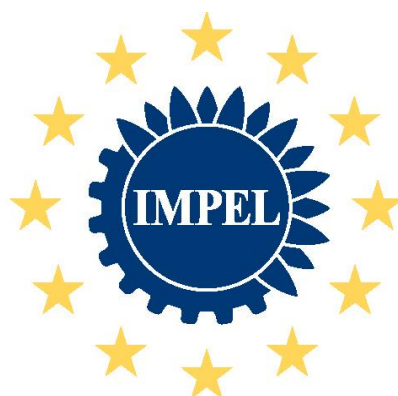


**IMPEL TFS prosecutors project  
Final report**



European Union Network for  
the Implementation and Enforcement  
of Environmental Law



## Introduction to IMPEL

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international non-profit association of the environmental authorities of the EU Member States, acceding and candidate countries of the European Union and EEA countries. The association is registered in Belgium and its legal seat is in Bruxelles, Belgium.

IMPEL was set up in 1992 as an informal Network of European regulators and authorities concerned with the implementation and enforcement of environmental law. The Network's objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. The core of the IMPEL activities concerns awareness raising, capacity building and exchange of information and experiences on implementation, enforcement and international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.

During the previous years IMPEL has developed into a considerable, widely known organisation, being mentioned in a number of EU legislative and policy documents, e.g. the 6th Environment Action Programme and the Recommendation on Minimum Criteria for Environmental Inspections.

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on both technical and regulatory aspects of EU environmental legislation.

Information on the IMPEL Network is also available through its website at:

[www.impel.eu](http://www.impel.eu)



<b>Title report:</b> IMPEL TFS-prosecutors project	<b>Number report:</b> 2012/12
<b>Project manager:</b> Rob de Rijck (Public Prosecutors Office, The Netherlands)	<b>Report adopted:</b> June 2013
<b>Authors:</b> Eva Cornelissen and Rob de Rijck	<b>Number of pages: 25</b> Report: 9 Annexes: 16
<p><b>Project team</b></p> <ul style="list-style-type: none"> <li>- Anne Brosnan (Environment Agency England and Wales)</li> <li>- Howard McCann (Environment Agency England and Wales)</li> <li>- Marc van Cauteren (Parket Antwerpen)</li> <li>- Antonio Vercher (Ministerio de Justicia España)</li> <li>- Kristina Persson (Swedish National Environmental Crimes Unit)</li> </ul> <p><b>Support:</b></p> <ul style="list-style-type: none"> <li>- Ingrid Kuipers (Public Prosecutors Office, The Netherlands)</li> <li>- Eva Cornelissen (Rotterdam Police department)</li> </ul>	
<p><b>Executive summary:</b></p> <p>This project aims to stimulate and strengthen the start of a platform or (informal) network of prosecutors in Europe involved in the prosecution of environmental crime with a special focus on the WSR 1013/2006.</p> <p>This network should facilitate the exchange of relevant case law, prosecution information like the level of fines, working methods, prosecution approach, interpretation and practical experiences. Furthermore it would like to inform participants on new developments within the compliance of the Basel Convention and WSR. The two main planned project results are a workshop for 20 participants of two days and an outline of a database on the Waste Shipment Regulation for EU prosecutors</p> <p>The project team has had 2 preparatory project team meetings. This led to the intended outline for a database of case law including national case law and a 2 day workshop for prosecutors in November 2012 in Spain. This workshop was attended by 19 prosecutors from 13 EU Member States and representatives from IMPEL, the Basel Convention Secretariat and Eurojust. The program of the workshop consisted of several presentations and ended with a discussion on how to continue. All participants valued the workshop and liked to see the network continue. Also the proposed database was considered to be a useful tool in order to share information on verdicts, fines etcetera. The next step will be to look for organizations that can finance and/or host this database.</p> <p>The budgeted project costs were € 17.750. The actual spending was €14.411,80.</p>	
<p><b>Disclaimer:</b></p> <p>This report is the result of a project within the IMPEL network. The content does not necessarily represent the view of the national administrations.</p>	



## **OBJECTIVES, INTENDED RESULTS, COSTS**

### **Objectives**

Objectives as formulated in the ToR are:

- Stimulate and strengthen the start of a platform or (informal) network of prosecutors in Europe involved in the prosecution of environmental crime with a special focus on the WSR 1013/2006.
- Exchange relevant case law, prosecution information like the level of fines, working methods, prosecution approach, interpretation and practical experiences.
- Inform participants on new developments within the compliance of the Basel Convention and WSR enforcement (e.g. Basel Convention Secretariat development of the 'Instruction Manual for Prosecutors and Judges on the Prosecution of Illegal Traffic of hazardous Wastes or Other Wastes').
- Explore the possibility to set up an interactive database of environmental case law including (translated) national case law and jurisprudence (e.g. EUR-Lex).

### **Intended results**

The results as formulated in the ToR are:

1. Two project team meetings
2. One workshop for 20 participants of two days
3. Outline of a database on the Waste Shipment Regulation for EU prosecutors
4. Project report

### **Costs**

Budgeted costs were: €17.750

Actual spending was: €14411,80.

The spending consisted mainly of travelling costs. The costs for accommodation and the venue were low as the accommodation and venue in Valsain were for free. The Dutch public prosecutors office has contributed to the project team meetings through dinner and local travel costs.

