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- Report on Malta

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**EVALUATION REPORT ON THE  
EIGHT ROUND OF MUTUAL EVALUATIONS**

**The practical implementation and operation of European policies on  
preventing and combating environmental crime**

**REPORT ON MALTA**

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## 1. EXECUTIVE SUMMARY

The evaluation visit was very well organised and prepared by the Maltese authorities, including as regards logistics. The selection of authorities visited and participants met was appropriate.

The evaluators were given the opportunity to talk with quite a large number of professionals from the Maltese central authorities, such as the Ministry for Home Affairs and National Security, the Malta Police, the Ministry for the Environment, Sustainable Development and Climate Change, the Environment and Resources Authority, the Ministry for Health, the Office of the Attorney General, the Civil Protection Department, the Trade Services Directorate, and the Customs Department.

The evaluation team found the visit organised by the national authorities to Malta Freeport in Birżebbuġa to be very worthwhile; here, the evaluators were able to observe the scanning of containers and road inspections.

In accordance with Articles 28 and 29 of Directive 2008/98/EC, Malta has established a waste management plan and a waste prevention programme. These are complemented by a national environment policy and a waste shipment inspection plan. Malta has put in place numerous efficient plans and regulations. However, in practice, there are only a small number of waste crime cases.

The country's geographical and economic situation limits its possibilities for managing waste. The majority of the hazardous waste generated within the country is exported. Most of these exports are shipped to EU Member States but a gradually growing proportion is sent to non-EU countries. These shipments are subject to proper administrative controls.

Malta exports around 70 000 tonnes of non-hazardous waste. The majority of these shipments are sent to non-EU countries (where the likelihood of them not being checked on entering the import country could be higher).

Perpetrators could feasibly mix hazardous substances with non-hazardous waste easily. In Malta, the ERA introduced a system whereby no exports of waste are allowed to leave the country unless ERA informs the Customs Department that the shipment (Container Number used as unique reference number) may proceed following paper checks or site inspections. However, according to the evaluation team, the competent authorities should increase the number and the effectiveness of checks on exported waste shipments.

There is no recordkeeping system for waste crimes. The Environment and Resources Authority (ERA) has been keeping a record of the number of administrative proceedings, but no sophisticated tools have been set up to analyse data in order to have an overview of the phenomenon. Therefore, it would be beneficial to develop a system for collecting statistics on waste crimes.

According to the national authorities, awareness-raising campaigns – partly supported by EU funding – and effective surveillance of the domestic market contribute to an obviously low number of waste crime cases.

Stakeholders and employees of the relevant authorities know each other well and have a good informal relationship. They make contact if needed, sustaining proper cooperation. However, this cooperation is based on personal connections and could be formalised more so as to establish roles and responsibilities. The ERA has announced its intention to implement a Memorandum of Understanding for that purpose. This should be supported in order to build a formal multi-agency cooperation framework.

Although international agreements and EU legislation are implemented properly, the practical experience of the national competent authorities is not sufficiently developed. Having a low number of detected waste crime cases leads to a lower level of readiness, which leads to an even lower number of cases. The evaluation team is of the opinion that one remedy could be that staff of all the competent authorities, attend more practice-focused training

As regards international cooperation, over the last ten years Malta has played an active role in different networks, such as EnviCrimeNet and IMPEL, and it cooperates well with ENPE and EUFJE.



## 2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997<sup>1</sup>, a mechanism was established for evaluating the application and implementation at national level of international undertakings in the fight against organised crime. 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 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, it was agreed that the evaluation would focus on those offences which Member States felt warranted particular attention.

To that end, the eighth evaluation round covers two specific areas: illegal trafficking in waste and illegal production or handling of dangerous materials. It should provide 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<sup>2</sup> (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<sup>3</sup> (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<sup>4</sup> (date of entry into force: 12 July 2007) are particularly relevant in this context.

In accordance with the decision taken by GENVAL, the evaluation round does not cover criminal activities linked to other types of environmental crime, such as illicit wildlife trafficking, the illicit timber trade, the illicit fish trade or air pollution.

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<sup>1</sup> Joint Action of 5 December 1997 (97/827/JHA), OJ L 344, 15.12.1997, p. 7.

<sup>2</sup> OJ L 312, 22.11.2008, p. 3.

<sup>3</sup> OJ L 328, 6.12.2008, p. 31.

