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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
No. prev. doc.:	13458/19
Subject:	Final report of the Eighth round of mutual evaluations on environmental crime - Information and discussion at the Council

In line with Article 2 of Joint Action 97/827/JHA of 5 December 1997[1], the Working Party on General Matters including Evaluations (GENVAL) decided on 14 December 2016 that the eighth round of mutual evaluations would be devoted to the practical implementation and operation of the European policies on prevention and combating environmental crime.

[1] Joint Action 97/827/JHA of December 1997 adopted by the Council on the basis of article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime (OJ L 344, 15.12.1997).

The draft final report as set out in doc. 11751/19, prepared by the General Secretariat of the Council on behalf of the Presidency and encompassing the conclusions and recommendations contained in the previously adopted reports for each individual Member State, was presented, and a preliminary exchange of views took place, at the LEWP/COPEN meeting on 17 September 2019.

Delegations were invited to submit written comments on the draft final report by 4 October 2019. A revised version of the report, as set out in doc. 13458/19, was presented at and endorsed by CATS at its meeting on 12 November 2019, with a view to its submission to the Justice and Home affairs Council on 2- 3 December 2019.

The Presidency intends to present the final report on the eighth round of mutual evaluations, as set out in the Annex to this document, at the Justice session of the above Council on 3 December 2019. Following a presentation by the Presidency, delegations will be invited to have an exchange of views. In this connection, the Presidency will also note its report on EU environmental criminal law (doc. 12801/19). The Council will then be invited to take note of the above final report and of the importance of enhancing the fight against environmental crime.

In accordance with Article 8(4) of the above mentioned Joint Action, the final report will also be forwarded to the European Parliament for information.

In the light of the above, the Permanent Representatives Committee (COREPER) is invited to:

-take note on how the Presidency intends to handle the final report of the eighth round of mutual evaluations, as set out in the Annex to this document, at the Justice and Home affairs Council on 2-3 December 2019.

- recommend to the Council to take note of the above report and of the importance of enhancing the fight against environmental crime.

ANNEX

Draft final report on the 8th round of mutual evaluations on

"The practical implementation and operation of the European polices on preventing and combating Environmental Crime"

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I- INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997[1] establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime, this report attempts to summarise the findings and recommendations and to draw conclusions regarding the eighth mutual evaluation round.

In accordance with Article 2 of the above Joint Action, the Working Party on General Matters including Evaluations (GENVAL) decided on 14 December 2016 that the eighth round of mutual evaluations should be devoted to the practical implementation and operation of European policies on preventing and combating environmental crime.

The choice of environmental crime as the subject for the eighth mutual evaluation round was welcomed by Member States. However, due to the broad range of offences covered by environmental crime, in accordance with the decision taken by GENVAL, it was agreed to focus the evaluation on those offences which Member States felt warranted particular attention. To that end, the eighth evaluation round covered two specific areas, illegal trafficking in waste and illegal production or handling of dangerous materials, and excluded other types of environmental crime, such as illicit wildlife trafficking, the illicit timber trade, the illicit fish trade and air pollution. [2]

[1] Joint Action of 5 December 1997 (97/827/JHA), OJ L 344, 15.12.1997, pp. 7-9.

[2] For the purpose of this final report 'environmental crime' refers to the scope of the evaluation as defined by GENVAL.

This approach provided a comprehensive examination of the legal and operational aspects of tackling environmental crime, cross-border cooperation and cooperation with relevant EU agencies.

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives[3] (date of transposition: 12 December 2010), Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law[4] (date of transposition: 26 December 2010), and Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste[5] (date of entry into force: 12 July 2007) are particularly relevant in this context.

Furthermore, Directive 2008/98/EC requires Member States to create waste management plans and waste prevention programmes, the latter by 12 December 2013. The objective of these programmes is to present a coordinated national approach to waste prevention, by defining targets and policies, and by aiming to decouple economic growth from the environmental impact of waste generation.

The organisation of the eighth round was complemented by the adoption of a questionnaire, of an order of visits and of the composition of the evaluation teams in relation to the observers (GENVAL on 5 May 2017), as well as by the designation of the experts on the basis of Member States' proposals. The General Secretariat coordinated the missions and assisted the experts of the evaluation teams.

The first evaluation mission was conducted in Sweden between 26 and 29 September 2017. The final evaluation mission took place in the United Kingdom between 25 February and 1 March 2019. All 28 evaluation missions resulted in detailed reports on the individual Member States.

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3 OJ L 312, 22.11.2008, p. 3.
4 OJ L 328, 6.12.2008, p. 28.
5 OJ L 190,12.7.2006, p. 1.

These evaluation reports were subsequently discussed and adopted in a joint formation of LEWP/COPEN[6]. Most of them are available on the Council's website and publicly accessible.

This document reflects the conclusions and recommendations contained in the previously prepared specific reports for each individual Member State[7]. It should be noted, however, that due to the long-lasting character of the evaluation, the individual reports may not entirely reflect the current state of play.

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[6] Sweden (ST 6540/18 REV1 DCL1), France (ST 6734/18 DCL1), Ireland (ST 7139/18 REV1 DCL1), Finland (ST 8430/18 REV1), Netherlands (ST 8379/18 REV1), Italy (ST 9815/18 REV1), Slovakia (ST 9816/18 REV1), Germany (ST 11430/18 REV1), Belgium (ST 11402/18 REV1), Denmark (ST 11621/18 REV1), Hungary (ST 11585/18), Latvia (ST 11426/18 REV2), Greece (ST 14588/18 REV1), Czech Republic (ST 14129/18 REV1), Cyprus (ST 14059/18 REV1), Poland (ST 15079/18 REV1), Spain (ST6601/19 REV1), Malta (ST 5518/19 REV1), Estonia (ST 6767/19 REV1), Luxembourg (ST 7947/19 REV1), Slovenia (ST 8065/19), Romania (ST 8783/19 REV1), Croatia (ST 9178/19 REV1), Bulgaria (ST 9180/19 REV1), Portugal (ST 9098/19), Lithuania (ST 10080/19), Austria (ST 10079/19) and United Kingdom (ST 10081/19).

[7] The individual reports were produced straight after the visits to the Member States concerned. Changes, e.g. the completion of implementation of legislation, may have occurred later, which would not be reflected in the individual reports. The follow-up to the evaluation reports, due 18 months after adoption, should reflect such changes. At the time of the discussion of the report in LEWP/COPEN, Member States often announced (future) changes to address recommendations made in their individual report.

II- EXECUTIVE SUMMARY

Environmental crimes, including waste-related crimes, are complex and multi-faceted forms of crime, which are present in one form or another and to differing extents all over the European Union. In the context of the evaluation, it has been repeatedly underlined in this respect that there is a risk that certain criminal offences in this area remain undetected, as this type of crime is rarely self-evident, but more often 'invisible', and it is therefore assessed to be a 'control crime', which as such has to be tackled proactively.

In order to prevent and fight effectively against environmental crime, including waste-related crime, the evaluation has highlighted that it is essential to define relevant priorities and to adopt a multi-agency approach, with the involvement of different national authorities, and to ensure effective coordination of their efforts on the basis of a strategically-oriented policy.

However, in the majority of Member States, these forms of crime suffer from a general lack of priority at political level and, in most Member States, no comprehensive national strategy setting out relevant priorities and involving all relevant authorities exists. Therefore, recommendations have been addressed to the Member States concerned, with a view to their adoption of such a strategy, possibly in a single document accompanied by a plan for its implementation.

In most Member States, statistics in the area of environmental crime, including waste-related crime, are insufficient, fragmented and based on multiple individual statistical sources, as they are collected separately by each individual authority involved in preventing and combating the forms of crime, with no interlinking or integration among them.

The absence of consolidated figures for reported environmental crimes leads to a lack of information and analysis of the entire flow of cases from the administrative authorities, the police, the prosecutor's offices and the courts. Consequently it is not possible to have an overview of the extent of these criminal phenomena and adapt national measures and actions accordingly.

Member States have therefore been recommended to work out a method to collect systematic, reliable and updated statistics comprising the number of notifications, investigations, prosecutions and convictions relating to waste crime. This would make it possible to carry out a strategic evaluation of the national system for preventing and combating environmental offences, to assess its effectiveness more easily and to prioritise the resources allocated to address these issues.

In a few Member States, databases or monitoring tools for information management have been considered good practices, though it has been recommended that such information and data collection systems be linked.

Without the possibility of checking the overall environmental crime figures, specifically in the area of waste crime, in most cases the evaluation teams were not in a position to carry out a thorough examination of the actual extent and seriousness of these forms of crime and an assessment of the related general trends in the Member States concerned.

The prioritisation of the protection of the environment involves the establishment of an organisational structure of competent bodies handling environmental cases vested with adequate powers to fulfil their tasks and provided with appropriate human and budgetary resources.

In general terms, all Member States have in place an institutional set-up to fight environmental crime; the latter is structured similarly in the Member States, though some differences exist as

regards the specific attribution of competences to the several authorities involved and their distribution between the central and the territorial levels, as well as the system for monitoring and sanctioning violations of legislation on the environment, including waste.

In the context of the mutual evaluation, in a number of Member States such organisation has been found to be well established and comprehensive, and the competences of the relevant services clear and well distributed; in other Member States there is room for improvement of the organisational structure, with a view to enhancing the national capacity to counter environmental crime, including waste-related crime.

The evaluation has also highlighted the importance of enabling all competent national authorities, including judicial authorities, to cooperate closely in order to create synergies and strengthen the resilience of the national environmental protection and enforcement system in this area.

The degree of institutionalisation of cooperation among all relevant stakeholders involved in countering environmental crime varies between Member States. In some of them, such cooperation takes place on an informal and "ad hoc" basis: however, this approach may turn out to be fragile in certain unexpected circumstances and, in any event, raises the issue of the transmission of know-how; in other Member States a more formal and structured inter-institutional framework is in place, often based on protocols or memoranda of understanding, in some cases with multidisciplinary platforms to coordinate such cooperation, and this can be considered a best practice, allowing the efficiency of the prevention and enforcement systems to be enhanced.

The complexity of the challenges posed by environmental crime, including waste-related crime, and the technical nature of such crime require a high level of legal knowledge and technical expertise in all the competent authorities involved in countering these forms of crime, at both central and local levels.

Some evaluated Member States' authorities pointed out that, taking into account the minor relevance of environmental crime, including waste-related crime, in their jurisdictions, they did not consider it appropriate to set up specialised structures for the prevention of and the fight against these forms of crime.

In the context of the mutual evaluation, however, it has repeatedly been underlined that a high level of specialisation is necessary for officials working in this area. Specialized investigators are also needed to take into account the financial and economic side of environmental crimes, in particular for serious crimes.

Across the European Union, the level of specialisation of the relevant staff is more adequate, with some exceptions, for environmental authorities, and to a certain extent, for police and customs, with some room for improvement in certain Member States, where specialized personnel deal with environmental crime among other responsibilities or only at central and not at local level.

In contrast, such specialisation is often insufficient for the judiciary. In most Member States, on the one hand, no specialised judicial structures have been established to deal with environmental crime, including waste-related crime, and, on the other hand, no specialised prosecutor or judge is assigned specifically to deal with criminal cases in this area. However, this does not exclude the possibility that prosecutors and judges could have acquired de facto specific expertise in dealing with cases of environmental crime, including waste-related crime. Relevant recommendations have been addressed to several Member States, with a view to increasing the specialisation of the judiciary in this area.