*(ANNEX 1 – adjusted Terms of Reference)*

*(ANNEX 2 – project plan versus actual spending)*

## PROJECT RESULTS

### 1. Project team meetings

The first meeting took place on the 8<sup>th</sup> and 9<sup>th</sup> of February 2012 in Rotterdam. During this meeting the group:

- explored the issues concerned with the database, its purpose and its content
- explored the purpose of the network of prosecutors and its shape
- set a date for the prosecutors workshop
- found an venue for the workshop through the effort of Mr. Antonio Vercher: the CENEAM (National Centre for Environmental Education) in Valsain (Spain),
- Gathered ideas for the workshop program
- Discussed the relationship with other initiatives and organisations

The second meeting took place on the 15<sup>th</sup> and 16<sup>th</sup> of May 2012 in Rotterdam. During this meeting the project group has:

- discussed the outline for the database
- worked on the final content of the program for the workshop (including speakers)
- worked on the participants list and the invitation
- made a planning
- discussed other practicalities and financial aspects

### 2. Other activities

The project team has got in touch with Ms. Juliette Kohler of the Secretariat of the Basel, Rotterdam and Stockholm Conventions. Two members of the project team, Mr. McCann and Mr. Vercher, contributed to the Basel training in Bratislava in June.

The project team made a first step with the network itself by exchanging judgements and discuss legal issues by mail and through Basecamp.

### 3. Proposal for a pilot database of environmental case law

The project team has worked on an outline for a database. This outline was sent to the participants of the workshop and was discussed on the last day of the workshop. The participants agreed that a database as outlined would be a a useful tool in their prosecutions.

*(ANNEX 3 - outline data base)*

### 4. Workshop

On Monday 12 November 2012, 19<sup>1</sup> prosecutors from 13 EU Member States and representatives from IMPEL, the Basel Convention Secretariat and Eurojust assembled in the Centro Nacional de Educacion Ambiental (CENEAM) in Valsain, Spain.

The goals of the workshop were to establish a network of European Prosecutors working on the WSR, establish a database, create enthusiasm for working on the WSR and promote a common level of understanding and cooperation. During the introduction of the participants it became clear that this workshop fulfilled a need as most prosecutors feel quite isolated in their work.

The second day of the meeting was filled with presentations concerning the WSR and related problems, such as the classification of waste, the definition of a shipment, recovery and import-transit-export. In the afternoon theory was put into practice by case studies based on real investigations.

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<sup>1</sup> Three prosecutors were unable to attend the workshop because of illness or unplanned trials they had to attend.



On the third and final day proper sanction and liability of a legal person were being discussed, followed by presentations by the representatives from IMPEL, Eurojust and the Basel Convention Secretariat on what their organizations do and how they can support prosecutors and cooperate on WSR cases.

The Spanish Attorney General Eduardo Torres-Dulce Lifante also attended a part of the workshop and underlined the importance of meetings like these and of cooperation among Member States in relation to prosecuting environmental crime.

At the end of the day the workshop was evaluated and the group discussed the continuation of this initiative. All participants valued the workshop and would like to see the network continue. Also the proposed database was considered to be a useful tool in order to share information on verdicts, fines etcetera. The next step will be to look for organizations that can finance and/or host this database.

*(ANNEX 4 – PROGRAMME WORKSHOP)*

*(ANNEX 5- REPORT WORKSHOP)*

<b>TERMS OF REFERENCE FOR IMPEL PROJECT</b>
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No	Name of project
2012/12	IMPEL-TFS Prosecutor Project

**1. Scope**

<b>1.1. Background</b>	<ul style="list-style-type: none"> <li>• The compliance deficit of the Basel Convention and the European Waste Shipment Regulation (1013/2006) or 'WSR' is very serious and past experience indicates that we are dealing with organised crime in many cases. Figures indicate that about 20% of all waste shipments are in violation.</li> <li>• IMPEL-TFS project results illustrate that within the enforcement and prosecution of the WSR it is very necessary to work together as competent authorities. In the whole chain of one waste shipment, multiple authorities in countries of origin, transit and destination are responsible for the control of this shipment.</li> <li>• Prosecution of environmental crime is a national competence. The differences in approach and the number of convictions in European countries are significant. There appears to be a lack of communication between authorities both on a national and on an international level. In practice, criminals who are involved in shipping waste illegally take advantage of the differences in enforcement lack of communication between authorities.</li> <li>• To improve the collaboration and alignment within prosecution of the WSR, frequent contact between all relevant authorities is necessary. Prosecution is an important part of the enforcement and compliance cycle. Therefore, European prosecutors need structured, personal and frequent contact where they can strengthen their network, exchange experiences of case law and good practices and align prosecution actions of European environmental law and regulations in Europe.</li> <li>• Since 2008, several initiatives have been undertaken by different organisations to improve collaboration between prosecutors of environmental crime in Europe. In June 2010 in The Hague, the International Seminar for European Prosecutors of Environmental Crime resulted in an official statement where the need of a European Network for prosecutors in their fight against international waste shipment related crime was expressed.</li> <li>• This project focuses on strengthening the cooperation between prosecutors for a more effective enforcement of the WSR. This is in accordance with the conclusions and recommendations in the European Council Conclusions of 20 May 2010 (5956/5/10) on the 'Prevention and combating of illegal trafficking of waste, particularly in international trafficking'.</li> </ul>
<b>1.2. Link to MAWP and IMPEL's role and scope</b>	<p>The IMPEL-TFS cluster MAWP covers 2011-2015 and this project links to the following key partners, strategic goals and themes of the TFS cluster:</p> <p><u>2. Key Partners</u>: Public Prosecutors (with links to the other key partners);</p> <p><u>3. Strategic Goals 1, 2 and 3</u>: Increased Awareness, Capacity Building and Improved Cooperation;</p> <p><u>4. MAWP Themes 3 and 4</u>: Better Collaboration Enforcement Partners and Interpretation Issues.</p>
<b>1.3. Objective (s)</b>	<ul style="list-style-type: none"> <li>- Stimulate and strengthen the start of a platform or (informal) network of prosecutors in Europe involved in the prosecution of environmental crime with a special focus on the WSR 1013/2006.</li> <li>- Exchange relevant case law, prosecution information like the level of</li> </ul>

