiscal Service, UK, were involved in the Bird-Egg case.

Leif Görts, also involved on behalf of Sweden, interviewed them about the case for this newsletter.

Leif Görts: Jarmo, how do you see the case from the Finnish point of view?

Jarmo Rintala: “We were kind of the third link in the evolution of the case. It’s very important to understand that what these collectors were doing was a cross-border act, so we needed cross-border cooperation. We received information from Sweden that a Swedish national had been arrested, and that he had been communicating with a Finnish national. Upon searching the suspect’s house – an operation that was done in coordination with Swedish colleagues – police discovered not the anticipated 100 eggs, but approximately 10 000, including a very rare egg from a bird that was declared extinct in the 17th century, a large number of rare animals that had been stuffed, and around 300 animals hidden in a freezer. The rare egg had a high monetary value, although it is not only a question of money, but of value to science.”

What was the added value Eurojust brought to the investigation?



Jarmo Rintala: “Eurojust’s assistance in the JIT was invaluable in coordinating communication between ourselves and our Swedish colleagues and with prosecutors in the UK, particularly in Scotland.”

Kate Fleming: “International communication and coordination at the beginning of the investigation may have achieved wider-ranging results. For example, Eurojust has a Liaison Prosecutor from the USA. Using Eurojust to facilitate contact between the UK, Sweden and our counterparts in the USA may have assisted in the coordinated engagement of all States at the same time.”

Jarmo Rintala: “I agree. It might have been that earlier communication would have reduced the time taken on the prosecution decision.”

Leif Görts: “So earlier communication and having Eurojust facilitate is a distinct advantage. We saw the criminality, but it continued until we started talking. Coordination meetings are ideal for this purpose and may have led to more focused, calibrated charges. In addition, coordination centres permit all of the countries involved to carry out an action day with coordinated actions; this is essential to secure evidence. I believe Finland is rather progressive in the use of JITs, and the benefits here are clearly demonstrated in this case when we see that the JIT funding enabled Sweden to hire the services of an expert, an ornithologist.”

Kate Fleming: “Coordination meetings rather than each country holding separate meetings would have worked in our favour. Close cooperation with other countries also allows us to see their different perceptions of crime and to inform judges of how environmental crimes can be taken more seriously. Knowing what I do now allows me to better inform my colleagues, and knowing how Eurojust can assist in a more coordinated approach will surely lead to better results.” ■

Introducing Vice-President Francisco Jiménez-Villarejo

Mr Francisco Jiménez-Villarejo, National Member for Spain, joined Eurojust in December 2012 and was elected Vice-President in October 2013.

He began his career as a prosecutor, joining the Prosecution Office of Seville in 1990. After being promoted to the rank of Senior Prosecutor, he worked at the General Prosecution Offices of Majorca (1996 – 1999), Seville (1999 – 2001), and Malaga (2001 – 2012), where he was appointed Delegate of the Anticorruption Prosecution Office in 2006.

Specialising in international cooperation in criminal matters, Mr Jiménez-Villarejo was a founding member of the Spanish Prosecutors International Cooperation Network in 2002 and a contact point of the European Judicial Network since 2004. He was a TAIEX short-time expert, expert member of the Phare Twinning Project in Bulgaria from 2005 – 2007 and a Council of Europe GRECO evaluator for the prevention of corruption in 2012.

Mr Jiménez-Villarejo has served as a member of the Permanent Committee of the European Judicial Training Network since 2011. Mr Jiménez-Villarejo is a frequent speaker at high-level international seminars. He was a professor of Criminal and Procedural Law at the Police Academies of Andalucía and Majorca, and in the Public Law Department of the Universidad de las Islas Baleares, and he collaborates on a regular basis with the Universities of Málaga, Valladolid and Castilla-La Mancha. His articles on international cooperation have been published in various books and law journals.



The Manure case

In the Netherlands and four other countries, a number of natural persons linked to numerous companies were trading in and transporting animal manure both inside the Netherlands and abroad. Manure transport and the discharge of fertilizer require transparent accounts in the Netherlands. Consistent breaches of the Fertilizers Act 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, leading to the suspicion that proper accounts were missing regarding the storage and distribution of animal manure in silos, thus avoiding the payment of tax related to the Fertilizers Act (if a larger amount than permitted is used on the land, a fine of EUR 7 per kg of nitrogen and EUR 11 per kg of phosphate is levied). The illegally obtained advantage was estimated at approximately EUR 8 to 9 million. In addition to the Netherlands, the suspects also operated in Belgium, Germany, Poland and Switzerland.

Eurojust provided assistance by facilitating mutual legal assistance before, during and after the planned action day of 25 September 2012. Several seizures of illegally obtained assets and administrative documents were made and witnesses were heard to collect evidence. Eurojust set up and ran an operational coordination centre to coordinate and monitor simultaneous operations between judicial authorities and 200 police officers in the five countries. Eurojust resolved the legal and practical obstacles that occurred during the action day. ■

Colophon

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