Regular and extensive continuous training, both at the beginning of and throughout careers, including joint training for law enforcement and judicial authorities, is also essential to acquire such specialisation and expertise and to ensure that the relevant staff remain consistently up to date with legislation and procedural requirements in this field, which evolve continuously. This should also include participation in the training opportunities available at EU level, such as CEPOL and relevant networks.

In some Member States, specialized police services/units dealing with environmental crime belong to the economic and financial crime departments within the national police, and this has been considered a best practice, as environmental crime is chiefly motivated by financial gain and can require financial investigations.

Another shortcoming identified by the evaluation is that the numbers of inspectors and of inspections actually performed, including physical inspections, is frequently insufficient to adequately counteract environmental crime, including waste-related crime.

The two aspects are linked, as a lack of human resources results in a low number of checks (especially ad hoc checks and combined environmental and financial investigations, etc.) and of specific investigations. The detection rate for environmental crime, including waste-related crime, is consequently quite low and in certain cases the prosecution of cases of these crimes, is statistically irrelevant. This can give the impression that such crime does not exist and prevent Member States from strengthening their monitoring and enforcement systems to counter these forms of crime. All these factors cause a lack of proactiveness in many Member States

As regards preventive action in particular, while some Member States expressed the view that legislation, inspections and requirements for licences could be sufficient to prevent these forms of crime, other Member States are more active and engaged in prevention programmes, information, education and awareness-raising campaigns, etc.

All Member States have established a legal framework to tackle environmental crime, including waste-related crime, defining related offences and penalties. However, according to the findings of the evaluation, in certain Member States the potential of the law enforcement and criminal law systems is not being used to its full extent, in some cases most likely as administrative enforcement is seen as less problematic and more effective than judicial follow-up. Therefore, in the context of the evaluation, it has been recommended to these Member States to reassess the balance between the administrative and the criminal approach to these forms of crime.

Furthermore, the distinction between administrative and criminal penalty systems is not always very clear due to a lack of or unclarity of legal definitions. Therefore, in the context of the evaluation, it was recommended to the Member States concerned to clarify the distinction between crimes and misdemeanours, on the basis of precise predefined criteria, so that there would be no doubt regarding the seriousness of environmental crime.

Another challenge identified in the evaluation is linked to certain difficulties in the interpretation and application of certain notions, such as 'environmental damage', 'risk of damage', and 'extent of the damage', that often are interpreted on a case-by-case basis by the prosecutors. Therefore, a further review of the legislation and/or the adoption of relevant guidelines was recommended to the Member States concerned to facilitate these tasks.

Liability of legal persons for waste-related crimes has been provided for by the Member States in different forms. Some have provided for criminal liability of legal persons in this regard. Others have provided for administrative liability. In certain Member States where only corporate fines have been provided for, such fines have been considered insufficient.

In some Member States the use of special investigative techniques (such as observation, infiltration, telephone tapping, etc.) to investigate environmental crime, including waste-related crimes, is not allowed, unless there is a link with economic and financial offences. Those Member States have been recommended to provide for this possibility, insofar as this is proportionate in relation to the offence concerned.

Some difficulties have been highlighted as regards evidence, including the admissibility of evidence acquired by administrative authorities, which is not subject to the strict criminal procedural rules applicable and therefore cannot always be used in judicial proceedings.

The private sector plays an important role in the protection of the environment and in prevention and awareness-raising activities; its cooperation with LEAs can make a key contribution by channelling reports of environment damage. However, the level and forms of cooperation between the public and the private sector vary between Member States; in some it takes place informally, whereas in others a formal framework exists for public/private partnerships, often based on protocols or memoranda of understanding. In the context of the evaluation, the establishment of such structured forms of cooperation has been recommended to those Member States that do not yet have it.

As regards NGOs in particular, they cannot in all Member States participate in criminal proceedings and be "parte civile"; in some cases their contribution is limited to lodging complaints and to carrying out awareness and educational activities; in a few Member States NGOs play no significant role in this area.

With a view to encouraging reporting of environmental infringements by citizens, the competent authorities in a few Member States have taken measures (such as hotlines, smartphone applications or on-line tools) to facilitate such reporting anonymously.

There are varying degrees of familiarity on the part of police, customs authorities and judicial authorities and varying levels of participation by them in the activities of EU bodies and networks and of international fora active in the area of environmental crime; in certain cases there is scope for closer and more formalised international cooperation.

The support and coordination provided by Europol, Eurojust, and the EJN is generally appreciated by the Member States; however, in certain cases cooperation with them could be strengthened, as the services and the products they can provide with regard to environmental crime are not always fully used by certain Member States.

The capacity of Member States' systems to prevent or detect illegal shipments of waste depends above all on the level of focus/prioritisation and is influenced by various factors, such as the availability of human and technical resources, the degree of their specialisation, the numbers of inspections performed, the efficiency of cooperation between all the authorities involved at national level and of international cooperation with the states of origin and destination of the waste, with a view to facilitating the return to and the proper management of the waste by these countries. In general terms, the evaluation highlighted that in many Member States there may be room for improvement on some of these points to enhance the capacity of their system to tackle these forms of crime more efficiently.

In some Member States, waste electrical and electronic equipment (WEEE) and end-of-life vehicles (ELVs) are considered priority waste streams and are subject to specific inspection activities and analysis, involving not only documentary but also physical checks; but such measures are not provided for in all Member States.

Member States have been encouraged to consider environmental crime, and more specifically illegal shipment of waste, from a broader perspective, as a part of economic crime frequently committed by organised crime groups, and to take into consideration its economic aspects and its financial implications for the natural environment and society.

As regards the production and handling of dangerous substances, in respect of which illegal activities may have a significant impact not only on the environment, but also on public health, the evaluation has highlighted that it is of the utmost importance to ensure an appropriate coordinated response to the threats posed by chemical, biological, radiological and nuclear materials. For this purpose, the evaluation has emphasised the importance of adequate controls and the use of intelligence and risk assessment, as well as of structured forms of cooperation, with a view to strengthening Member States' detection and enforcement systems in this field.

In the light of the above, the capacity to accomplish the complex, multi-agency task of preventing and fighting environmental crime, including waste-related crime, which requires adequate human and financial resources, varies between Member States. In general terms, a higher level of prioritisation is recommended at political and strategic level, in order to ensure that there is an efficient monitoring and enforcement system in this area.

More generally, further efforts by the Member States to use the potential of the national law enforcement and criminal law systems to their full extent, by involving all the stakeholders at the same level, using all the available tools efficiently and fostering international cooperation, could contribute to achieving better management of environmental matters across the EU and in a cross-border context.

III - NATIONAL ENVIRONMENTAL STRATEGY

KEY FINDINGS AND CONCLUSIONS

At the time of the evaluation, in the majority of the Member States a strategic approach to tackle environmental crime was missing, and in most of them there was no single strategic document defining the national policy on the fight against this form of crime in a comprehensive way.

Only a few Member States had established an overall National Environmental Strategy defining the national policy at central level, the adoption of which is to be considered an example of best practice to be followed by the other Member States.

Therefore, in many evaluation reports the experts underlined the need to reassess the level of priority for this type of crime.

In a few Member States, strategically-oriented elements are set out within a more general framework that also addresses issues related to environmental crime, or in a set of different specific documents, such as action plans, national programmes or projects, defining targets to be achieved at national level and tasks to be carried out by relevant national authorities. These documents may, to a certain extent, play a strategic role in combating environmental crime; however, in some cases they are limited to providing for actions to be performed by environmental authorities only, and not by the other LEAs.

Other documents adopted by the Member States pursuant to EU waste legislation are in place, such as: the National Waste Management Plan, which constitutes a legal requirement laid down pursuant to Article 28 of Directive 2008/98/EC on waste, and contains a number of measures related to the fight against waste crime; the National Environmental Inspection Plan, which constitutes a legal requirement in accordance with Article 50 of Regulation (EC) No 1013/2006, as amended by Regulation (EU) No 660/2014 (Waste Shipment Regulation) and regulates inspections and checks of transboundary shipments of waste.

However, even if these documents define respectively certain aspects of waste monitoring compliance and waste shipment control in relation to specific targets and the measures and actions to be taken for their achievement, as well as related tasks of the competent authorities in this context, they reflect sector-specific policies and do not constitute a global national strategy against environmental crime.

In a few Member States, the strategic approach to environmental crime is backed by the establishment of bodies or entities with coordination functions for the implementation of the National Environmental Strategy, ensuring overall coherence in national policy to tackle this form of crime; this can be considered a good practice to be followed by the other Member States.

In general, the absence of a strategic approach can give rise to the risk of a lack of uniformity in tackling this form of crime. This is even more evident in those Member States in which competences for environmental matters are very fragmented, where a strategic approach involving all authorities at political level is therefore more important.

In the context of the evaluation, the need for a strategically-oriented overall approach on preventing and combating environmental crime, including waste-related crime, encompassing monitoring and law enforcement activities, has therefore been underlined repeatedly.

To that end, it was pointed out that prevention or management documents and plans should be backed by a national strategy setting out national priorities at political and administrative levels in this area, on the basis of an overall analysis of environmental crime at national level, in order to have a coherent framework to counter all forms of this criminal phenomenon.

A coordinated national strategy would make it possible to set up a more formal framework for national policy and cooperation at strategic level and therefore to improve the prevention, detection and fight against environmental crime at national level and across the EU.

A strategic approach would also help to identify national priorities as regards research, investigation and prosecution in this field, to define the respective roles and responsibilities of all the relevant actors, as well as to ensure that all of them specialise and are trained and cooperate in an effective manner. This would contribute to targeting offences and failure to comply with the requirements of the relevant legislation through more effective environmental enforcement.

At the time of the evaluation, there was no specific budget allocated in any of the evaluated Member States to prevent or fight against environmental crime. Nevertheless, this does not seem to have a negative impact, because Member States manage to use the general law enforcement budget or EU funding to fulfil their duties in this area.

RECOMMENDATIONS

- ***Member States which have not yet adopted a National Environmental Strategy on environmental crime are encouraged to do so in the best possible timeframe and also to consider the adoption of an action plan for the implementation of such a strategy, with a view to improving the overall coherence and consistency of relevant actions in this field.***

- ***The strategy should outline the objectives and priorities of national policy in this area of crime, clearly lay down the roles and responsibilities of all the competent authorities involved in countering this type of criminal activity and the modes of their cooperation, the resources needed and procedures and mechanisms for regular monitoring of the results achieved.***

- ***Member States are also recommended to attribute coordinating functions for the implementation of the above strategy to a single body/entity or cooperative structure and to ensure that it is regular updated and reviewed, on a risk-analysis-based approach, in order to take account of relevant developments and trends and of related threats regarding environmental crime.***

IV - STATISTICS

KEY FINDINGS AND CONCLUSIONS

One of the main shortcomings identified by the 8th mutual evaluation round in the majority of the Member States concerns the collection by the administrative, law enforcement and judicial authorities of complete, reliable and updated statistics on environmental crime, including waste-related crime, covering the control, investigation, and following up of environmental infringement cases.

The statistics provided by the Member States in the context of the mutual evaluation are in many cases incomplete, sometimes not listing all kinds of waste crime and insufficiently detailed, often with no breakdown of the specific types of environmental crime, thus not showing what proportion of environmental crime is accounted for by waste crime, or the number of offenders. In some Member States there are systems in place where all relevant bodies collect environmental statistics, but these data are not centrally processed; in other cases not all the authorities involved in tackling environmental crime compile relevant statistics.