	<p>finances, working methods, prosecution approach, interpretation and practical experiences.</p> <ul style="list-style-type: none"> <li>- Inform participants on new developments within the compliance of the Basel Convention and WSR enforcement (e.g. Basel Convention Secretariat development of the 'Instruction Manual for Prosecutors and Judges on the Prosecution of Illegal Traffic of hazardous Wastes or Other Wastes').</li> <li>- Explore the possibility to set up an interactive database of environmental case law including (translated) national case law and jurisprudence (e.g. EUR-Lex).</li> </ul>
<b>1.4. Definition</b>	<p>The objectives will be achieved by the following approach:</p> <ul style="list-style-type: none"> <li>➢ Set up project team, approval ToR</li> <li>➢ Develop project plan</li> <li>➢ Two preparatory project team meetings</li> <li>➢ Two day workshop covering 4 topics: <ul style="list-style-type: none"> <li>1. Establishment of a European Prosecutors Network;</li> <li>2. Information exchange on WSR prosecution in practice;</li> <li>3. Explore possibility of environmental case law database;</li> <li>4. Share relevant developments.</li> </ul> </li> <li>➢ Prepare a proposal for a pilot case law database</li> <li>➢ Report results (network, workshop, database etc)</li> </ul>
<b>1.5. Product(s)</b>	<ul style="list-style-type: none"> <li>5. Two project team meetings</li> <li>6. One workshop for 20 participants of two days</li> <li>7. Proposal for a pilot database of environmental case law</li> <li>8. Project report</li> </ul>

## 2. Structure of the project

<b>2.1. Participants</b>	<p>Prosecutors of environmental crime specialised in WSR in Europe (or their representatives), project team, relevant organisations. Countries that have confirmed that participation are:</p> <ul style="list-style-type: none"> <li>• The Netherlands</li> <li>• Belgium</li> <li>• United Kingdom</li> <li>• Sweden</li> <li>• Spain</li> <li>• Germany</li> </ul>
<b>2.2. Project team</b>	<ul style="list-style-type: none"> <li>- Anne Brosnan (Environment Agency England Wales)</li> <li>- Kathleen Desaegeher (Parket Generaal Brussel) en Marc van Cauteren (Parket Antwerpen)</li> <li>- Kai Lindgens (District Court Frankfurt am Main)</li> <li>- Antonio Vercher (Ministerio de Justicia España)</li> <li>- Kristina Persson (Swedish National Environmental Crimes Unit)</li> <li>- Thera Boelhouwers (VROM-Inspectorate, The Netherlands)</li> </ul>
<b>2.3. Manager Executor</b>	Mr. Rob de Rijck (Public Prosecuting Office, The Netherlands)
<b>2.4. Reporting arrangements</b>	Report to the IMPEL-TFS Steering Committee and IMPEL General Assembly in Republic of Ireland, May 2013
<b>2.5 Dissemination of results/main target groups</b>	Prosecutors of environmental crime, Basel Convention and the WSR, IMPEL-TFS network, European Commission, Secretariat of the Basel Convention, Eurojust, International Association for Prosecutors, INECE etc.

### 3. Resources required

<b>3.1 Project costs and budget plan</b>		<b>2012</b>	
	<u>1. Overhead (organisation) cost (€):</u>		<b>0</b>
	<u>2 Project meeting costs (€:)</u>		
	<u>Meeting 1<sup>2</sup>: Project Team</u>		<b>2.550</b>
	No of Participants:	<b>6</b>	
	Travel <sup>3</sup> :	2.010	
	Accommodation <sup>4</sup> :, 1 night	540	
	Catering: (lunch, dinner, coffee)		
	Meeting room:	100	
	<u>Meeting 2: Project Team</u>		<b>2.550</b>
	No of Participants:	<b>6</b>	
	Travel:	2.010	
	Accommodation:, 1 night	540	
	Catering: (lunch, dinner, coffee)		
	Meeting room:	100	
	<u>Meeting 3: 2 days workshop</u>		<b>12.650</b>
	No of Participants:	<b>20</b>	
	Travel:	6.700	
	Accommodation:, 3 nights	5.400	
	Catering: (2 lunches, 1 dinner coffee breaks)	550	
	Meeting:		
	<u>3. Other costs (€:)</u>		
	Consultant costs (estimate)	<b>0</b>	
	Consultant reporting (estimate)	0	
	co-financing contribution, committed by partners		
	<b>Total costs 2012</b>		<b>17.750</b>
<b>3.2. Fin. from IMPEL budget</b>			<b>17.750</b>
<b>3.3. Co-financing by MS (and any other )</b>			
<b>3.4. Human from MS</b>			

### 4. Quality review mechanisms

The project manager will regularly report the process and outcomes to the IMPEL-TFS Steering Committee and the IMPEL General Assembly. IMPEL procedures are applicable and have to be followed by the project team.