<sup>4</sup> OJ L 190, 12.7.2006, p. 1.

Furthermore, Directive 2008/98/EC requires the 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, delineating targets and policies, and aiming to decouple economic growth from the environmental impacts of waste generation.

Experience from past evaluations shows that Member States will be in different positions regarding the implementation of the relevant legal instruments and programmes, and the current process of evaluation could also provide useful input to Member States that may not have sufficiently implemented all aspects of the various instruments.

Moreover, the Council conclusions of 8 December 2016 on countering environmental crime<sup>5</sup> recognise that combating environmental crime requires a comprehensive multidisciplinary approach at all levels, better cooperation and exchange of information between the competent authorities, including third countries, and the need to enhance dialogue and cooperation with relevant international organisations. Also, the Council conclusions of 18 May 2017 on setting the EU's priorities for the fight against organised and serious international crime between 2018 and 2021<sup>6</sup> establish the fight against environmental crime as the one of the EU's priorities.

Taking all the above elements into consideration, the evaluation aims to be broad and interdisciplinary and to focus not only on the implementation of various instruments related to fighting environmental crime, but mainly on the related operational aspects in the Member States. Therefore, it will encompass cooperation among environmental, police, customs and judicial authorities at national level, as well as with Europol, Interpol and Eurojust. The evaluation will also cover operational practices in the Member States with regard to waste treatment operations, establishments and undertakings which collect and transport waste.

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<sup>5</sup> 15412/16, ENFOPOL 484 ENV 791 ENFOCUSTOM 235.

<sup>6</sup> 9450/17, COSI 107 ENFOPOL 247 CRIMORG 107 ENFOCUSTOM 133.

The order of visits to the Member States was adopted by GENVAL on 5 May 2017. Malta was the seventeenth Member State to be evaluated during this round of evaluations. In accordance with Article 3 of Joint Action 97/827/JHA, a list of experts with substantial practical knowledge in the field and prepared to participate in the evaluations, designated by the Member States, has been drawn up by the Presidency.

The evaluation teams consist of three national experts, supported by staff from the General Secretariat of the Council and observers. For the eighth round of mutual evaluations, GENVAL agreed with the Presidency's proposal that the European Commission, Eurojust and Europol should be invited as observers.

The experts charged with undertaking the evaluation of Malta were Ms Fatima Russo (Portugal), Mr Marc Sotelsek PD (Germany) and Mr Imre Gergely (Hungary), together with Ms Carmen Necula and Ms Giovanna Giglio from the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Malta between 17 and 20 July 2017, and on Malta's detailed replies to the evaluation questionnaire, together with its detailed answers to ensuing follow-up questions.

### **3. GENERAL MATTERS AND STRUCTURES**

#### **3.1. Action Plan or similar strategic documents against environmental crime**

Malta has put in place a National Environmental Policy, which can be accessed online:

<http://msdec.gov.mt/en/decc/documents/environment/national%20environment%20policy.pdf>

This is a comprehensive environmental policy covering all environmental sectors and natural resources, including air, waste, water, land, soil, climate, biodiversity, coastal and marine areas, noise, chemicals and mineral resources.

The objectives of this policy are to:

- a. provide direction to both the public and private sector and other players;
- b. ensure the integration of all policies such that all stakeholders work in a coordinated manner to achieve the national objectives and key priorities, exploiting synergies and addressing potential conflicts across sectors;
- c. clearly articulate and communicate national environmental commitments and priorities in a transparent manner.

The policy also mentions environmental crime in the context of the transposition of the Environmental Crime Directive (Directive 2008/99/EC), whereby existing laws are further consolidated through the harmonisation of penalties to be imposed as well as by ensuring that these penalties constitute an effective deterrent.

In addition to this, Malta has also put in place the Waste Management Plan for the Maltese Islands: A Resource Management Approach, which covers the period until 2020. This plan covers different waste streams as well as a Waste Prevention Plan, and is available online:

<https://msdec.gov.mt/en/document%20repository/waste%20management%20plan%202014%20-%202020%20-%20final%20document.pdf>

Malta has also adopted a Waste Shipment Inspection Plan pursuant to the requirements of the Waste Shipment Regulation (Regulation (EC) No 1013/2006).

Through the aforementioned plans, it seems there are no comprehensive strategic documents related to the illegal shipment of waste, in particular with regard to the free port and offshore shipments.