Furthermore, reported statistics often do not cover all the stages of the administrative and criminal proceedings, making it impossible to draw conclusions with regard to the progress and outcome of specific cases and proceedings. In certain cases, though showing the number of prosecutions, the statistics do not provide any information regarding the number of investigations closed down or the number of convictions, making it impossible to compare the number of investigated cases with the number of prosecuted and sentenced persons.

It must be underlined that comprehensive statistics should cover all environmental offences, both criminal and minor offences, at all stages of proceedings - administrative inspections, criminal investigations, prosecution, trial.

They might include inter alia the type of criminal offence and the specific investigative measure, number of reported offences, number of investigations carried out and decisions not to investigate certain types of environmental crime, number of prosecutions and convictions, penalties, administrative offences and fines applied, number of victims and of victim complaints, number of cross-border cases, outcome of MLA/EIO requests, and duration of the procedure.

In all Member States there is no single authority for central management and coordination of statistics, and in most of them no centralised waste crime statistics collection exists. Instead, such statistics are available, but kept separately by each national authority based on its own system and neither exchanged among them or used to quantify the work done nor to carry out in-depth analyses. Furthermore, statistical systems are independent of each other and often differ significantly between authorities, with different criteria and/or using different databases.

In a few Member States there are well-developed information management and data collection tools for recording and reporting all relevant information in the environmental area, accessible to all competent authorities involved in preventing and combating environmental crime and with limited access for the public, which were considered good practices by the evaluation teams. However, even in these cases, different institutions have their own systems for collecting data, with no interoperability between them; therefore, there is room for improvement as regards the links between existing systems and comparison and analysis of information between institutions.

Only in a few Member States are there ongoing initiatives or plans regarding the possible establishment of common platforms to collate the environmental crime statistics between different authorities or to introduce a reporting requirement of such data to a single national authority.

With multiple individual statistical sources and no centralised database on environmental crime or at least of interlinked and integrated statistics, no overall, consolidated figures are available for reported crimes in this area and there is no analysis of the complete set of data.

Consequently, there is a lack of information on the entire flow of cases from the administrative authorities, police, prosecutor's offices and courts, and environmental crime cannot be tracked in a single statistical system so as to provide an overall picture of this criminal phenomenon.

The absence of coherent statistics threatens to undermine the overall assessment of the work carried out by all actors involved in countering environmental crime and could also make governments' decision-making processes in this area difficult.

A centralised and integrated approach to the collection of all environmental statistical data in a comprehensive, systematic and reliable way, possibly with the creation of a centralised database and/or of a central authority responsible for managing the relevant data, is therefore crucial to facilitate the access to the information, and would allow the data collected by the different institutions to be compared and analysed.

On the one hand, this would make possible detailed analysis of and insight into the extent of new emerging trends and developments in this area and thus a realistic overall picture of this arising criminal phenomenon.

On other hand, it would facilitate intelligence sharing and assessments and analysis of risks, as well as evaluation of the effectiveness of national legal and enforcement systems in the area of the environment, with a view to the adoption or, where appropriate, adaptation of appropriate preventive and follow-up action to combat criminal activities in this field accordingly.

RECOMMENDATIONS

- ***Member States are encouraged to develop a centralised and integrated approach to the collection of systematic, reliable and up-to-date statistics on environmental crime, including waste-related crime, by each competent authority, with a view to making possible consistent and coherent comparison and analysis of relevant information among institutions.***[8]

- ***The statistics referred to above should cover all reported environmental offences and each stage of the related criminal and administrative proceedings, with disaggregated data on waste crime, as well as clusters and analysis of metadata, and should be made available to all the relevant stakeholders.***

- ***Member States should use the available statistical data on environmental crime to develop comprehensive environmental risk-based assessments and to carry out strategic evaluations, with a view to assessing the effectiveness of their national systems and to adapt them, where appropriate, in order to counter this form of crime more effectively.***

[8] A number of Member States have raised concerns in relation to this recommendation, underlining inter alia that its implementation would require considerable resources or that interconnection of statistics may be difficult.

- ***Member States are encouraged to improve the information channels on environmental crime data between the competent authorities, by considering the creation of a centralised database or by ensuring interconnection and interoperability between the existing databases, as well as the establishment of a central authority responsible for managing the relevant data.***

V- PREVENTIVE ACTION

KEY FINDINGS AND CONCLUSIONS

The best way to avoid environmental infringements is to strengthen preventive measures in this field. Effective prevention action is, however, a complex and multi-agency component of the fight against environmental crime, including waste-related crime.

In general terms, these forms of crime are prevented by the regulatory set-up and ongoing supervision: a general preventive function in this area is ensured by the implementation of legislation and penalties, by regular pre-announced and unannounced on-the-spot checks, as well as by the requirements imposed to grant permits and licenses.

In particular, authorisations to operate facilities and to collect or transport waste, as well as obligations regarding declarations of waste streams and provision of other environmental information, impose clear operating conditions to protect the environment and reduce the risk of fraud.

Furthermore, national legislation transposing Directive 2004/35/CE of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage and, in particular, the 'polluter pays' principle on which it is based, also contribute to the prevention of environmental crime.

National regulations and directives on waste containing monitoring requirements for the proper and safe disposal of waste can also indirectly contribute to the prevention of environmental crime, including waste-related crime.

Apart from these considerations, there are considerable differences in Member States' approaches as regards the prevention of environmental crime, including waste-related crime. In some Member States, the assumption prevails that the principles and provisions laid down in criminal and administrative law — with related penalties for environmental offences, in combination with the system of environmental licences and inspections, also considered to be an environmental crime prevention mechanism — are sufficient to play a deterrent and preventive role in this crime area. Therefore, in those Member States there are either no, or not sufficient, specific national programmes or projects, legislation or public awareness initiatives aimed at prevention that specifically target environmental crime, including waste-related crime.

Some Member States use their waste management plans and waste prevention programmes, which constitute a legal requirement imposed by Directive 2008/98/EC, to provide for preventive actions addressed to citizens or operators working in the environment field.

The main objective of these programmes is, however, to present a coordinated national approach to waste prevention and waste generation, with no specific focus on environmental crime, including waste-related crime. In the context of the evaluations, it was underlined in this regard that it would be useful if such plans could be backed by a plan for monitoring and law enforcement activities targeting those who fail to comply with the prevention and management measures.

Other Member States have a more active approach in the area of prevention of environmental crime, including waste-related crime, and are already engaged in this area, with initiatives that include prevention programmes, information, education and awareness-raising campaigns, targeting schools, local communities, specific groups and the private sector, in particular waste management operators.

However, it must be highlighted that such prevention activities are most often organised in the wider context of environmental protection and education. While the positive impacts of those actions are obvious, as they encourage lawful conduct and safeguarding of the environment, it should also be underlined that they do not specifically target the prevention of environmental crime, including waste-related crime.

Furthermore, the level of engagement of the public authorities - environmental or LEAs - in this area varies across the EU. In a few Member States the wide range of prevention activities organised and addressed to different sectors of the society were considered examples of best practices; a few Member States have gone even further and provided specific provisions in their legislation to tackle this type of crime, such as prohibiting cash payments for waste trade or creating a mandatory register for waste producers or waste management operators. In other Member States there is still room for improvement in further promoting these activities and measures.

There are also different degrees of private-sector involvement in the prevention of waste crime, as in some Member States such cooperation does not exist or is insufficient, whereas in others the private sector is actively involved, inter alia through awareness actions, or through forms of cooperation, though often with some room for improvement.

The level of environmental awareness of citizens also differs between Member States. In a few Member States, mainly where there is a tradition of protection of the environment, citizens usually report possible environmental crimes of which they may be aware. With a view to encouraging them to do so, a few Member States make use of hotlines, smartphone applications or a reporting point on the homepage of the competent authorities, without a requirement to disclose the reporter's identity, thus encouraging the public to report alleged offences.

NGOs can also play an important role in the prevention of environmental crime, including waste-related crime, inter alia by providing information and data to the LEAs, but the situation varies in Member States in this respect too. In some Member States the public authorities cooperate with and/or provide support and/or funding for the activities of NGOs in this field, whereas in other Member States there is no, or not sufficient, cooperation with and/or support to NGOs.

In the context of the evaluation, it was underlined that running a number of public awareness campaigns relating to waste crime may be beneficial in terms of promoting law-abiding behaviour, better compliance on the part of the regulated operators, and/or reporting of possible offences by the public; this can contribute to improving the prevention of waste crime.

It also appears to be useful to carry out awareness campaigns to target certain risk groups, risk behaviours and high-risk waste streams; an emphasis on educating children is particularly important in this context.

Furthermore, it was underlined that publicising information on damage caused by environmental offences and on successful cases could be a way forward for enhancing trust in public authorities and encouraging citizens to be more active in reporting offences, as the public would be aware that the authorities react properly to complaints.

RECOMMENDATIONS

- ***Member States are encouraged to prioritise the prevention of environmental crime, including waste-related crime, and for that purpose to make use of or to further develop a wide range of activities and programmes targeted both at the public and at the private sector.***

- ***Member States are encouraged in particular regularly to carry out public information, educational and awareness-raising campaigns aimed at preventing environmental crime, including waste-related crime, inter alia by targeting specific risk groups (particularly children), risk behaviours and high-risk waste streams.***

- ***Member States are also invited to consider establishing dedicated reporting points for environmental crime, in order to encourage citizens to inform the competent authorities of possible environmental offences.***

- ***Member States are encouraged to foster cooperation with the private sector, including NGOs, in relation to the prevention of environmental crime, including waste-related crime.***

VI - STRUCTURES – THE JUDICIARY

KEY FINDINGS AND CONCLUSIONS

The structure and organisation of the judiciary vary between Member States, including with respect to which bodies have competence for dealing with cases of environmental crime, including waste-related crime.

Due to the specificity of environmental law and the complexity involved in detecting non-compliance in the environmental field, successful investigations, prosecutions and convictions in environmental crime cases depend to a large extent on how skilful and experienced the authorities in charge of investigation and trial are. A good level of understanding and specialised knowledge on the part of the judiciary in this area is therefore of utmost importance.

According to the findings of the mutual evaluation, however, the degree of specialisation and specific expertise within the judiciary in the area of environmental crime is often not satisfactory. A significant number of Member States do not have formal specialised structures or prosecutors specialising in environmental crime, including waste-related crime, which is most often dealt with by general prosecution offices. However, some Member States have specialised prosecutors or specialised services within the Prosecution Offices dealing with environmental crime, including waste-related crime offences.

In some Member States the responsibility for dealing with such crimes usually lies de facto with public prosecutors and judges, who have been trained or have acquired specialised knowledge only through daily work and personal commitment. However, this is rather limited in many cases due to the low figures for environmental crime, including waste-related crimes; it cannot ensure continuity and cannot be considered an appropriate long-term solution.

In some Member States, there are national networks of prosecutors specialising in environmental crime, which can be considered a good practice, as they allow exchange of knowledge and experience and facilitate the spreading of best practices among practitioners, thus contributing to raising awareness of environmental-crime-related issues within the judiciary.

In the context of the evaluation, it has therefore been underlined that public prosecutors specialising in environmental crime are essential for successful investigations and court proceedings, taking into account that their assessment of the facts at the very start of a case can be decisive. They also have to know how to construct the case, as they have to guide the police and coordinate the action of other authorities in the preliminary investigation and supervise the collection of evidence.

The lack of specialisation is even more relevant as regards judges. In almost all the Member States, there are no specific chambers / judges at the criminal courts responsible for examining and adjudicating environmental crime, including waste-related crime. Only in countries where the courts deal with a significant number of environmental crimes do judges have the opportunity to

acquire experience in the field. Nevertheless, in many Member States the courts are not always able to manage large environmental and waste proceedings, due both to a lack of specialisation among judges and to a shortage of staff.