### 5. Legal base

<b>5.1. Directive/Regulation/Decision</b>	<ul style="list-style-type: none"> <li>➢ European Waste Shipment Regulation (1013/2006);</li> <li>➢ Commission Regulation (EC) 1418/2007 concerning the export of certain wastes for recovery to NON-OECD countries;</li> <li>➢ European Council Conclusions of 20 May 2010 (5956/5/10) on the 'Prevention and combating of illegal trafficking of waste, particularly in international trafficking'.</li> </ul>
<b>5.2. Article and description</b>	<p>EC Regulation No 1013/2006 on the supervision and control of shipments of waste within, into and out of the European Community</p> <ul style="list-style-type: none"> <li>➢ Article 50(1): Member States shall lay down the rules on penalties applicable for infringement of the provisions of this</li> </ul>

<sup>2</sup> specify, like Review Group Meetings, Workshop etc.

<sup>3</sup> normative: €360/person

<sup>4</sup> normative: €90/person/night

	<p>Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive;</p> <ul style="list-style-type: none"> <li>➤ Article 50(2): Member States shall, by way of measures for the enforcement of this Regulation, provide, inter alia, for inspections of establishments and undertakings in accordance with Article 13 of Directive 2006/12/EC, and for spot checks on shipments of waste or on the related recovery or disposal;</li> <li>➤ Article 50(5): Member States shall cooperate, bilaterally or multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments.</li> </ul> <p><u>EC Directive 2008/99/ on the protection of the environment through criminal law</u></p> <ul style="list-style-type: none"> <li>➤ Article 3 Offences: Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence: (...) (c) the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked; (...)</li> <li>➤ Article 5 Penalties: Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.</li> </ul>
<b>5.3 Link to the 6<sup>th</sup> EAP</b>	Articles 3(2) and 9(d) of the European Community 6 <sup>th</sup> European Action Programme.

## 6. Project planning

<b>6.1. Approval</b>	IMPEL General Assembly, November 2011 Warsaw
<b>(6.2. Fin. Contributions)</b>	
<b>6.3. Start</b>	January 2012
<b>6.4 Milestones</b>	<ol style="list-style-type: none"> <li>1. Project plan February 2012</li> <li>2. Project team meeting 1 March 2012</li> <li>3. Project team meeting 2 June 2012</li> <li>4. Workshop September 2012</li> <li>5. Proposal case law pilot database October 2012</li> <li>6. Final report December 2012</li> <li>7. Presentation and adoption report IMPEL GA 2013</li> </ol>
<b>6.5 Product</b>	<ul style="list-style-type: none"> <li>• Two project team meetings</li> <li>• Workshop</li> <li>• Proposal pilot case law database</li> <li>• Project report</li> </ul>
<b>6.6 Adoption</b>	IMPEL General Assembly 2013



Line Item	July	August	September	Q3	October	November	December	Q4	Annual
<b>Total</b>									
Plan	€ 0,00	€ 0,00	€ 9.000,00	€ 9.000,00	€ 0,00	€ 3.075,00	€ 0,00	€ 3.075,00	€ 17.175,00
Actual	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 10.588,80	€ 0,00	€ 10.588,80	€ 14.411,80
Variance	€ 0,00	€ 0,00	-€ 9.000,00	-€ 9.000,00	€ 0,00	€ 7.513,80	€ 0,00	€ 7.513,80	-€ 2.763,20
Variance (percent)	#DEEL/0!	#DEEL/0!	-100,00%	-100,00%	#DEEL/0!	244,35%	#DEEL/0!	244,35%	-16,09%
<b>Accommodation, travel, catering, venues &amp; Other</b>									
Plan	€ 0,00	€ 0,00	€ 9.000,00	€ 9.000,00	€ 0,00	€ 3.075,00	€ 0,00	€ 3.075,00	€ 17.175,00
Actual	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 10.588,80	€ 0,00	€ 10.588,80	€ 14.411,80
Variance	€ 0,00	€ 0,00	€ 9.000,00	€ 9.000,00	€ 0,00	-€ 7.513,80	€ 0,00	-€ 7.513,80	€ 2.763,20
Variance (percent)	#DEEL/0!	#DEEL/0!	100,00%	100,00%	#DEEL/0!	-244,35%	#DEEL/0!	-244,35%	16,09%
<b>Consultant</b>									
Plan	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00
Actual	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00
Variance	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00	€ 0,00
Variance (percent)	#DEEL/0!	#DEEL/0!	#DEEL/0!	#DEEL/0!	#DEEL/0!	#DEEL/0!	#DEEL/0!	#DEEL/0!	#DEEL/0!