### **3.2. National programmes/projects with regard to waste crime**

Malta has put in place a Waste Management Plan for the Maltese Islands: A Resource Management Approach. This plan sets a number of goals to meet a series of targets in order to reduce and prevent the generation of waste and to manage waste in the most efficient manner possible. It also covers prevention, training and public awareness. Section 3.11 of the plan indicates that compliance and enforcement capabilities should be beefed up in various areas. In fact, the government is in the process of creating a Compliance and Enforcement Directorate to address compliance and enforcement issues.

In addition to this, the Waste Shipment Inspection Plan aims to strengthen the enforcement of the Waste Shipment Regulation in order to make inspections more effective. The plan identifies and targets issues and proposes several tools and practices to improve cooperation between the main authorities involved in the inspections of shipments of waste. This includes the setting-up of a working group with the aim of coordinating inspections at various locations around the island and facilitating and strengthening communication between the different authorities.

### 3.3. Statistics

#### 3.3.1. *Main trends with regard to waste crime*

Waste crime as defined in Article 3(b) and (c) of Directive 2008/99/EC is quite a new form of crime in Malta, especially when compared to other prevalent forms of crime. As explained above, exact figures on this form of crime could not be provided, but the practical experience of the national competent authorities shows that only a few cases of waste crime reach the point of prosecution and conviction. Article 83 of the Environment Protection Act (Chapter 549 of the Laws of Malta) empowers the Environment and Resources Authority (ERA) to enter into an agreement in writing with the offender, indicating the steps to be taken to remedy the offence. In such cases, a penalty is paid by the offender in respect of the offence committed as prescribed by the relevant national legislation.

The process of identifying trends in the phenomenon could be facilitated by keeping statistics. However, the Customs Department reported that it has only been keeping statistics for internal use since 2002, but information is exchanged with other authorities upon request. Statistics began being collected with the setting up of ERA in 2016; however its representatives were able to indicate a – very general – trend in the export of used “goods” (not declared as waste but declared as “used personal goods”) being dispatched to Africa.

#### 3.3.2. *Number of registered cases of waste crime*

Malta has initiated the collection of waste crime statistics. The ERA has in fact started to collect statistics on matters regulated by the Environment Protection Act which include waste crimes as defined in Directive 2008/99/EC and other Directives/Conventions that regulate waste. These statistics are based on reports submitted by the public and on incidents identified by ERA officers. However, such statistics are not published at present.

The ERA reported a number of around 400 cases. However, there is currently no strategical planning based on those figures at the ERA. The cases mentioned before were the only ones reported.

Malta's small number of about 450 000 inhabitants obviously facilitates the surveillance of the domestic waste market, which may contribute to the low number of cases. However, Malta's free port is the third largest in the Mediterranean Sea, and most of the containers arriving there are being transhipped. Therefore, it cannot be ruled out that some waste crime remains undetected.

### **3.4. Domestic budget allocated to prevent and fight against waste crime and support from EU funding**

The competent authorities administering any projects or implementing any waste-related laws in Malta receive annual government budgetary subventions through Parliament to address such matters. In addition to this, Malta receives EU funds through a number of EU projects related to waste, in particular funds to address the issue of awareness-raising and policy compliance. Malta considers EU funds to be very beneficial as these assist Member States in better tackling the problem of waste.

### **3.5. Prevention of waste crime**

The Waste Shipment Inspection Plan provides for the carrying out of inspections which aim to prevent illegal shipments of waste. Such a plan is important due to the fact that the environmentally sound management (ESM) of waste in Malta is highly dependent on exports of waste.

In addition, there exists a Consignment Permit-Consignment Note procedure which, since 2016, pursuant to Regulation 14 of the Waste Regulations (Subsidiary Legislation (SL) 549.63), has been extended to also cover transfers of non-hazardous waste within the territory of Malta, specifically for bulky waste collected from private households. The aim of this procedure is to ensure traceability of transfers of such waste within Malta.

Other indirect ways to prevent waste crime are implied through the regulatory framework established to manage waste generation and disposal, such as that set by the Waste Regulations (SL 549.63), which aim to prevent or reduce the adverse impacts of the generation and management of waste.

The Waste Prevention Plan incorporated in the Waste Management Plan describes the existing prevention measures and determines appropriate specific qualitative and quantitative benchmarks for waste prevention measures in order to monitor and assess the progress of the said measures.