Without specific knowledge of environmental crime, judges, who are supposed to handle the most important cases of environmental crime, are likely to underestimate the possible complexity of the evidence and the time needed for the court hearings involved compared to ordinary crime cases.

However, this does not exclude the possibility that prosecutors and judges could have acquired de facto specific expertise in dealing with cases of environmental crime, including waste-related crime.

Greater specialisation by criminal judges regarding environmental crime in general and waste crime in particular is assessed to be necessary, as it would increase the resilience of the national systems in handling environmental crime cases. It should also be recalled that the need for specialised judges in environmental crime is highlighted in the Council conclusions on countering environmental crime of 8 December 2016.

This could be achieved through various measures, e.g. by providing more training on environmental crime, by setting up dedicated structures and with the participation of judges in international fora.

RECOMMENDATIONS

- ***Member States should take appropriate measures to ensure or increase the level of specialisation of their prosecutors and judges, with a view to efficiently prosecuting and sanctioning environmental crime.***

- ***For that purpose, they should consider establishing specialised structures/units and/or appoint specialised prosecutors and judges with a good level of understanding and knowledge of this complex area of crime, and provide them with continuous specialised training in environmental crime, including waste, legislation and related crimes.***

- ***Member States should consider establishing networks of prosecutors and judges specialising in environmental crime at national level, to help them exchange experience and assist each other, as a measure to improve the effectiveness of the fight against this type of crime.***

VII - STRUCTURES - THE LAW ENFORCEMENT AUTHORITIES (LEAS)

KEY FINDINGS AND CONCLUSIONS

Effective organisation, international integration and professional competence, including a good level of knowledge and specialisation in LEAs involved in environmental crime, including waste-related crime, as well as efficient investigations, are key elements in tackling this complex and sophisticated type of crime effectively.

The police authorities of the Member States play a significant role in the investigations of these forms of crime, with the exception of a few Member States where the police do not seem to be sufficiently active and/or only engage in waste crime investigations when requested by the environmental authorities or with their support.

The structure and organisation of the LEAs vary significantly between Member States, both as regards which bodies have competence for environmental crime, including waste-related crime, and in respect of the level of specialisation in environmental matters.

A good level of knowledge and specialisation in the LEAs is also essential, for the same reasons as highlighted for the judiciary, to fight against this complex and sophisticated form of crime effectively. Generally, the evaluation showed that the degree of specialisation in the LEAS is higher than in the judiciary.

Some Member States have established specialised central services within the LEAs dealing with environmental crime, which in some cases support local authorities or coordinate the investigation of environmental crime across the country and synergies across the different levels of intervention, with a high level of specialisation. This also facilitates communication between police and prosecutors. In some Member States there are also decentralised specialised units at local and/or regional levels dealing specifically with environmental crime investigations.

The existence of such dedicated investigation services/units and police investigators and teams to handle environmental crime cases has been considered a good practice. In other Member States, such specialised police services/units do not exist, and/or there is a lack of specialisation in environmental crime in the national police, or only partial specialisation, with specialised personnel dealing with environmental crime among other responsibilities or only at central and not at local level.

In the context of the evaluation, it was underlined that the establishment of specialised competent units within the police forces could enhance the capacity to investigate waste crime more effectively, in particular serious organised crime. The importance of this point is also stressed in the Council conclusions of 8 December 2016 on countering environmental crime.

In some Member States, central services specialised in environmental crime belong to the economic and financial crime departments within the national police, which also include the services responsible for tackling financial crime, or investigations concerning environmental crimes are assigned to the economic crime services of the police.

As environmental crime is chiefly motivated by financial gain, from an organisational perspective, these structures and organisational measures are well placed to deal adequately with the financial aspects of environmental crime investigations and these approaches may be considered best practices.

In some Member States the number of police staff assigned to dealing with environmental crime, including waste-related crime, is insufficient, and this prevents the police from proactively seeking out these often hidden forms of crime.

Customs services are also involved in countering environmental crime, including waste-related crime, while performing their tasks of controlling cross-border goods traffic, as regards in particular cross-border shipments of waste. Generally speaking, in most Member States they appear to be well established and organised and performing these tasks and risk analyses satisfactorily; however, in a few cases they seem not to have the expertise needed to deal with illegal waste shipments and specific waste-related issues (their field of expertise being mainly taxes) or not to have sufficient human resources available.

RECOMMENDATIONS

- ***Member States which have not yet done so are encouraged to establish within their national police services specialised units both at central and at local level for the investigation of environmental crime, including waste-related crime, in the best possible timeframe in order to combat such crimes more effectively.***

- ***Member States should maintain and/or, where appropriate, increase the level of specialisation of LEA staff dealing with investigations of environmental crime, including waste-related crime, in order to ensure the appropriate expertise for dealing with such complex forms of crime.***

- ***Member States are encouraged to provide or further develop the relevant units/services of their Law enforcement authorities (LEAs) with adequate human resources in order to boost their inspection and enforcement capacity in countering environmental crime, including waste-related crime.***

VIII - STRUCTURES - OTHER AUTHORITIES

KEY FINDINGS AND CONCLUSIONS

In the majority of the Member States, the administrative organisation in the area of the environment is generally well established and the environmental authorities are usually the main actors in combating environmental crime, including waste-related crime and offences, due to their generally good level of knowledge and expertise and because they are often the first to detect non-compliance in this field.

The ministry having the environment among its responsibilities is the central state administrative authority in this area. In most Member States, other administrative governmental bodies such as environmental inspectorates and/or dedicated agencies are usually tasked to carry out checks and inspections in the environmental field and to impose administrative penalties in the event of administrative offences. However, these bodies have been designed differently and their powers and/or numbers of officers differs significantly from one Member State to another.

In the majority of the Member States, the local administrative authorities also play an active role in the prevention of environmental crime and the enforcement of environmental legislation, and they generally also have the power to impose penalties in respect of environmental offences falling within their competence.

In most Member States, the degree of specialisation and knowledge of environmental issues of the administrative environmental authorities is generally satisfactory or sufficient, though to differing extents.

In one Member State, there is a specialised unit including not only prosecutors but also police and technicians with a network throughout the territory to assist all the actors involved in countering environmental crime, including waste-related crime; this may be considered a best practice.

In a few Member States, there may be still room for improvement as regards specialisation in the administrative sector in this area of crime in order for the relevant practitioners to have the necessary skills to carry out inspections more effectively.

In addition, since investigating environmental crime, including waste-related crime, is a complex task both from a legal/procedural point of view and due to its factual /scientific aspects, specific technical expertise is essential in environmental enforcement.

However, as pointed out by the competent national authorities, in some Member States there is a lack of qualified and independent expertise. The establishment in a few Member States of specialised bodies or agencies to provide such expertise to the enforcement authorities may be considered a good practice.

Some Member States have decided to vest administrative bodies with criminal powers comparable to those of police investigators in respect of detecting and investigating environmental crime. They can conduct inspections, use force, enter premises and take samples. This solution allows a high level of specialisation in the units in charge of the investigation, thus avoiding gaps in cooperation between administrative agencies and LEAs and simplifying the transmission of information within the investigative services.

In other Member States, administrative inspectors only have administrative powers, and not criminal enforcement powers. In cases involving environmental crime, including waste-related criminal activities, they therefore have to rely on police, border police or customs.

The evaluation highlighted some of the consequences where not vesting the environmental authorities with investigative powers prevents investigations from being implemented effectively in the fight against environmental crime, including waste-related crime.

First, the professional skills and knowledge of the administrative staff dealing with the environment are not being used in the best possible way. In addition, this system runs the risk of double jeopardy where environmental authorities also investigate crimes linked to these crimes (such as fraud and tax evasion) and the police also investigate the same crimes.

It was therefore recommended, especially in Member States where the main actors are the environmental authorities, to vest the administrative inspectors with (limited) criminal investigative powers. If such a solution is not possible in certain Member States, they are recommended to ensure good cooperation in investigations between LEAs and prosecutors on the one hand and administrative authorities on the other hand.

In most cases the environmental inspectors are therefore assisted in their enforcement activities by police and customs, playing a supporting role: the police by stopping and checking vehicles on the road and boats on the rivers, and customs authorities by monitoring and controlling cross-border waste shipments, in particular by checking waste streams at entry/exit border crossing points. Border police and coast guard services can also play a role in this field. In some Member States, the above authorities also carry out investigations in this area on their own initiative, including joint investigations.

Considering the importance of the administrative agencies in the fight against environmental crime, including waste-related crime, the number of inspectors assigned to deal with offences in this area and the terms of their employment should be sufficient to ensure that they will not resign after proper training.

However, in some Member States the competent services of the environmental administrations are currently understaffed, and the lack of adequate overall human resources reduces the capacity to carry out control activities in the most effective way.

In these cases, the assignment of more staff to management and inspection services was recommended by the evaluators in order to increase the possibilities of intervention, in particular with more inspections, which in turn can lead to the development of proactive measures with regard to environmental crime, including waste-related crime.

RECOMMENDATIONS

- ***Member States should maintain and/or, where appropriate, further increase the level of specialisation and the skills of the personnel of their administrative authorities dealing with environmental offences, including waste-related offences, in order to ensure adequate expertise in this complex and technical area.***

- ***Member States are encouraged to ensure that their administrative environmental authorities have an adequate number of staff to efficiently and proactively perform control activities, in particular with a sufficient number of inspections to monitor compliance with environmental legislation and detect related offences.***

- ***Member States are encouraged to consider, in accordance with their national law, the possibility of vesting the administrative environmental inspectors, with (limited) criminal investigative powers, in order to enhance their capacity of detecting and investigating environmental crime, including waste-related crime.***

IX- STRUCTURES

- COOPERATION AND COORDINATION AT NATIONAL LEVEL

KEY FINDINGS AND CONCLUSIONS

As environmental crime has a cross-cutting nature, involving several authorities at national level, a multidisciplinary approach is key for preventing and combating it efficiently.

In this context, close and effective inter-institutional coordination and cooperation between the different public actors at operational and strategic level, as well as between central and local/regional authorities, in order to coordinate initiatives and strengthen data exchange, technical support and investigative techniques, is therefore essential for the national environmental system and enforcement action in this area to function well.

This could be achieved better by designating a body composed of representatives of ministries, governmental agencies and other stakeholders in charge of fighting environmental crime and protecting the environment. Coordination meetings should be convened on a regular basis and include the participation of non-permanent actors, including businesses and NGOs, if needed.

However, only a few Member States have such central bodies or working groups or forms of inter-ministerial cooperation ensuring coordination been set up. Apart from these exceptions, in most Member States no single authority has been designated at central level to take the lead on the enforcement and administration of environmental and waste matters, and responsibility in this area is often dispersed across various actors.

The evaluation highlighted in this context that, while it is important to have as many agencies as possible involved in the fight against environmental and waste crime, where there is no central overarching authority to set policy and priorities, cooperation is fragmented and it may therefore be difficult to ensure a coordinated and structured focus on this national responsibility.

Consequently, the usefulness of establishing a central body or a permanent platform or structure at central level for cooperation and for coordinating the work of the relevant authorities, including public prosecutors and judges, has been underlined, with a view to ensuring coherence among all those involved in combating environmental crime and increasing the resilience of the environmental enforcement system.

According to the findings of the evaluations, forms, modalities and levels of cooperation and coordination among relevant stakeholders involved in the fight against environmental crime vary between Member States.