## OUTLINE OF A DATABASE ON THE WASTE SHIPMENT REGULATION FOR EU PROSECUTORS

### Background and objectives

Article 174 of the Treaty on the Functioning of the European Union expresses the responsibility of the Union to contribute to the protection and preservation of the quality of the environment and the protection of human health. Directive 2008/99/EC on the protection of the environment through criminal law indicates the importance of prosecution of environmental crimes.

Prosecution of environmental crime is, however, a national matter. And the differences in approach and the number of prosecutions in the Member States are significant. There appears to be a lack of communication between authorities both on a national and on an international level. This affects the wished for level playing field and criminals who are involved in shipping waste might even take advantage of these differences in enforcement and lack of communication between authorities.

Therefore, European prosecutors need structured, personal and frequent contact so that they can build their network, exchange experiences of case law and good practices and align prosecution actions, especially in cases regarding the European Waste Shipment Regulation.

IMPEL, the European Union network for the implementation and enforcement of environmental law, has financed a prosecutors project. This IMPEL-TFS prosecutors project aims at strengthening the cooperation between prosecutors in Europe for a more effective enforcement of the WSR.

In order to achieve this, a network of prosecutors should be established. A database will facilitate the exchange of information and the communication between prosecutors. The database will be filled by the prosecutors network itself. The prosecutors project working group has defined the specifications of this database.

The next step is to find a host for the database. Continuation of the database on the longer term and security aspects are, among others, important issues to be considered.

### Specifications of the database

- Shape: Electronic secure database (website)
- Focus: Criminal enforcement of the European Waste Shipment Regulation
- Users: Prosecutors of all EU member states dealing with WSR regulation
- Content:

A. **Case law** from lower as well as higher courts. For each case the following documents or information will be provided by the introducing member state:

- a) The judgement
  - The text of the judgement in the original language.



- Names of the defendants will not appear in the judgements but initials are allowed

b) A summary of the judgement in English

The summaries will be provided in English by the submitting member state. If another member state is interested in the judgement, it may decide to translate the whole judgement on its own charges.

c) Keywords

The introducing member state will provide the keywords in English.

d) Identifying information

This includes the official domestic reference numbers of the judgements, the name of the prosecutor, the sort of court and a rating indicating the importance of the court.

**B. General information**

- a list of prosecutors working on the WSR
- a list of national contact points
- a description of the implementation of the WSR for each country, including maximum penalties
- description of the judicial system
- a glossary of important definitions
- FAQ

The database will not be used for the exchange of operational information. Members could contact or inform each other through the national contact points when a specific operational subject comes up.

Furthermore, the database is not be used for commercial purposes such as commercial publications.

- Moderator/secretariat:

A small secretariat will update the database/website. The secretariat will be responsible for the final selection of documents, keywords and admittance to the database. This secretariat could be a (yearly) revolving responsibility of the members. A handbook could give guidelines on how to manage the database/website. The formal hand over of the secretariat to the next member could take place during an annual conference of the prosecutors network.

- Access

Each member state will have a national contact point (existing of a group of high level managers) who can give their colleagues 'reading only' access. It is only through the national contact points that documents can be submitted to the secretariat.

June 5, 2012

The prosecutors project working group,

Rob de Rijck and Eva Cornelissen (The Netherlands), Anne Brosnan and Howard McCann (England and Wales), Kristina Persson (Sweden), Antonio Vercher Noguera (Spain) and Marc van Cauteren (Belgium).

## ANNEX 4- PROGRAM WORKSHOP



### PROGRAM IMPEL TFS WORKSHOP 2012 'HOW TO PROSECUTE ILLEGAL WASTE SHIPMENTS'

#### Goals workshop:

- establish the network of European prosecutors on WSR
- establish a database
- create enthusiasm for working on the WRS,
- promote a common understanding and cooperation

November 12<sup>th</sup>: arrival at CENEAM, Valsain and introduction of participants and program

November 13<sup>th</sup> and 14<sup>th</sup>: workshop

November 15<sup>th</sup>: departure

Monday November 12th		
16.00	Arrival by bus at CENEAM	Group 1
18.00	Arrival by bus at CENEAM	Group 2
19.00-19.45	Opening remarks and introduction of the IMPEL TFS workshop  WSR: why is it so important?	Mr. Antonio Vercher Noguera  Mr. Howard McCann
19.45	Dinner	

Tuesday November 13th		
08.00-09.00	Breakfast	
09.00-10.00	General presentation of WSR skeleton	Mr. Howard McCann
10.00-12.30  (incl. coffee break from 10.45 to 11.05)	Problematic issues:  What is waste and evidence needed/proof end of waste?  Classification: what types of waste are there?  What is transport/export/transit?  What is recovery?	Ms. Kristina Persson  Mr. Rob de Rijck  Mr. Rob de Rijck  Ms. Kristina Persson
12.30-13.30	Lunch break	
13.30-14.00	Continuation presentations	Ms. Kristina Persson
14.00-15.45	Training session based on TFS cases	All participants, lead by: Ms. Kristina Persson Mr. Howard McCann Ms. Renske Mackor
15.45-16.05	Coffee break	
16.05-17.30	Presentation cases and plenary discussion	All participants