The Prevention and Remedying of Environmental Damage Regulations (SL 549.97) establish a framework of environmental liability based on the polluter-pays principle, to prevent and remedy environmental damage and to implement the provisions of Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage. Regulation 6 of the said Regulations provides that 'where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, the operator shall, without delay, take the necessary preventive measures'. In such cases, the operator is obliged to inform the ERA of all relevant aspects of the situation without undue delay. The ERA has the power to require and instruct the operator to take the necessary preventive measures. However, the ERA takes the necessary measures itself if the operator fails to take any preventive action or if the perpetrator cannot be identified.



### 3.6. Conclusions

- Malta has in place a wide-ranging policy against environmental crime, provided for in a set of strategic documents such as the National Environmental Policy, covering environmental crime in the context of the transposition of the Environmental Crime Directive (Directive 2008/99/EC), the Waste Management Plan for the Maltese Islands, and the Waste Shipment Inspection Plan, pursuant to the requirements of the Waste Shipment Regulation, as well as the Waste Prevention Plan, the objectives of which are to be achieved by 2020.
- Regarding the institutional framework, the experts are of the opinion that Malta has several departments in different Ministries with the necessary human and material resources and with competence for preventing and fighting environmental crime and carrying out investigations.
- However, the team was not able to establish with certainty to what extent the current coordination between the different actors is sufficient for this particularly complex type of criminal activity. The experts consider that the challenges posed by the multiplicity of actors require more formal and structured cooperation.
- Concerning statistics, the experts were informed that the ERA has initiated the collection of waste crime statistics on matters regulated by the Environment Protection Act, including on waste crimes as defined in Directive 2008/99/EC. These statistics are based on reports submitted by the public and on incidents identified by ERA officers through random or planned inspections carried out jointly with Customs and the Malta Police.
- During the visit, the Maltese authorities reported a total number of 400 cases per year, which includes all the incidents against the environment recorded by the ERA, without any breakdown. These numbers did not allow the evaluation team to have an overall view of the environmental crime situation in Malta. In fact, such statistics seem to be at an incipient stage and do not reveal the extent of the threat at national level.

- Noting the absence of a centralised database on environmental crime, the experts shared the view that the Maltese authorities should develop an integrated system covering all reported environmental incidents separately, including disaggregated data on waste crime investigations, administrative offences and fines applied.
- As the Mediterranean's third largest port, the Malta Freeport does not seem to be sufficiently exploited with regard to identifying waste crime cases. Neither do the 12-mile zone or the roads approaching Malta's shoreline.
- The Maltese authorities should raise and keep up their staff's awareness of Malta as a possible or potential gateway for illegal waste shipment to other EU Member States. The competent national authorities should keep in mind the important role of Malta in view of its geographical and strategical position as a transit country and Malta's responsibility towards the other Member States.

## 4. NATIONAL STRUCTURES

### 4.1. Judiciary (prosecution and courts)

#### 4.1.1. Internal structure

Waste crime cases are dealt with by the Court of Magistrates (Malta/Gozo). In its criminal jurisdiction, this court has a twofold competence. As a court of criminal judicature, it deals with all cases where the punishment for the alleged offence does not exceed six months' imprisonment. However, with the consent of the Attorney General and of the accused, the Court of Magistrates as a court of criminal judicature may determine cases where the offence carries a punishment not exceeding ten years' imprisonment.

As a court of criminal inquiry, it collects the evidence brought by the Malta Police against a person charged with an offence falling within the competence of the Criminal Court. At the end of this inquiry, the court has to decide whether there is sufficient evidence for a Bill of Indictment to be filed by the Attorney General before the Criminal Court.

Any person who is charged with an offence carrying a punishment exceeding 10 years' imprisonment must be tried by the Criminal Court.

It is to be noted that there is an additional mechanism of administrative fines to deal with waste crimes. Such fines are imposed by the ERA on an offender in lieu of prosecution before the Criminal Court. Whenever the ERA issues administrative fines and/or daily penalties, the offender has a right of recourse to the Environment and Planning Review Tribunal to challenge the ERA's decision.

The Office of the Attorney General, employing 34 lawyers, is the legal service of the state pleading before the courts, with one department competent for civil as well as constitutional cases, and one department competent for criminal cases. Moreover, the Attorney General is involved in the legislation procedure as he or she is asked for advice in the legislation committee.