Currently, in many Member States there is no legal framework for cooperation between the various authorities in cases concerning environmental crime, including waste-related crime, and inter-institutional cooperation most often takes place on an ad hoc and informal basis, using personal contacts, with no formal agreement between the various authorities.

Although this does not usually seem to give rise to any problems in practice, a system depending on interpersonal relationships and the personal qualities and goodwill of the stakeholders is not the best possible way to ensure cooperation that functions well, as it may turn out to be fragile in certain unexpected circumstances; furthermore, it may raise the issue of transmission of know-how, as knowledge often disappears when staff depart and there is no handover procedure for their successors.

Other Member States have developed more advanced and efficient forms of interaction, which the individual reports identified as good practices. In some of them protocols or memoranda of understanding between all relevant authorities have been concluded in order to clarify the roles/responsibilities of each authority concerned and to facilitate coordinated action at operational and strategic level.

Formal networks established at national level with representatives of all law enforcement services, as already exist in some Member States, can also be considered a good step in this direction.

Due to the complexity of environmental crime, including waste-related crime, which involves a multiplicity of actors, in the context of the mutual evaluation it was highlighted repeatedly that a formal and structured inter-institutional framework would contribute to enhancing multi-agency cooperation in this area; this should also cover implementing more systematic exchanging of information and establishing shared databases.

Structured coordination of efforts could easily, and almost without cost, create synergies to enhance the capacity of the national system to prevent and fight against environmental including waste-related crime.

It is also recalled, in particular as regards waste shipments, that pursuant to Article 50 of Regulation (EC) 1013/2006, as modified by Regulation (EU) 660/2014, as part of the implementation of an inspection plan, Member States should make arrangements for cooperation between authorities involved in inspections.

It is also essential to have smooth cooperation between the administrative entities and the judiciary, particularly in the reporting of environmental offences to the prosecutors, who decide if the elements of the case meet the criteria for criminal prosecution and for imposing a criminal penalty.

RECOMMENDATIONS

- ***Member States are encouraged to establish a formal and structured inter-institutional framework for cooperation at strategic and operational levels among all relevant stakeholders involved in the prevention of and the fight against environmental crime, including waste-related crime, based on a multidisciplinary approach, possibly through protocols or memoranda of understanding.***

- ***Member States should consider designating a central body/entity or platform at national level in charge of coordinating the efforts of all the authorities involved in the fight against environmental crime, including waste-related crime, with a view to providing synergies, as well as maximising readiness and reaction capabilities.***

- ***Member States are encouraged to ensure systematic exchanging of information and the establishment of shared databases with data on environmental crime, including waste-related crime, among all the competent authorities involved in countering such criminal activities.***

X - TRAINING

KEY FINDINGS AND CONCLUSIONS

EU and national environmental legislation is significantly complex, technical and in constant evolution and therefore requires a high degree of understanding by the administrative agencies, LEAs, prosecutors and also by the judges.

Consequently, it is a significant challenge for all actors involved to maintain their expertise, remaining consistently up to date on legal and procedural requirements regarding the practical implications resulting from the application of that legislation (e.g. interrogation at different stages of the administrative / criminal procedure; sampling in an admissible manner for evidence) and peculiarities regarding environmental crime, including waste-related crime.

Regarding misclassification of waste and/or wrong declarations of cargoes, it is also important that waste management operators who collect or transport waste on a professional basis are properly trained, as they are the first line of defence in the waste management system.

In some of the evaluation reports it was pointed out that the basic level of training for the authorities competent for waste shipment control is needed to allow them to identify illegal shipments of waste more easily and, once a suspicious shipment has been detected, to compare it with the cargo declared in the documentation. For that purpose, specialised training for these actors should include the collection, analysis and expert appraisal of samples.

Therefore, and due to the specific requirements of detecting and investigating environmental infringements and crimes, basic, regular and continuous in-service training for the above practitioners at all levels, from the beginning of their careers, is of crucial importance. This can contribute to increasing their skills and knowledge and to raising their awareness of these types of criminal activities for the purpose of successful investigation and prosecution of these types of crime.

In certain Member States significant efforts, resources and people are invested in providing extensive specialised training in the area of environmental crime, including waste-related crime, for relevant actors involved in the prevention of and fight against these criminal activities, who have a high level of technical and legal expertise commensurate with the challenges posed by these forms of crime.

In other Member States there is room for improvement, as the training provided to the staff of some of the competent authorities is assessed to be inappropriate and insufficient, as it is not regular and/or is not offered throughout careers, or where available is not mandatory.

Furthermore, Member States do not usually provide the same level of training for all staff of all the competent authorities. In general, the training provided to the environmental authorities is more satisfactory.

As regards the police, training is generally sufficient, though with exceptions in some Member States, where there is room for improvement. Such training should encompass the use of intelligence sources, data analysis, detection and investigation techniques to acquire adequate evidence in specific environmental cases, particularly in Member States where investigative powers are assigned only to the police.

The usefulness of enhancing the training of police officers, where appropriate, through 'training the trainers' programmes and by propagating knowledge of environmental legislation, has also been highlighted as a potential benefit.

As regards customs, in the case of a number of Member States, training in this area is considered insufficient, as environmental issues have not yet been included, or not sufficiently, in specific training on a regular basis. For these authorities the training should cover, in particular, waste classification and differentiation between waste and by-products.

The situation is generally unsatisfactory for the judiciary, as prosecutors and especially judges do not receive any, or not sufficient, specialised training in this area. In a few Member States only, they occasionally participate in training activities organised abroad by EU bodies or other countries.

The evaluation highlighted in this regard that prosecutors and judges, at least those handling cases involving environmental crime, including waste-related crime, must be well trained to manage particularly complex legal issues in the decision-making process, with a view to deciding whether, respectively, to prosecute or adjudicate a case (in particular by defining the severity of the environmental damage); specialized training is therefore required for them.

In one Member State, the joint training for public prosecutors and police and the specialised training provided by prosecutors to police and customs officers, were considered examples of best practice.

In a few Member States, responsibility for coordinating and carrying out such training activities, not only for the officials working in the institution providing the training, but also for the staff of other institutions, are assigned to a single body, most often to the environmental administrations, which provide training to police officers, customs and border police, while in a few cases this task is performed by the police. In other Member States, each authority conducts training within its own sphere of competence to its personnel.

In one Member State, training is also provided in the form of distance learning sessions (e-learning), which may be considered a good practice and an effective training method with positive economic aspects, given the relatively low cost of IT tools.

In the context of the evaluation, it was highlighted that regular joint training courses involving judges, prosecutors, police and administrative units for sharing experience are extremely useful, as they allow not only exchanges of experience, but also an opportunity to focus on problems and possible solutions from different perspectives.

In addition to the training provided at national level, relevant EU bodies, such as CEPOL, and EU networks, such as EnviCrimeNet, the European Network of Prosecutors for the Environment (ENPE) and the European Union Forum of Judges for the Environment (EUFJE), also provide or contribute to specialised training in the area of environmental crime; however, this option is generally not used by Member States to its full potential.

RECOMMENDATIONS

- ***Taking into account the complex and multi-faceted nature of environmental crime, including waste-related crime, Member States are recommended to maintain or enhance regular and continuous in-depth training in this field for all practitioners involved in the fight against these forms of crime, including prosecutors and judges.***

- ***Member States should consider exploring the possibility of providing or establishing inter-institutional planning of training, with a view to providing joint training, bringing together all relevant stakeholders in combating environmental crime and facilitating enhanced cooperation between Law Enforcement Authorities and the prosecution services.***

- ***Member States should make the best possible use of training opportunities available at EU level, such as CEPOL and relevant networks, as well as at international level, by ensuring regular participation in those training activities by relevant stakeholders involved in tackling environmental crime, including waste-related crime.***

- ***Member States should consider the possibility of using e-learning methods in environmental training for all the entities involved in fighting environmental crime.***

XI - LEGAL ASPECTS

KEY FINDINGS AND CONCLUSIONS

All Member States have specific legislation to prevent and tackle environmental crime effectively. However, the accuracy of the legal definitions, the levels of penalties and the range of investigative tools vary significantly between Member States.

All Member States have transposed Directive 2008/99/EC on the protection of the environment through criminal law, and most of them have set up adequate legal frameworks to safeguard the environment. Some Member States have met only the minimum standards of the above Directive, whereas others have implemented more detailed and exhaustive regulation. In a few Member States environmental protection is enshrined in the constitution.

In almost all Member States, there is no single legal text covering all environmental offences. They are usually contained in the Criminal Code and/or in other special environmental legislative acts. The fragmentation of the legal framework across several pieces of legislation regulating all the various kinds of acts that can cause harm to the environment and human health can give rise to complexity and potential overlaps. Member States have therefore been encouraged to consider reviewing their national legislation in the field and unifying it in a single legal text.

The legal definitions of environmental offences and the criteria for assessment of the seriousness of related crimes vary between Member States and are usually based on concepts such as the danger they pose or the damage they cause to human life or health or to the environment.

However, in many Member States there are no clear predefined criteria for assessing the scale of the environmental damage, and often there is little case-law on how the courts define these terms. More often, in practice, the environmental damage, the risk of damage and the extent of the damage, together with other relevant factors, are assessed on a case-by-case basis by the judicial authorities.

The evaluation highlighted in this regard that varying perceptions of the seriousness of environmental crime, including waste-related crime, can affect the effectiveness of the actions taken to tackle these forms of crime, and that it is therefore important that all national authorities take a similar approach and apply the same procedures to serious crimes in this area, including with judicial follow-up as necessary.

Certain notions, such as 'substantial damage' as referred to in Article 3 of Directive 2008/99/EU, environmental damage, ELVs, etc. are too vague and not clear enough; in many cases criteria, guidelines or instructions to define them are absent or insufficient.

Another problem frequently identified in the evaluations was the lack of a clear distinction between crimes and misdemeanours and/or the regime of administrative or criminal penalties, in the absence of clear criteria for determining which regime should apply. Furthermore, in some cases the law does not appear to clearly and unambiguously stipulate when minor offences must be reported to the police or to the prosecutor. As a consequence, the prosecution authority may not investigate the case, leaving it to the competent administrative authorities to take appropriate action.

Recommendations have therefore been addressed to the Member States concerned, with a view to achieving more clarity and uniformity in the determination of the applicable legislation and penalty regime and to differentiating on the basis of precise predefined criteria between criminal offences and administrative infringements. This should allow each environmental offence to be addressed in the most appropriate way and to ensure judicial follow-up when a violation of environmental law results in criminal liability.

In some Member States, criminal law measures are the last resort, and environmental issues are dealt with almost entirely by administrative entities. Arguments provided by the national authorities in this regard are linked to the constitutive elements of the crime and the evidence standards which need to be fulfilled, or to the consideration that administrative enforcement is seen as less problematic and more effective than judicial follow-up, taking into account that a criminal prosecution is often time-consuming and procedurally difficult. The evaluation has included recommendations to those Member States with a view to re-assessing the balance between the administrative and the criminal approach to environmental crime.

Besides the rules in the legislation, formal agreements or protocols between the competent authorities dealing with environmental offences, or guidelines addressed to them, clarifying the criteria for determining when such offences are to be followed up administratively and when judicially, can be useful in order to implement standardised criteria and avoid misinterpretations.

Pursuant to Article 6 of Directive 2008/99/EC on the protection of the environment through criminal law, Member States must ensure that legal persons can be held liable for the offences referred to in Article 3. Some Member States have provided for criminal liability of legal persons, others for administrative liability, in these cases.