19.30	Dinner	
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Wednesday November 14th		
08.00-09.00	Breakfast	
Time to be confirmed	Introduction	Attorney General Eduardo Torres-Dulce Lifante
09.00-10.00	Proper sanction and liability of a legal person	Ms. Anne Brosnan and Mr. Marc van Cauteren
10.00-10.30	Practical aspects of TFS prosecution	Mr. Sailesh Mehta
10.30-10.45	Coffee break	
10.45-12.00	Introduction to: IMPEL BASEL secretariat Eurojust	Ms. Nancy Isarin Ms. Amelie Taoufiq Mr. Daniel Bernard
12.00-13.00	Lunch break	
13.00-14.30	Introduction to network and database and discussion on how to continue	Mr. Antonio Vercher Noguera All participants
14.30-14.45	Wrap up: conclusions and evaluation	Mr. Antonio Vercher Noguera and participants
14.45-15.10	Short coffee break and preparation for guided walk	All participants
15.10-17.30	Guided walk	All participants
17.30-18.00	Coffee/tea/hot chocolate break	
19.30	Farewell dinner	

Thursday November 15th		
7.30-09.00	Breakfast	
8.15	Departure	Group 1
10.30	Departure	Group 2



**MINUTES OF THE IMPEL TFS PROSECUTORS WORKSHOP ON WSR  
VALSAÏN , SPAIN, NOVEMBER 12 – 14, 2012**

**MONDAY NOVEMBER 12<sup>th</sup>**

In the afternoon, the participants were welcomed by host Mr. Antonio Noguera Vercher, head prosecutor for environmental and urbanisation crimes in Spain, in the Centro Nacional de Educacion Ambiental (CENEAM) in Valsain.

The evening program consisted of an introduction to the program and the location by Rob de Rijck, public prosecutor for environmental crimes from the Netherlands and an introduction by all participants on their professional backgrounds and their expectations for the workshop.

**TUESDAY NOVEMBER 13<sup>th</sup>**

**Introduction to the WSR – Mr. Howard McCann (England/Wales)**

The program started with an introduction by Howard McCann on the WSR. Significant is the high level of environmental protection, the first preamble of the Waste shipment regulation reading : *“The main and predominant objective and component of this Regulation is the protection of the environment, its effects on international trade being only incidental”*.

Relevant regulations are;

- Regulation (EC) No 1013/2006 on shipment of waste (WSR)
- Directive 2008/98/EC on waste
- Regulation No 1418/2007

The scope of categories of waste and shipment, the OECD system (traffic light: green,amber,red) and relevant definitions were discussed, e.g. ‘shipment’ including *planned* shipment. Following the EU Wood Trading case (**Case C-277/02**), the ‘shipment’ of waste is to be perceived in its entirety, from the point of departure in the member state of dispatch to the end of its processing in the member state of destination. Waste means any substance or object which the holder discards or intends or is required to discard (art. 3, Directive 2008/98/EC). Furthermore the procedures for takeback and provisions on enforcement were discussed.

The main questions when dealing with possible waste shipment are:

- Is the material waste?
- Is it transported for recovery or for disposal?
- Is the destination country a member of the OECD?

One of the cases described concerned the issue of waste being either waste paper or household waste. In such cases it seems preferable to only prosecute obvious cases and not to enter into discussions about percentages of contamination.

This and other issues were illustrated by several UK court cases on the WSR.

### Waste and recovery – Ms. Kristina Persson (Sweden)

The WSR regulation refers to type of waste, destination and type of treatment to be applied at its destination. All export of waste from the Community destined for disposal is prohibited, except for export to EFTA countries that might have different regimes.

Article 36 lists the types of waste the shipment of which for recovery to countries to which the OECD Decision does not apply, in other words non OECD countries, is prohibited. These mainly are wastes listed in Annex V (red list), wastes the import of which the country of destination has prohibited or has notified to be hazardous (art. 3 Basel Convention) or wastes of which the competent authority of dispatch has reason to believe will not be managed in an environmentally sound manner.

Article 37 deals with procedures when exporting waste listed in Annex III or IIIA (green list).

Regulation No 1418/2007 deals with the export for recovery to Non-OECD countries of certain types of waste listed in these annexes.

The waste hierarchy mentioned in Regulation 2008/98/EC is as follows:

*Prevention – preparing for re-use – recycling – other recovery - disposal*

The main problem is to determine whether the waste really is waste or a used product or second hand good.

Re-use means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived. Preparing for re-use means checking, cleaning and repairing operations. This has to be done *before* the product is brought to the market

Recovery means any operation which leads to waste serving a useful purpose by replacing other materials (art 3). Annex II of regulation 2008/98/ EC sets out a non-exhaustive list of recovery operations.

For electrical and electronic equipment the WEEE (Waste of electrical and electronic equipment) guideline No 1 contains the common understanding on how the WSR should be interpreted for these materials. Copies of invoice/contract, evidence of evaluation/testing, a declaration by the holder and sufficient packaging are required if a holder claims that the good is used EEE. Furthermore it should be fully functioning and not destined for recovery or disposal operations. Also it should be directly reused for the intended purpose or presented for sale or export for this use. This also implies that no essential parts should be missing, that there has to be a regular market for this item and that it is not outdated EEE destined for cannibalization.