The Office of the Attorney General is a contact point for mutual legal assistance in criminal matters. It is also the Eurojust contact point, and it has been involved in five Eurojust cases to date, one of which concerned waste crime. Up to now, there have been no requests by Eurojust in waste crime cases, but there was one extradition request from the United States of America in a waste crime case. The evaluators were informed that the Attorney General is responsible for environmental cases brought before the Superior Court, either as a court of first instance or as a court of appeal. In cases involving the possibility of imprisonment for up to two years for the suspect(s), charges are brought to the magistrate. The Malta Police have competence for prosecuting waste crime cases. However, in exceptional cases, the Malta Police may require legal assistance from the Attorney General. There is a lawyer assigned to support the Malta Police 24/7.

Whenever imprisonment of two to six or up to twelve years is expected, the Malta Police conduct the investigations and hand the case over to the Attorney General.

In cases with an expected imprisonment of six to twelve years, there is a jury trial after a committal proceeding.

With regard to environmental cases the Attorney General reported that most cases are brought to the magistrate court, hence the Attorney General is only responsible in cases of appeals. Regarding the collection of evidence, technical expertise is required in waste crime cases, as accused companies often make use of expert opinions.

Should a Joint Investigation Team seem helpful, the decision on setting one up would be made in close contact with the Malta Police.

#### *4.1.2. Capacity of and obstacles to prosecution and sanctioning of waste crime*

The Daily Penalty (Environment) Regulations were published earlier this year to establish administrative fines in the form of daily penalties for environmental offences including waste crimes. Such crimes include operating without a permit and failing to comply with conditions set out in environmental permits and/or authorisations.

Furthermore, on a daily basis, the Malta Police Force, in collaboration with the Cleansing Directorate and on behalf of the Ministry for Transport and Infrastructure, targets particular areas and locations where illegal dumping and waste crimes occur. Cases detected are then referred to the Local Tribunals where the relative prosecutions are conducted.

The main challenge is the lack of experience in those cases.

Due to the very low number of known cases, there are no prosecutors or judges specialised in waste crime cases, as they have to handle cases coming from all fields of criminal law. Should a major incident occur, there is no possibility of deploying a team of domestic environmental criminal law or waste crime experts, as there is a lack of experience in major waste crime cases at the Office of the Attorney General as well as at the courts.

## 4.2. Law enforcement authorities

### 4.2.1. *The structure and cooperation between investigative authorities involved in preventing and combating waste crime*

| <b>Administrative Law Enforcement Section (ALE) within the Malta Police Force</b> |   |
|---|---|
| <b>Powers</b>   | <p>The Malta Police have the general powers and duties in respect of criminal prosecutions as derived from the Criminal Code (Chapter 9 of the Laws of Malta):</p> <ul style="list-style-type: none"> <li>- Power to Search and Stop;</li> <li>- Power of Entry, Search and Seizure under Warrant;</li> <li>- Power of Entry and Search without Warrant;</li> <li>- Seizure and Retention;</li> <li>- Power of Arrest and Detection.</li> </ul> |

| <b>Customs Department</b> |  |
|---------------------------|--|
| <b>Powers</b>             | <p>Subsidiary Legislation 37.09 – Certain Powers of Officers of Customs Regulations empower every customs officer, in addition to the powers and duties assigned under the Customs Ordinance (Chapter 37 of the Laws of Malta), to exercise all the powers and duties vested in an officer of the Executive Police in connection with any offence committed at any harbour or sea within the territorial jurisdiction of Malta or any part of the foreshore of Malta or the immediate vicinity thereof.</p> <p><i>[This legislation is currently being revised].</i></p> |

| <b>Environment and Resources Authority (ERA)</b> |  |
|--|--|
| <b>Composition</b>                               | <p>The Malta Environment Authority (ERA) is established in accordance with Article 6 of the Environment Protection Act (Chapter 549 of the Laws of Malta). It consists of no fewer than eight and no more than ten members, of whom one must be the Chairperson of the Authority.</p> <p>The Environment and Resources Directorate within the ERA is composed of eight main units:</p> <ul style="list-style-type: none"> <li>- <u>2 thematic units</u>: Ambient Quality &amp; Waste and the Biodiversity Unit and Water Unit;</li> <li>- <u>3 operational units</u>: Environmental Planning Unit, Environmental Assessment Unit and the Compliance &amp; Enforcement Unit;</li> <li>- <u>3 strategic units</u>: National Affairs Unit, International Affairs Unit and the Information Resources Management Unit.</li> </ul> |