The level of penalties applicable to environmental crime, including waste-related crimes, differs between Member States and usually ranges between a maximum and a minimum; in a few Member States it has been considered too low and insufficient to allow criminal law to play its punitive and deterrent role.

Some reports have pointed out that the fines for legal persons are not used sufficiently, and/or that they are too low compared to the potential profit that can derive from environmental crimes, including waste-related crimes. Several reports have pointed out that their amounts could be reviewed. Recommendations have therefore been addressed to the Member States concerned, with a view to making more use of corporate fines for environmental offences and increasing the levels of such fines.

In some Member States the use of special investigative techniques (such as observation, infiltration, telephone tapping, etc.) to investigate environmental crimes, including waste-related crimes, is not provided for. Those Member States can use economic and financial offences, which are generally linked to environmental crimes, as perpetrators try to maximise their profits, to allow LEAs to use such techniques.

However, this solution is not always applicable, and the evaluation has therefore highlighted that special investigative techniques are essential to combating environmental crime effectively and has recommended the Member States concerned to provide in their legislation for the possibility of using them in the investigation of these forms of crime.

RECOMMENDATIONS

- ***Member States are encouraged to consider reviewing national legislation related to the fight against environmental crime, including waste-related crime, which if possible could be collected into a single legal text, in order to facilitate its full understanding and application by all competent authorities.***
- ***Member States are recommended to ensure that the distinction between the administrative and criminal penalty systems in the environmental field is clearly defined, by adopting and making available to all relevant actors specific and uniform criteria for such differentiation.***
- ***Member States are recommended to establish guidelines to ensure that problematic concepts, such as 'substantial damage' and 'environmental damage', are adequately defined, with a view to facilitating the work of the competent authorities in this area.***
- ***Member States are recommended to ensure that the level of penalties, and in particular of corporate fines, applicable to environmental crimes, including waste-related crimes, is adequate and to ensure that such fines are actually imposed in every case when the relevant criteria are met.***
- ***Member States are recommended to ensure that their national legislation allows the use of special investigative tools to investigate environmental crimes, including waste-related crimes, insofar as this is proportionate in relation to the offence concerned, in order to effectively combat these criminal phenomena.***

XII - PROCEDURAL ISSUES

KEY FINDINGS AND CONCLUSIONS

In all Member States there are requirements to be met with regard to the taking of evidence, to ensure that it is valid and admissible in courts or in administrative proceedings related to environmental crime. In some Member States the competent authorities indicated that they were not aware of any specific difficulties regarding the collection or the admissibility of evidence in this field and that obstacles encountered did not differ from those which arose in other types of criminal cases.

However, other Member States highlighted some problems in this regard. One of the most common difficulties concerns lack of compliance with procedural guarantees in the phase of taking samples and analysing them, which may affect proceedings due to the fact that they cannot be used as evidence. This concerns in particular evidence gathered by administrative authorities, which therefore cannot always be used in judicial proceedings, as those authorities are not subject to the strict criminal procedural rules.

Some Member States' authorities reported some difficulties in assessing the damage caused by an environmental crime, especially in cases of waste crime - in particular the risks of damage, its identification, its actual extent - due to the fact that damage is often not easily visible or measurable: These difficulties may affect the appropriate classification of the crime, assessment of aggravating circumstances and consequently of the penal value (see also Chapter XI).

Specific difficulties related to evidence of waste crimes are dealt with in chapter XV.

Other difficulties encountered with regard to evidence in court and in administrative proceedings, which make investigations more complicated, have been highlighted in the context of the evaluation, such as identification of the perpetrator, proof of psychological elements (negligence or intent) in relation to the accused person or entity and for offences committed by the latter, the detection of the responsible person(s), documentation and assessment of environmental conditions at the time of an inspection in a way that stands up in court, and the use of forged documents.

In some Member States where the number of cases presented before the courts is very small, difficulties can be encountered with regard to the admissibility of evidence due to practitioners not having sufficient legal knowledge and experience in this field.

In all Member States, other measures besides criminal penalties and administrative fines can be imposed for environmental offences, including waste-related offences, by administrative enforcement bodies (non-judicial enforcement action).

This includes coercive administrative measures for the prevention and cessation of administrative offences, as well as of the detrimental consequences of such offences. These measures include (with some differences between Member States): confiscation or seizure, payment of an amount of money equal to the amount of the enrichment obtained, temporary or permanent closing down of the company, suspension or repeal of licenses and other permits, laying down requirements, conditions and instructions, disqualification from company rights and / or denial of benefits, and measures aimed at immediate action to remedy negative effects on the environment.

In a few Member States, security measures which do not punish offenders, but are intended to prevent them from reoffending, by removing circumstances facilitating or promoting the further perpetration of criminal offences, are also provided for.

In criminal proceedings, measures other than criminal penalties which can be imposed are confiscation of means used to commit the offence (instrumentalities) and forfeiture of the proceeds of the crime or acquired through the crime (criminal assets), including economic benefits obtained by committing the offence. In cases of transmission and execution of confiscation orders between Member States, Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, applies.

In most Member States, with a few exceptions, it is not possible to directly allocate the confiscated profits to environmental agencies and/or police budgets or into a fund for compensation for victims of environmental offences, which according to the conclusions of the evaluation could be useful.

Criminal penalties other than imprisonment and fines can also include: prohibition of special rights, deprivation of public rights, barring from public office, from a profession, or from a management position in enterprises, compensation for damage caused by the criminal offence, publication of the judgment and restoration of the environment.

As regards the latter, according to the 'polluter pays' principle laid down in Article 191(2) of the Treaty on the Functioning of the European Union (TFEU) and regulated by Directive 2004/35/EC on environmental liability and by Directive 2008/98/EC on waste, the responsibility for restoring the environment and repairing the environmental damage caused lies primarily with the offenders at their own expenses.

This principle is supported through the extended producer responsibility principle. On this basis, in the event that restoration has not taken place, or not sufficiently, by the deadline indicated, enforcement bodies of all Member States may impose enforcing administrative measures aimed at forcing the liable legal and natural persons to remedy the environmental damage caused (to the extent that this reversible effect is objectively possible) and to pay all the expenses incurred.

In some Member States, the law provides for the possibility of suspending the penalty on condition of the compensation of damages and action taken to secure, clean up and restore the site concerned.

The public authorities hold ultimate responsibility for restoring the environment, but generally intervene as a last resort if a defendant found to be guilty of a criminal offence by a valid verdict refuses to carry out the restoration or is unidentified or does not have the financial capacity to do so. In a few cases, the state uses special funds for this purpose.

In one Member State, a Register of Environmental Liability containing records of the persons and companies found guilty of committing serious environmental crimes and/or having committed serious breaches of environmental regulations has been considered an effective way to prevent infringement of environmental law and therefore an example of good practice.

Under national legislation, across the EU, NGOs have different roles with regard to environmental / waste crime matters and the levels of their active involvement differ between Member States.

In all Member States, NGOs, like any other natural or legal person, may support or lodge complaints about conduct harmful to the environment and report suspected breaches of environmental legislation to the competent national authorities. In a few Member States they have not merely the right but the duty to report a criminal offence.

In contrast, the procedural legitimacy of NGOs differs between the legal systems of the Member States; though in the absence of an obligation to provide so in national legislation, in a significant number of Member States NGOs may also act as "*parte civile*" in criminal proceedings relating to environmental crime, including waste crime cases, and can bring civil law claims to obtain compensation for environmental damage. In most cases this possibility is subject to certain conditions, such as having an interest in the case and/or being an injured party in relation to environmental criminal offences. In other Member States the national legislation does not allow NGOs to bring civil actions in criminal proceedings, that right being limited to the victims of the crime.

However, in most of these Member States NGOs can participate to varying extents in criminal proceedings. This can include providing data/information on the alleged crimes and/or presenting evidence to the law enforcement authorities and to the prosecutor's offices, participating in hearings through their representatives, and being involved as witnesses or experts. In a few Member States these possibilities are not provided for by the legislation and NGOs cannot play any special role in criminal proceedings.

In the context of the mutual evaluations, emphasis was repeatedly given, with reference to the Aarhus Convention, to the significant role that NGOs can play, as they often have useful specialized knowledge in environmental matters, and to the importance of giving them the option to take legal action.

RECOMMENDATIONS

- ***Member States are recommended to ensure that prosecutors and judges have sufficient knowledge to assess the admissibility of evidence, including that of samples in environmental crime cases, and for that purpose to provide them with adequate specialised training.***

- ***Member States are encouraged to consider the possibility of making use of the proceeds of environmental crime, including waste-related crime, to fund the fight against such criminal activities.***

- ***Member States are recommended to make full use of the possibilities for NGOs active in the area of environmental protection to participate in judicial proceedings, in order to make the best use of their expertise, thus contributing to the fight against environmental crime.***

- ***Without prejudice to EU data protection legislation, Member States should consider establishing a register of environmental liability to promote compliance and prevent infringements of environmental law.***

XIII - INTERNATIONAL COOPERATION

KEY FINDINGS AND CONCLUSIONS

Environmental crime, including waste-related crime, often has a cross-border dimension and international cooperation is therefore essential to tackle these criminal phenomena effectively. However, the degree of familiarity of Member States with working in an international context and their actual involvement in such cooperation varies.

Europol, Eurojust and the EJN, with their expertise and facilities, play essential roles in increasing mutual trust and cooperation between Member States' investigating and judicial authorities and in facilitating international cooperation with third States.

They conduct a wide range of activities, which include producing analyses of environmental crime trends, coordinating international investigations and prosecutions, mutual exchange of information, criminal intelligence, evidence, and contributing to training on an EU-wide basis. In the framework of the 2018–2021 EU policy cycle, a specific priority of the EMPACT project focuses on 'combating environmental crime'.

The support and coordination provided by Europol, Eurojust, and the EJN is generally appreciated by the Member States, though some of them underlined the need to increase their resources in order to allow them to play an even more active role in the fight against environmental crime. Cooperation with these EU bodies is in general satisfactory and Europol and Interpol communication channels and their databases, including the Europol SIENA information exchange platform, are frequently used by Member States' LEAs for cross-border information exchange.

However, in certain cases such cooperation could be strengthened, as the services and the products that Eurojust, Europol and the EJN can provide with regard to environmental crime are not always entirely known and fully used by all relevant practitioners of certain Member States. In one country report it was underlined that planned and integrated cooperation by operational forces with Europol and Interpol, mainly in identifying contact points in the countries of destination of waste, particularly those outside the EU, would enhance cooperation at the operational level.

Within the EU context, a broad range of relevant networks for all the entities involved in the environmental field has been set up:

- the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), which brings together environmental authorities, organises conferences and carries out projects in the environmental field to improve and enforce EU environmental law;

- IMPEL-TFS (transfrontier shipment of waste), which deals with problems concerning illegal waste shipments;

- the informal network for countering environmental crime (EnviCrimeNet), which connects LEAs in the field of environmental crime to share knowledge and best practices;

- the European Network of Prosecutors for the Environment (ENPE), which involves prosecutors working in the environmental field and has dedicated working groups related to 'waste crime' or 'sanctioning, prosecution and judicial practice in this area';

- the European Union Forum of Judges for the Environment (EUFJE), which allows judges to exchange experiences, thus contributing to better knowledge and to more effective enforcement of environmental law.

The level of participation in the activities of these networks varies between the Member States. The majority of them are members and participate in IMPEL and EnviCrimeNet, though while some are more actively involved, for others such participation is not regular and/or does not concern all relevant activities within these fora.

