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**Final follow-up 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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1. INTRODUCTION

Following the adoption of the Joint Action of 5 December 1997¹ (hereinafter Joint Action), a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established. In line with Article 2 of the 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 dedicated to the practical implementation and operation of European policies on preventing and combating environmental crime².

At its meeting on 5 May 2017, GENVAL approved the evaluation questionnaire³ for the eighth round of mutual evaluations as well as the sequence for the mutual evaluation visits⁴.

The evaluation process was conducted from September 2017 to March 2019 and followed a pattern consistent with that of the preceding rounds of evaluations. To that end, following each evaluation visit a report was drafted, giving a factual description of the relevant organisational structures and legal practices of the evaluated Member State. The respective country reports also identified both areas requiring improvement and areas of good practice, as well as recommendations the evaluating team felt appropriate in order to further streamline and improve the fight against environmental crime at EU level. The final report on the eighth round of mutual evaluations⁵ with recommendations was adopted by the Council on 2 – 3 December 2019.

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

² ST 15196/16

³ ST 7752/17 REV1

⁴ ST 7834/17 REV1

⁵ ST 14852/19

Each Member State had to submit after a period of 18 months a follow-up report on the implementation of the recommendations addressed to them in the respective country reports. The General Secretariat of the Council received the follow-up reports from all Member States. Seven follow-up reports were presented during the COPEN meeting on 7 of March 2022⁶.

At the COPEN meeting on 15 July 2022 and the LEWP meeting on 20 July 2022, the Presidency invited delegations who explicitly wished to have their follow-up report of the 8th evaluation round presented at a forthcoming LEWP/COPEN meeting, before the presentation of a final follow-up report, to inform the Presidency and the General Secretariat of the Council accordingly⁷. One Member State expressed its wish to present their follow-up report.⁸

On behalf of the Presidency, the General Secretariat of the Council carefully analysed the information provided by the Member States on the implementation of the recommendations. It has should be underlined that several recommendations relate to the unique setup of the respective Member States, therefore these recommendations are not entirely the same. Nevertheless, common denominators allowed for categorization, enabling the below detailed analysis.

⁶ The following follow-up reports have been discussed: Sweden (ST 9882/19), Netherlands (ST 8951/20), Slovakia (ST 5792/20), Germany (ST 9639/20), Belgium (ST 7669/1/20 REV 1), Czech Republic (ST 8952/2/20 REV 2) and Portugal (ST 5769/1/21 REV 1)

⁷ WK 9127/22

⁸ Croatia expressed interest in presenting their follow-up report (ST 5446/22), which will take place at the next joint meeting of LEWP/COPEN.

2. FOLLOW-UP TO THE REPORTS

2.1. General analysis

All Member States have sent their follow-up report to the General Secretariat of the Council.

Of the 334 recommendations that were made to the Member States that submitted their follow-up reports:

- 205 recommendations have been implemented (which represents 61% of the total),
- 77 recommendations were partially implemented or being implemented (which represents 23% of the total),
- 52 recommendations were not implemented (which represents 16% of the total).

These figures show that, in general, Member States have followed the recommendations addressed by the experts. If the recommendations implemented are added to those that are partially or being implemented the rate is 84% of the total. Taking into consideration that for some recommendations the follow-up period of 18 months may be short, especially in the case of legislative amendments, this rate of achievement can be expected.

2.2. Analysis by topics

The recommendations made by the evaluation teams to the Member States are gathered by topics. The most important topics with the highest number of recommendations are highlighted below.

2.2.1. Enhancing cooperation between national competent authorities

The subject that attracted the most attention from the evaluation teams was the cooperation between the competent authorities in the fight against environmental crime. In this field, the experts made 53 recommendations, representing almost 16% of the total of the recommendations made to the Member States. Therefore, the experts see cooperation between national competent authorities as one of the most important priorities. This is perfectly understandable in an area involving several stakeholders.

Of these 53 recommendations:

- 40 recommendations were implemented (75% of the total),
- 9 recommendations were partially implemented or being implemented (17% of the total) and
- 4 recommendations were not implemented (8% of the total).