|               |  |
|---------------|--|
| <b>Powers</b> | <p>The Environment Protection Act (Chapter 549 of the Laws of Malta) empowers the ERA to permit, assess, investigate, monitor and take action on any activity or intervention that may have an effect on the environment.</p>  |
|               | <p>- <u>Right of Entry (Article 71 of the Act)</u></p> <p>The ERA officers '<i>with the assistance of the Police Force, may enter any premises, public or private, vessel or any other place, for the purposes of:</i></p> <p><i>(a) the making of investigations, inspections, surveys, tests or measurements, or lifting of samples;</i></p> <p><i>(b) ascertaining that nothing contrary to the provisions of this Act, to the regulations made thereunder or to any term, condition, limitation or specification attached to any authorisation issued under this Act is taking or has taken place, and taking any action accordingly;</i></p> <p><i>(c) ascertaining or reproducing such data or information as the Authority may require;</i></p> <p><i>(d) making plans of any premises, vehicle or vessels and taking photographs of the same after entry or boarding in accordance with this article; or</i></p> <p><i>(e) doing anything that is ancillary or consequential thereto.'</i></p> |
|               | <p>- <u>Power to carry out inspections (Article 72 of the Act)</u></p> <p>The ERA officers '<i>shall have the power to carry out inspections and investigations on any occasion and for any purpose related to the responsibilities pertaining to the Authority'.</i></p>  |

The Malta Police Force has a special unit dealing with offences related to the environment.

Up to a certain term of imprisonment, a Maltese Police inspector acts as a prosecutor in a (magistrate's) court, too. Waste crime is however not considered common by the Police, as only one major waste crime case was known to the Police Officer the team met.

Police staff deployed for the fight against waste crime consist of 17 field officers, four office clerks, one sergeant and one inspector.

Customs officers inspect the ships and containers arriving at and departing from Malta in the Malta Freeport and at its boundaries. Since the Malta Freeport may potentially constitute the largest risk in relation to waste crime in Malta due to the nature and scale of the activities carried out in this location the Customs Department is the key player in the fight against waste crime in Malta. As a rule, inspections are carried out by X-ray scans of the containers (about 2 % of the container turnover), but an even higher amount of containers (about 95 % of the container turnover) is scanned for radiation as well. The Customs Department is currently hiring more staff.

The Compliance & Enforcement Unit and the Ambient Quality & Waste Unit within the ERA are specialised teams dealing with illegal trafficking of waste and waste management. Moreover, an Enforcement Directorate is planned to be set up within the ERA to strengthen further its compliance. National investigative authorities, mainly the Malta Police and the ERA, have established an excellent level of cooperation. Given Malta's small geographical size, the relevant authorities meet on a regular basis, exchange information in the most efficient manner, and assist each other as necessary.



The Civil Protection Department is one of the first entities involved in waste crime, especially in cases endangering public health or causing major incidents. The Civil Protection Department will then be assisted by ERA, a formal MOU exists between ERA and CPD this consists mainly of a financial arrangement for the disposal of hazardous material recovered, and from other authorities such as Customs Department. Customs in most cases are one of the first authority to detect waste crime (particularly in the Malta Freeport). When it comes to the deployment of the Civil Protection Department, it will first send an emergency response unit and then set up an operational procedure. Moreover, the Radiation Protection Board may be involved in waste crime cases involving radioactive waste. It includes only two persons, but the Board maintains good relations with ERA; it is an IAEA contact point and has hosted IAEA meetings.

With respect to the medical service for major incidents, there are only few experts available in Malta, as only one hospital available for the whole population and which can treat patients injured in major incidents. Malta has one of the highest population densities in the EU. Fortunately, major waste crime cases where victims are in need of medical help were not reported. The medical service has strengthened the already good cooperation between the Maltese authorities, especially the Civil Protection Board which is adequately equipped to enter the 'hot zone' of a major waste crime incident. Also available are antidotes that may need to be used in such incidents which are stored at the main hospital. A mass poisoning would be considered a serious problem for the medical service to deal with. National investigative authorities, mainly the Malta Police and the ERA have established an excellent level of cooperation. Given Malta's small geographical size, the relevant authorities meet on a regular basis, exchange information in the most efficient manner, and assist each other as necessary.