This guideline is not legally binding. But the Directive 2012/19/EU states it is appropriate for member states to lay down minimum requirements for shipments of used EEE suspected to be WEEE. The guidelines could be used to define these requirements. The directive states that member states should bring into force the necessary laws, regulations and administrative provisions by 14 February 2014.

### Categorization of waste; import, export and transit – Mr. Rob de Rijck (the Netherlands)

The presentation treated the system of the lists of wastes in the Annexes to the WSR and the various terms of movement in the Regulation. The term export means ‘a process commencing once the waste is destined for (the foreign) country at its point of origin, and continuing until the waste reaches its ultimate destination in the foreign country (Court of Appeal for England and Wales, 2011). It also discussed the term (illegal) shipment which has a very broad meaning including *planned* shipment, which makes it unnecessary to prosecute for ‘attempt of shipment’.

As to the term 'transit', defence arguments like 'the transportation of the substances via Rotterdam was not transit as defined in the Regulation, because the substances did not leave the ship and lead to a preliminary question to the ECJ by the Rotterdam criminal court on May 4<sup>th</sup> of 2012 The judgement of the ECJ is expected by the end of 2013.

### **Training sessions – Lead by Howard McCann and Kristina Persson**

The case presented by Ms. Persson dealt with the export of electronic waste from Sweden to the Ivory Coast. The suspects claimed that these items were used products for re-use. The issues that were discussed were among others whether the items could be considered waste according to EU 1013/2006, whether they were exported for recovery or re-use.

The cases presented by Mr. McCann dealt with used tyres, electric waste in Nigeria and waste paper. In the tyre case the tyres (non hazardous waste – VII form) were to be sent to Malaysia but a contract with a recovery plant in Malaysia was missing. In a second attempt the shipment was to be sent to Korea but the contract that was presented didn't mention any prices.

Conclusion: a VII form for the green list waste must be accompanied by a contract between the person arranging the shipment and the consignee. These contracts may contain indications of fraud/illegal shipments e.g. if they are very incomplete (e.g. no prices)

The waste paper case dealt with a case about waste which was actually either household waste or a combination of paper and household waste to India. As India has a ban on household waste the export is prohibited.

The case on electronic goods dealt with a transport to Nigeria (a non-OECD country) in violation of article 36.

### **The Probo Koala case – Ms. Renske Mackor (The Netherlands)**

As the second prosecutor in the Probo Koala / Trafigura case, Ms. Mackor gave a lively presentation about the voyage of this ship with its 500 m<sup>3</sup> of highly hazardous waste and the subsequent criminal case.

## **WEDNESDAY NOVEMBER 14<sup>th</sup>**

### **Sanctioning of legal persons – Ms. Anne Brosnan (England/Wales)**

Article 50 of the Waste Shipment Regulation states that Member States shall impose penalties for infringement and take all measures necessary to implement them. These penalties should be effective, proportionate and dissuasive. The Environmental Crime Directive (2008/99) also obliges Member States to provide criminal penalties for environmental offences which includes shipment of waste within the WSR.

### **Liability of legal persons – Mr. Marc van Cauteren (Belgium)**

The objective of the environmental crime directive (2008/99/EC) is to ensure a more effective protection of the environment and implementation of EU policies through criminal law. The directive provides for minimum rules.

The basis of corporate liability is:

- Offences committed for the benefit or in the interest of the legal person.
- The acts of certain employees that can be attributed to the corporate entity.
- The proper systems and controls to prevent the offence from occurring have failed or are inexistent.

Penalties can be fines (administrative or criminal), dissolution (ban from participating to certain tenders), confiscation of the assets / profits, damage recovery or settlement.

Our network of prosecutors could contribute to the harmonisation of penalties imposed.

### **Visit of the Attorney General of Spain, Mr. Eduardo Torres-Dulce Lifante**

The workshop was much honoured with a visit by the Attorney General of Spain, who was especially welcomed by Mr. Antonio Vercher. The Attorney General was given insight into the subject of the workshop by showing a Sky news broadcast about an illegal transport of household waste from the UK to Brazil.

In his speech, Mr. Torres – Dulce Lifante stressed the importance of events as these taking place. He considers cooperation between member states on subject like the WSR an absolute necessity in order to achieve harmonisation.

### **How to prosecute illegal waste shipments: the Basel convention – Ms. Amelie Taoufiq (Basel secretariat)**

Ms. Taoufiq started her presentation by saying that the European Waste Shipment regulation is probably the most advanced regulation on waste worldwide

The Basel convention entered into force on May 5<sup>th</sup> 1992 and now has 179 parties. The objective of the convention is to protect human health and the environment by minimizing the generation of hazardous waste, treating and disposing hazardous waste and other wastes as close as possible to their source of generation in an environmentally sound manner (ESM) and reducing trans-boundary movements (TBM).

The convention treats the rights and obligations for the parties on TBM (art. 4) and the definition of hazardous wastes. Hazardous wastes are those listed in Annex I and Annex VIII and contain the hazardous characteristics, such as explosive, corrosive, poisonous or flammable mentioned in Annex III. Furthermore hazardous waste can be defined by domestic legislations. The second type of waste covered by the Convention is 'other wastes' as defined in Annex II which are mainly household wastes.