These figures show that Member States have followed the recommendations made by the experts. Among the different achievements mentioned in the follow-up reports, the establishment of a National Environmental Security Taskforce (NEST), signature of agreements between the national competent authorities, appointment of contact points, creation of transversal working groups or access to different databases could be mentioned.

The difficulties linked to the lack of implementation of the recommendations in this area result from constitutional or legislative problems.

2.2.2. Improving training on environmental crime

Training was the second topic that led the experts to make recommendations. In this field, 40 recommendations were addressed to the Member States which represents 12% of the total number of recommendations. Clearly, experts found that there was room for improvement in the level of knowledge of the different stakeholders in the fight against environmental crime.

Of 40 recommendations:

- 33 recommendations were implemented (83% of the total),
- 3 recommendations were partially implemented or being implemented (7% of the total), and
- 4 recommendations were not implemented (10% of the total).

The follow-up reports show that Member States have made real efforts to follow the recommendations related to training. They created new trainings (including e-trainings) for the competent authorities. Moreover, workshops and joint trainings for various relevant authorities were set.

These figures show that Member States follow the right path to enhance knowledge among all the relevant stakeholders and should maintain their efforts. Due to the pandemic or the independence of the judiciary, however, some Member States were not able to implement the recommendations.

2.2.3. Specialisation of competent authorities

The third area of improvement that experts underlined is the specialisation of competent authorities. Indeed, 30 recommendations were linked to this topic, representing almost 9% of the total of recommendations.

Of these 30 recommendations:

- 16 recommendations were implemented, (53% of the total)
- 9 recommendations were partially implemented or being implemented (20% of the total) and
- 5 recommendations were not implemented (17% of the total).

More than half of the recommendations have been implemented here and Member States created national networks in some competent bodies and specialised prosecutors or police officers/investigators.

Nevertheless, it appears that Member States had difficulties to go further in the specialisation of competent authorities. The main reason appears to be a need of time to set up specialised units, especially within the police. The Member States also underlined the difficulty to appoint specialised prosecutors in their countries or to make specialisation in environmental crime a prerequisite before appointing a prosecutor. Moreover, some Member States highlighted the fact that the number of criminal cases in environmental crime is not sufficient to call for specialisation within the judiciary.

2.2.4. Statistics

Another important issue is the lack of statistics: 26 recommendations were addressed to the Member States on enhancing the collection of data in order to have a clearer picture of environmental crime.

Of these 26 recommendations:

- 8 recommendations were implemented, (30% of the total)
- 11 recommendations were partially implemented or being implemented (42% of the total), and
- 7 recommendations were not implemented (27% of the total).

Clearly, in this area Member States have difficulties to comply with the recommendations. Some Member States have managed to, or are working on a way to ensure a better information sharing and information gathering between the competent authorities in the fight against environmental crime and to integrate them in one system. Besides that, some Member States publish their statistics on environmental crime.

Follow-up reports show that the main challenge in this area is to create an integrated database gathering all the inputs from the different competent authorities. There are technical issues that make connections between existing databases complicated or impossible. Few Member States underlined also the fact that it was not clear what kind of data was exactly expected.

2.2.5. Strengthening the budget and staff dedicated to environmental crime

One other matter of importance for the evaluation teams was the necessity to allocate funds specially dedicated to the fight against environmental and to strengthen the competent authorities' staff. In this area, the experts made 25 recommendations (7,5% of the total number of recommendations).

Of these 25 recommendations:

- 15 recommendations were implemented, (60% of the total)
- 3 recommendations were partially implemented or being implemented (12% of the total) and
- 7 recommendations were not implemented (28% of the total).

More than half of the recommendations have been implemented: several Member States have recruited staff within customs, police or environmental agencies. Moreover, some Member States have increased their budget allocated to judiciary and police.