As regards the above judicial networks, the level of involvement is generally lower and in a number of Member States no judges currently participate in the activities of the EU Forum of Judges for the Environment (EUFJE) and no prosecutors participate in the ENPE.

The evaluation has in particular highlighted that judges dealing with environmental crime cases, who need to determine the extent of environmental damage to establish criminal liability, are encouraged to become more involved in activities focused on environmental crime at EU level.

More generally, full participation in all the above networks has been recommended in the context of the evaluation, as it allows the sharing of best practices, modi operandi, cross-border intelligence, as well as easy and direct contacts with foreign partners in the field of environmental crime.

Furthermore, in cross-border investigations, participation in internationally coordinated investigations can be of benefit in effectively investigating and prosecuting environmental crime.

Within the EU framework, the Joint Investigation Teams (JITs) are a useful tool of international cooperation in transnational crime cases, based on an agreement between competent authorities of two or more Member States - both judicial and law enforcement - to carry out criminal investigations jointly. Moreover, Europol and Eurojust can facilitate and finance the setting up and operation of JITs.

Participation in JITs is generally indicated as a positive experience by participating Member States, who consider them an effective instrument for conducting cross-border investigations, making possible direct exchange of information between investigators and timely cross-collection of evidence without the need to submit separate formal requests for mutual legal assistance or for a European Investigation Order. However, at the time of the evaluation, only a few Member States had participated in JITs regarding cases of environmental crime, including waste-related crime.

The importance of cross-border cooperation and information exchange with the competent authorities of other countries, especially neighbouring countries, with a view to coordinating efforts in fighting against transnational environmental crime cases, has repeatedly been underlined in the context of the evaluation.

The development of relationships with non-EU countries directly concerned as countries of destination or origin of the waste, as practised by some Member States, is also essential to tackle illegal waste shipments effectively and allow criminal proceedings to benefit from international cooperation.

However, the efficiency and forms of such cooperation differ across the EU. Some Member States have to varying extents developed forms of cooperation between each other in this respect, which can include exchanges of information and/or best practices, regular meetings and /or joint actions/projects, joint training and joint inspections (covering inter alia transboundary shipment of waste, appointment of liaison officers, etc.). This cooperation is sometimes based on protocols or memoranda of understanding or other forms of bilateral agreements, which can be considered good practices.

In other cases, cooperation with other EU Member States does not seem to be formal or systematic. Relevant recommendations have been addressed to other Member States where room for improvement has been identified in respect of such cooperation.

In certain cases regional forms of international cooperation have been developed, including with non-EU countries, such as HELCOM in the Baltic Sea region, to tackle regional cross-border environmental problems in this area, with inter alia the establishment of a Network of Prosecutors on Environmental Crime (ENPRO), and the Southeast European Law Enforcement Centre (SELEC) in the Black Sea region, with inter alia the establishment of the Southeast European Prosecutors Advisory Group (SEEPAG) to enhance coordination in preventing and combating crime, including transnational serious and organised crime. These structures can be considered examples of good practices, as they broaden cooperation by involving third states and thus allow the sharing of new experience and data and thereby contribute to enhancing the fight against environmental crime.

RECOMMENDATIONS

- ***Member States are encouraged to participate actively in work carried out at EU and international levels to enhance cooperation in tackling environmental crime, including waste-related crime, in particular in the activities of EU agencies and bodies — Eurojust, Europol and EJN — and of the European networks active in this area.***

- ***Member States are encouraged to raise the awareness of practitioners of the possibilities and advantages of JITs and their use in environmental crime cases in order to make investigations more effective.***

- ***Member States are encouraged to ensure or further develop cooperation with neighbouring countries, including third countries, and, where appropriate, to develop regional cooperation in fighting environmental crime.***

- ***Member States are encouraged in particular to cooperate closely with EU and non-EU countries of destination or origin of shipments of waste, in order to coordinate efforts in combating illegal cross-border activities in this area, inter alia by establishing contact points/liaison officers with a view to information exchange and sharing of best practices.***

XIV -COOPERATION BETWEEN THE PUBLIC AND THE PRIVATE SECTOR

KEY FINDINGS AND CONCLUSIONS

According to the findings of the evaluation, the level of cooperation between the public and private sectors varies between Member States, and generally proves to be more developed and efficient where it is more structured and where there is an environment of confidence and trust.

In some Member States the evaluation has assessed that such cooperation works effectively, whereas in other Member States there could be more active involvement of the private sector in tackling environmental crime.

In some Member States the use of public/private partnerships based on memoranda of understanding or other formal agreements is provided for, though sometimes limited to specific areas. Other Member States have not developed a formal framework for public/private partnerships, and in some of them cooperation, meetings and exchange of information on incidents, trends and developments with the private sector take place informally.

The evaluation highlighted the importance of establishing public/private partnerships, to allow regular collaboration and exchange of information, knowledge, experience and capabilities with the private sector in the fight against environmental crime, primarily in the detection of illegal waste activities.

The most advanced forms of cooperation with the private sector were identified in some Member States where such cooperation is institutionalised by the establishment of appropriate institutions/working groups with the participation of representatives of the private sector, and in some cases also NGOs or universities involved in environmental matters, and of the public administration/law enforcement bodies competent in this area.

In the context of the evaluation, these structures were assessed as valuable and beneficial, since they enable civil society to participate actively in preventing and fighting environmental crime, and therefore considered examples of good practices.

NGOs working on environmental protection can, thanks to their specialised expertise, play a significant role in the prevention and fight against environmental crime, including waste-related crime, for instance by carrying out awareness actions and education campaigns, reporting useful data and information on possible criminal activities and related trends, as well as in the evaluation of environmental damage.

Although private associations and NGOs operating in this field are present in almost all Member States, their level of cooperation with LEAs varies. In some they make key contributions by channelling reports of environment damage, while in others it seems that they could be more integrated in public efforts to enhance prevention and raise awareness among citizens and private companies in this area (see also Chapter XII).

In some Member States cooperation in this area with the private sector also involves the industry, which proves useful for discussion of the implementation of environmental legislation and improving environmental compliance.

In some Member States there is a reporting obligation for the private sector on waste crime, whereas in other Member States such reporting is not mandatory or limited. According to the findings of the evaluation, dialogue with the private sector beyond the mandatory reporting requirements could facilitate better results in combating environmental crime.

RECOMMENDATIONS

- ***Member States are encouraged to make use of structured public/private partnerships in the field of environmental protection, which could be based on memoranda of understanding or other formal agreements, with a view to ensuring a clear framework for regular cooperation, thus contributing to enhancing the fight against environmental crime, including waste-related crime.***

- ***Member States are encouraged to establish bodies or structures with the participation of representatives of both the public and the private sector dealing with environmental matters, with a view to ensuring cooperation in the prevention of and fight against environmental crime, including waste-related crime.***

- ***Member States are encouraged to establish or further develop working relationships, dialogue and regular exchanges of information with the national NGOs active in the environmental field.***

- ***Member States should encourage the private sector to share information on suspected environmental breaches with the public authorities, where appropriate, by establishing in national law an obligation for the private sector to report environmental incidents.***

XV - ILLEGAL TRAFFICKING OF WASTE

KEY FINDINGS AND CONCLUSIONS

National structures for preventing and combating illegal shipment of waste in the Member States involve a large number of control bodies at different levels, each with their own roles, carrying out inspections and investigations.

The national systems of distribution of competences, the effectiveness of the organisation and the degree of interaction among the different authorities in the waste enforcement chain vary across the European Union. In some Member States, the low illegal waste shipment detection rate suggests there may be room for their systems to improve to tackle illegal trafficking of waste more effectively.

Whereas in a number of Member States cooperation in this area is formalised and quite efficient, in others there is room for improvement via more integrated and coordinated actions among the various LEAs in order to build up a more robust system for detecting and tracking illegal transboundary shipments of waste.

The primary responsibility for the implementation of Regulation No 1013/2006, in particular for monitoring transboundary shipment of waste, usually lies with the environmental authorities; in some Member States different administrative authorities are competent for, on the one hand, the administrative obligations (e.g. licensing) and, on the other hand, the inspection of facilities and waste-producing companies, as well as of those involved in waste transport.

As waste crimes are assessed as 'control crimes', a sufficiently large number of inspectors and of inspections are essential for detecting this form of crimes. Under Regulation No 1013/2006, Member States have set up inspection plans for shipments of waste.

In a few Member States the inspection services have been found to function well, with inspectors having the expert knowledge, capacity and equipment to perform inspections.

In other Member States the capacity of the system to prevent or detect illegal shipments of waste is affected by a lack of information, intelligence, focus/prioritisation, and the absence of a central strategy to identify and counteract the phenomenon. This often results in the total number of routine inspections and the number of available inspectors not being sufficient to act against waste crimes. In certain Member States the evaluation has in particular highlighted the need for more focused controls on the roads and at the borders and inspections of company premises.

Given that waste, including hazardous waste, is moved around between various Member States, the absence of regular checks is not only a risk factor for the country itself, but may also have knock-on effects at EU level and could impede the detection of illegal networks operating in this field in and through a number of countries. Links between illegal trafficking of waste and organised crime are, however, not obvious. In some countries this link has not been proven, whereas in others it appears more or less clearly.

The evaluation also therefore underlined the need for physical controls to detect illegal waste shipments during customs checks on importing and exporting of waste, including for collecting samples, on a regular basis rather than only when there are irregularities in documentation, which could in certain cases be fraudulent yet not arouse any suspicions.

Making use of intelligence, special investigation techniques and financial investigations to facilitate the obtaining of relevant evidence in this field is also important, so recommendations for improvement have been addressed to a number of Member States in this regard.

Risk assessment is also essential for targeted inspections, especially in Member States where the large volume of goods passing borders makes it difficult to inspect all container traffic.

Given the huge complexity of the applicable legislation and the need for it to be enforced effectively, it is essential that inspectors/investigators dealing with cross-border shipment have specialised training. However, this is not always the case, in particular for customs services, which often do not have the specialised expertise needed to deal with illegal waste shipments in such a way as to determine whether a criminal activity has occurred in relation to the physical waste.

Due to the huge amount of waste shipped by car or boat, bodies involved in the fight against environmental crime cannot rely solely on human analysis to check shipments, and need tools that can be used to inspect them swiftly. It is also important in order to tackle waste crime effectively that Member States' inspection authorities have modern infrastructure and equipment.

The use of scanners to carry out inspections makes it possible to obtain an image of goods shipped without the need to open containers. Furthermore, some Member States share the use of scanners around common borders, which has been considered a good practice. In a few Member States advanced inspection tools, such as drones, X-ray technology and mobile scanning devices are used during transboundary inspections; special vehicles scientifically equipped for sampling in the field have been considered examples of best practices. More generally, there is room for improvement in this respect.

Some Member States have electronic databases relating to the cross-border shipment of waste requiring notifications, which contain information relating to the production, transport and destination of the waste, and in some cases related infringements, accessible by the authorities involved in tackling waste crime. As these databases can facilitate the tracking of waste and thus contribute to improving the efficiency of inspections, as well as strategic and tactical analysis, they can be considered best practices.

In order to prevent waste crime, a few Member States impose an obligation to label waste trucks and lorries with the 'A' plate. This is very useful in facilitating the identification and tracking of waste shipments and the performance of related inspections, and can therefore be considered a good practice.

A few countries have digitalised the mandatory forms for waste shipment, added automated analysis of these forms and shared their operating system with all the bodies involved in the fight against environmental crime. They are thus able to perform swift and accurate risk assessments, detect infringements and immediately send officers to carry out inspections.