The control procedure and definition of illegal traffic and consequences were discussed as well as the role of the Basel secretariat. This among others contains:

- receive and convey information from and to Parties
- provide Parties, upon request, with information on consultants or consulting firms having the necessary technical competence in the field, which can assist them
- assist Parties upon request in their identification of cases of illegal traffic and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic
- co-operate with Parties and with relevant and competent international organizations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation.

Recently there have been moves to synergise and implement a coherent and coordinated strategy on the Basel, Rotterdam (certain hazardous chemicals and pesticides) and Stockholm (persistent organic pollutants) conventions and the facilitation of the implementation of an international framework with a uniform strategy

### **IMPEL TFS Network – Ms. Nancy Isarin (IMPEL)**

IMPEL is the *European Union network for the Implementation and Enforcement of Environmental Law*. It is an association, seated in Brussels, with 33 member countries and funded with the EU LIFE+ fund and member contributions. It has two clusters one of which is the IMPEL TFS (trans-frontier shipment of waste).

The objectives of IMPEL TFS are stimulating compliance with the WSR by carrying out joint enforcement projects, facilitating the exchange of knowledge, information and experience and promoting and facilitating national and cross-border (international) collaboration.

It provides tools like inspection guides, manuals, the Waste Watch and training DVD's. IMPEL recognizes that public prosecutors are an important partner in the enforcement cycle and the prosecutors project is a priority activity in the Multi Annual Work Programme 2011-2015. An example of the importance of prosecutors working together is the differences between the EU Member States in fines and penalties.

### **The role of Eurojust in the fight against environmental crimes – Mr. Daniel Bernard (Eurojust)**

Eurojust was set up in 2002 by the EU with a view on reinforcing the fight against serious crime. It has 27 national members who are assisted by a deputy, assistants and seconded national experts. There are 3 liaison magistrates (Croatia, Norway and the United States) and one administrative Director and administration.

Its objectives are to stimulate and improve coordination between competent authorities (CA's), improve cooperation between CA's by facilitating the execution of international mutual legal assistance and implementation of extradition requests. And it supports CA's in order to render their investigations and prosecutions more effective. This all in relation to serious crime affecting two or more member states.

Eurojust has several external partners like EJM, Europol, OLAF and contact points in 24 non-member states. One of its specialisations is environmental crime. Eurojust can support operational coordination meetings by arranging meeting rooms, interpretation in any language, financing travel and hotel costs and direct contact between the involved judicial/law enforcement authorities (in case of e.g. exchange of information, setting up JITS, immediate problem solving). If necessary coordination meetings can be organised by Eurojust in a short time. Two big cases on environmental crime illustrated the contribution that Eurojust can have.

In certain cases member states are obliged to share information with Eurojust (e.g. terrorism, JIT but also under other circumstances). There are several prosecutors networks in which Eurojust seeks to participate.

### **Discussion on the future of the network and evaluation workshop**

Antonio Vercher started the discussion by mentioning the possibility of mutual assistance by forming a Joint Investigation Team. He will send a memo on this subject to the participants.

Rob de Rijck described the objectives of the workshop one of which was the establishment of a network of prosecutors dealing with WSR cases. A database/website could support this network by being a forum through which information can be spread such as case law and other (non-operational) legal information like prosecution policies and fines. In order to fill the database prosecutors from the network would be required to make a short summary of the judgement in English and send this and the entire judgement in the original language to the (revolving) network secretariat which moderates the database/website.

Interested participants could then decide to have the complete judgement translated on their own costs. So far there have been two examples where courts have taken into consideration the judgement from another member state (English Court and a Swedish Court referred to Dutch verdicts). The structure and functioning of such a database have been laid down in the document that was drafted by the preparation group.

All participants confirmed that a network and a database as suggested are essential. A network can reduce the isolated domestic position of prosecutors in this field and facilitate seeking assistance. Preferably this network and database should be easily accessible and work in an effective way so that information can be exchanged on e.g. fines. Furthermore the cooperation with ENPE (the European Network for Prosecutors for the Environment) should be investigated as well as further international cooperation.



Anne Brosnan, who is involved in the establishment of ENPE thought there are possibilities for ENPE and this network to work together. She also saw the need for a special network on TFS as it is such a specific area. On the 30<sup>th</sup> of November the cooperation of both networks will be discussed. The phenomenon of more networks appearing at the same time was also discussed. The feeling was that a new network like this does have a reason for existence if it is easy accessible en practical and meets the needs of the members. It would be practical to have one contact point per state and find contact points from other organisations like ENPE.

Mr. Bernard referred to the possibility to work together on a case with the help of Eurojust which does imply that the lead should also be given to Eurojust

The workshop itself was considered as very useful, with a good mixture of a theoretical base and practical case studies at the same time. A subject for future workshops could be how to enhance mutual legal assistance.

Rob de Rijck concluded that the discussion shows that there is a need for this network and a forum/database. The next step will be to develop this database and find a host for this. Nancy Isarin said that IMPEL is interested in supporting the network in the future and suggests that maybe the Basel secretariat might want to join too. Amelie Taoufiq agreed that this possibility might be worth investigating.

Participants who would like to be more actively involved in the network, e.g. think about the database or the next workshop are very much invited to do so.

Rob de Rijck thanked all participants for their valuable contribution to the workshops.

#### **PARTICIPANTS:**

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