However, a significant number of Member States were unable to follow the recommendations. The reasons given are the difficulties in finding additional funds both to hire staff and to allocate them to the environmental crime budget. On this second point, some Member States also have legal issues in allocating funds specifically to the fight against environmental crime.

2.2.6. Enhancing the strategic approach to tackle environmental crime

24 recommendations (7%) were made to the Member States in order to develop a single national environmental strategy, establishing priorities and resources in order to tackle environmental crime, and setting out the roles of the various actors and their cooperation in this field.

Of these 24 recommendations:

- 17 recommendations were implemented, (70% of the total)
- 6 recommendations were partially implemented or being implemented (25% of the total) and
- 1 recommendation was not implemented (5% of the total).

In this area the Member States have largely followed the recommendations made by the experts. The follow-up reports describe strategic long-term plans involving the national competent authorities or the Ministries that have the responsibility of these authorities. In one follow-up report it is even mentioned that a specific Ministry with its own policy in the field of the fight against environmental crime is created.

2.2.7. Enhancing cooperation between the public and private sector

The cooperation between public and private sector covers several aspects: it encompasses the cooperation between public authorities and private companies or non-governmental organisations but also public campaign and awareness on environmental issues. 18 recommendations were made in this field.

Of these 18 recommendations:

- 14 recommendations were implemented, (78% of the total)
- 2 recommendations were partially implemented or being implemented (11% of the total) and
- 2 recommendation was not implemented (11% of the total).

Almost all the Member States have complied with the recommendations. They reported to have taken into consideration public awareness in their action plans to combat environmental crime. Furthermore competent national authorities have developed links with the private sector or NGOs to obtain more information and receive support in their investigations.

2.2.8. Other topics

The remaining recommendations represent around one third of the total of the recommendations made to the Member States.

Among these recommendations, some are linked to the possibility of enhancing cooperation with EU networks like the *European Union Network for the Implementation and Enforcement of Environmental Law* (IMPEL), the *Environmental Crime Network* (EnviCrimeNet), the *European Network of Prosecutors for the Environment* (ENPE) or *European Union Forum of Judges for the Environment* (EUFJE). Recommendations have been well received and Member States have appointed practitioners to join these networks or improved their connections with them.

Another matter of importance was the increase of the number of checks of waste shipment and the quality of these checks. Almost all the recommendations on this matter have been complied with. Member States have found different ways to meet their obligations: they increased the number of staff within the competent authorities and subsequently it raised the number of checks, or they asked the existent authorities to carry out additional checks. They also developed joint inspections involving different competent authorities which allow to use the qualities of different bodies in one check. Moreover, they spread the good practices of some competent authorities to the others.

The suggestions to better link environmental crimes with economic crimes were almost completely met. This has been done by Member States by issuing a new law or defining new priorities within the competent authorities. Following the same path, the Member States that were recommended to do so, increased the level of administrative fines, made legislative changes, or created new administrative tools such as guidelines for the competent authorities.

More problematic were the recommendations suggesting a differentiation between administrative and criminal sanctions. Some Member States revised their law or intend to do so, other Member States considered that the current existing criteria were sufficient to make this distinction.

Another important topic was linked to the creation of a risk analysis system. Among the Member States that were recommended to do so, only few managed to implement it within the 18 months dedicated for the follow-up. Other Member States need more time, which is understandable when a new platform is created or if the implementation is carried out gradually.

3. CONCLUSION

Considering the number of recommendations having been implemented – including the recommendations that have been partially implemented or are being implemented –, Member States found the recommendations made by the evaluation teams in the respective country report relevant in the fight against environmental crime.

Reference should be made to the ongoing negotiations on the draft *Directive on the protection of the environment through criminal law and replacing Directive 2008/99/EC*⁹. The proposal aims to improve and add precision, legal certainty and effectiveness to the EU's legal framework on environmental crime. These measures will improve the framework supporting the crucial work of crime-fighting professionals, such as inspectors, police officers, prosecutors and judges.

Taking into account the legislative process, no further follow up steps are envisaged in the framework of the eighth round of mutual evaluations.

⁹ COM(2021) 851 final