Certain main obstacles to the detection of offences relating to illegal waste shipments were identified in the context of the evaluation: first of all, the complexity of waste classification, which causes difficulties as regards the definition of waste in EU legislation, the distinction between hazardous and non-hazardous waste and the differentiation between by-products and waste, or between used cars and end-of life vehicles; in certain cases it was stressed that it can be difficult to obtain samples that accurately reflect the waste shipped. Yet, Member States have to rely on expertise, which primarily involves the need to obtain suitable samples.

In a few countries, the existence of public-sector bodies which have specialised laboratories providing assistance and advice on technical and scientific matters to the competent authorities offer technically qualified and impartial expertise. In other Member States, forensic examination is performed by private experts or companies; some of them pointed out a lack of experts in environmental crime (and more specifically experts on waste), the costs of the expert analysis and its duration, which can cause delays in criminal proceedings.

Some Member States have produced manuals and handbooks at national level that facilitate such assessments by the competent authorities, contributing to more effective enforcement of waste legislation. A number of Member States called for guidance at EU level to solve difficulties in interpreting the waste classification system, with a view to contributing to a more effective and coherent approach to waste crime across the EU.

The evaluation also highlighted difficulties when an illegal international transfer is detected in the organisation of the return of the cargo to the country of origin. As provided in the EU legislation, Member States have to take measures to detect waste being transported illegally and ensure that it is managed properly from an environmental perspective, either by returning it to its place of origin or by directing it towards an appropriate and authorised collection or treatment centre.

For this purpose, the traceability of waste from production to final destination needs to be addressed by provisions in national legislation that require waste shipments to be accompanied by identification documents and producers and managers of waste to keep chronological records of the waste they manage, in accordance with the Waste Framework Directive.

These situations must be monitored and the competent national bodies in the country in question must be informed so that they can confirm the delivery of the waste at its place of origin. To ensure that waste is managed properly, these steps must be taken in close cooperation with the other competent foreign authorities concerned.

However, in cases where waste has already been disposed of, the traceability of the persons who committed the offences and the identification of the responsible parties when waste is unloaded overseas can also be problematic. Furthermore, establishing the gravity of the offence can be a considerable challenge, because the waste consignments have often been transported away from the Member States' territory before detailed examinations are carried out.

Effective action in this respect, with a view to facilitating the return and proper management of the waste, requires cooperation with the states of origin, especially third states, directly concerned by waste trafficking, which are, however, often unknown; where they can be identified, there may be difficulties in communicating with them, which is often time-consuming.

Another difficulty is linked to the need for collected evidence to be assessed by means of relevant expert opinions, in particular in relation to waste crimes, especially if the waste has already been disposed of domestically or shipped abroad. A common concern in this context is the problem of sampling under an administrative procedure, which is subject to less stringent rules than during an investigation and sometimes unsatisfactory from the point of view of criminal law follow-up (see also Chapter XII).

Other obstacles to the detection of illegal waste shipments indicated by Member States are limited budgets, taking into account that storing the seized goods can incur additional costs, limited human resources and the complexity of the circumstances underlying the criminal offences.

Flows of WEEE and ELVs create needs for specific measures to be taken at various stages in the waste management process in accordance with the requirements provided for respectively by Directive 2012/19/EU on waste electrical and electronic equipment (WEEE) and by Directive 2000/53/EC on end-of-life vehicles.

Whereas in some Member States WEEE and ELVs are considered priority waste streams and are subject to specific inspection activities and analysis, involving not only documentary checks but also detailed physical inspections, such measures are not in place in all Member States.

Specific findings relating to hazardous waste are reported under Chapter XVI.

RECOMMENDATIONS

- ***Member States are recommended to ensure integrated and coordinated actions bringing together the various Law Enforcement Authorities and the administrative bodies in order to build up or further strengthen an efficient system to tackle illegal activities related to cross-border waste shipments.***

- ***Member States are recommended to ensure, with a view to improving enforcement actions as regards illegal transboundary waste shipments, that they have an adequate number both of specialised and adequately trained inspectors, possibly vested with criminal enforcement powers, and of regular inspections, including physical checks of containers transporting waste.***

- ***Member States are recommended to make use of intelligence, risk assessment, financial investigations and special investigation techniques, insofar as this is proportionate in relation to the offence concerned, as well as to establish electronic databases relating to the cross-border shipment of waste, with a view to further strengthening their capacity for detection of illegal shipments of waste.***

- ***Taking into account potential risks in relation to WEEE and ELVs, Member States should consider drawing up a global action plan for the entire cycle of these waste streams, from production to elimination, which also identifies all the services involved in related enforcement activities.***

- ***Member States are encouraged to take measures to improve cooperation with the states of origin, especially third states, directly concerned by waste trafficking, with a view to facilitating the return and proper management of waste by these countries.***

XVI- ILLEGAL PRODUCTION OR HANDLING OF DANGEROUS MATERIALS AND MANAGEMENT OF HAZARDOUS WASTE

KEY FINDINGS AND CONCLUSIONS

As the illegal production and handling of dangerous substances may have a significant impact not only on the environment, but also on public health, it is of the utmost importance that the appropriate legislative framework and structures to regulate and control the relevant activities are in place.

According to the conclusions of the evaluation, in order to protect the population and the environment from danger, it is important that the dangerous substances and products be handled carefully during production, storage, transportation, use and disposal, and that for these purposes, measures taken to prevent or limit the damage be based on a risk assessment for each substance.

Though the attention Member States devote to the illegal production and handling of dangerous substances and materials varies, most have put in place, to varying extents, the relevant regulatory and organisational framework in this area, including specific criminal law provisions to define related offences and penalties.

In the context of the evaluation, it was highlighted that it is important that the relevant legislation is clearly designed to ensure that all activities are conducted under strict regulations specifying the applicable restrictions regarding production, importation, treatment, collection, etc. of the dangerous substances.

The majority of Member States have a definition of 'dangerous material' in their national legislation, usually in administrative laws, though a few do not.

However, where there is uncertainty, the relevant EU legislation in this field applies. In particular, under Article 3 of Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification (CLP), labelling and packaging of substances and mixtures, a substance or a mixture is considered to be 'dangerous' if it fulfils the criteria relating to physical hazards, health hazards or environmental hazards laid down in Annex I of Regulation (EC) No 1272/2008, and is to be classified in accordance with the corresponding hazard classes provided for in that Annex.

Under Article 4 of the CLP Regulation, manufacturers, importers and downstream users are required to classify substances or mixtures in accordance with Title II of the Regulation before placing them on the market.

The manufacture, placing on the market and use of certain dangerous substances, mixtures and articles are prohibited and/or restricted by specific conditions laid down in Annex XVII to Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH Regulation).

In the context of the evaluation, it was underlined that cooperation among the competent authorities - administrative services, police, customs, civil protection, the fire services and the judiciary- should preferably be formalised, on the basis of standard operational procedures, in order to ensure an appropriate coordinated response to the threats posed by chemical, biological, radiological and nuclear materials.

Some Member States indicated that they had encountered a very small number of cases of illegal activities related to the production and handling of dangerous substances, or only minor breaches for non-compliance with the applicable legislation as regards licences, authorisations, etc.

The low detection rate regarding (even more serious) illegal activities linked to the production or handling of dangerous materials raises the question of whether this could be linked to a lack of knowledge and awareness of these forms of crimes and/or to insufficient monitoring and control activities by the LEAs, involving the need to take appropriate measures to enhance the prevention of and fight against illegal activities in this area.

Whereas some Member States indicated that they were not aware of any obstacles to the successful investigation and prosecution of illegal activities regarding the production and handling of dangerous substances, others pointed out general problems, such as the complexity of the legislation, lack of specialisation, difficulties in detection, etc.

One of the main challenges in investigating and detecting criminal activities related to the handling of dangerous materials seems to be the gathering of sufficient and reliable evidence, which demands adequate investigative measures and specialised expertise, also taking into account physic-chemical developments since the samples were taken.

The dangerous materials themselves are often evidence that has to be collected by taking samples and analysed by appointed experts / forensic laboratories. Relevant evidence should also be taken into official custody or otherwise seized, providing for safe and secure storage, which often involves significant costs (see also Chapter XII).

According to the findings of the evaluation, also taking into account that the handling of dangerous materials often has links with organised crime, it is important, in order to improve the detection capabilities in this area, to make use of intelligence information. Furthermore, Member States should make the best use of the possibilities offered by modern technologies with high-tech instruments and very sophisticated equipment that can facilitate the detection, sampling and decontamination of hazardous materials.

Taking into account that dealing with dangerous substances requires a high level of expertise, and that in general there is a need for greater specialisation, adequate and regular specialised training on dangerous materials for national operators dealing with these matters is essential. Such training is provided to varying extents in certain Member States; in some it is better organised and extensive, in others it should be increased and improved.

Cooperation with the competent authorities in other EU Member States and in third countries with regard to dangerous substances is also important, to allow information to be exchanged on trends in the production and handling and placing on the market of such substances at European and international level.

However, some Member States provided no information or reported no specific experience of cooperation with other European and international partners with regard to the handling of dangerous materials. Other Member States reported forms of cooperation — in particular information exchange — with other countries through the relevant channels, such as Europol and Interpol. Some Member States referred to the use of other channels, such as the Portal Dashboard for National Enforcement Authorities (PD-NEA), the internet-supported information and communication system for the pan-European market surveillance (ICSMS) and, for serious risks, the RAPEX safety gate to share information about dangerous substances.

As regards waste, the criteria for classifying waste as hazardous are set out in Commission Regulation (EU) No 1357/2014 of 18 December 2014. Due to their impact on human health and the environment, special attention should be given to offences related to hazardous waste as referred to in points (b) and (e) of Article 3 of Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law.

The handling and transportation of hazardous waste should be monitored, since inappropriate management of such waste can cause serious pollution and have a damaging impact on public health. This is achieved both through obligations for producers, holders, collectors, carriers and disposers of hazardous waste to inform the competent authorities of hazardous waste disposal and transport and through inspections. In most Member States, however, there are no specific systems or measures available for inspections and investigations specifically targeting hazardous waste.

In many of the evaluated Member States, the number of criminal cases regarding hazardous waste or dangerous materials is small. Common modi operandi in illegal management of hazardous waste are to pretend that dangerous wastes are not hazardous, to classify WEEE as products, and to hide hazardous wastes under non-hazardous wastes.

Many of the offences related to hazardous waste are committed through misclassification, as some companies tend to classify goods as non-hazardous if there is the slightest chance they could be detected. Therefore, one of the main challenges for the competent authorities is the correct documentation of the waste as hazardous. As the management of hazardous waste is extremely technical and complex, the relevant measures should ensure that inspections and related sampling are carried out by qualified technicians with specific expertise in this area.

RECOMMENDATIONS

- ***In order to strengthen their detection and enforcement capacity in tackling the illegal production and handling of dangerous substances, Member States are encouraged to enhance monitoring activities and related checks, as well to make use of intelligence and risk assessments to identify trends and threats in this area.***

- ***Member States should consider formalising inter-institutional cooperation in tackling illegal activities concerning the production and handling of dangerous substances, in order to ensure that the competent authorities are able to react to the threats posed by chemical, biological, radiological and nuclear materials swiftly and in a coordinated manner.***

- ***Member States are encouraged to take appropriate measures to increase the specialisation of the competent authorities involved in tackling the illegal production and handling of dangerous substances, e.g. by increasing the training opportunities available to practitioners in this complex and highly technical area of crime.***