One of the good practices applied by the national authorities is the joint inspections. For this purpose, a national working group was created to coordinate inspections at various locations around Malta, particularly at the Malta Freeport and waste management facilities.

Furthermore, there is also in place an agreement between the ERA and the Customs Department which regulates the procedure applicable when processing export documents and conducting inspections.

The 'Waste Shipment Inspection Plan for the Maltese Islands' (WSIP) includes a plan to lay down the responsibilities of the respective authorities (ERA, Customs, Police and Transport Malta) vis-à-vis inspections, including cooperation mechanisms. The ERA is planning to introduce this through a Memorandum of Understanding to take into consideration various aspects addressed in the WSIP.

#### *4.2.2. Investigative techniques/tools*

The main investigative techniques/tools used are inspections and recently introduced surveillance by means of drones. The ERA is also developing a web-based GIS Viewer with online environmental spatial data to be publicly available. This will facilitate information exchange and data availability that should also be useful in relation to investigations. The ERA is planning to introduce this through a Memorandum of Understanding to take into consideration various aspects addressed in the WSIP.

Malta Freeport, the third largest transshipment and logistics centre in the Mediterranean region, operates in the south-eastern part of the island. Over 95 % of the Freeport's container traffic relates to transshipment. Around 60 % of these containers are bound for non-EU countries, mainly in northern Africa. 40 % have a destination in the EU. National authorities regularly conduct inspections of transshipments as several X-ray scans are in use in order to check containers in the territory within the port area. 2 % of the traffic is checked. Taking into consideration only the number of checks, this can be considered a best practice, as other major ports scan only approx. 1 % of their traffic. However, this amount of scanning has not led to the detection of waste crimes. In order to increase the efficiency of the inspections, the toolkit used by the authorities should be expanded or the targeting of the screening system should take better consideration of waste matters.

The containers to be scanned are chosen by a risk analysis of the documents (loading lists) provided by the shipping agency. If the X-ray image gives rise to suspicions, the containers will be opened and physically as well as organoleptically and physically checked.

Without prior X-ray scanning and suspicion facts on the images, no container will be opened or physically as well as organoleptically checked.

According to the information given by the Malta Police, no investigations were carried out in relation to illicit waste trafficking in the country.

As the Malta Freeport could pose a high risk with regard to waste crime, X-ray containers and radioactivity scanners are deployed by the Customs Department. This is necessary as Malta's Freeport with a total turnover of 16 000-17 000 TEU (6 000-7 000 containers) per day – has links with, inter alia, Syria, Libya, Egypt – Northern Africa in general – and the USA, with 100 % of the containers leaving the Freeport being scanned for radioactivity, and 70-75 % of the containers dispatched within the boundaries of the Freeport. For conducting road inspections of container transporters, a mobile X-ray scanner unit can be used.

A forensic unit is not available in Malta, but there is a general forensics department. Whenever an expert opinion is needed, it can be obtained from professors of the University of Malta.

Malta's Police Force has boats at its command in order to inspect ships and investigate maritime waste crime, but it is restricted to the twelve- nautical mile zone. Inspections on the high seas are carried out by Malta's Maritime Squadron.

#### *4.2.3. Investigation of waste crime - capacities and obstacles to success*

Though wiretapping is an admissible investigative technique, it has to be regulated by a court order and is more commonly used by Malta's Secret Services. Controlled deliveries are not admissible. Investigation of waste crime - capacities and obstacles to success

Malta has limited experience of waste crime investigations.

The Compliance and Enforcement Unit (CEU) was set up within the ERA and this unit has investigated various domestic waste-related crimes. During these investigations, some of the main challenges/obstacles include difficulties in obtaining land ownership information, and in identifying the offender.

With regard to the main challenges or obstacles in investigating cross-border cases, Malta lacks experience in this area due to the fact that there are no imports of waste into Malta and most of the exports are carefully monitored by the ERA and Customs. Malta aims to undertake further specialised analysis of waste crime and to improve the knowledge capacities of the relevant national authorities.

The lack of experience hints at the conclusion that Malta's authorities do not detect a sufficient number of waste crimes. Since a huge transshipment port is located in Birzebbugia, a much higher number of cases should be known to the authorities.

#### **4.3. Other authorities/institutions**

Waste crimes are also dealt with by the ERA. Serious offences are usually dealt through joint effort and collaboration between the Police and the ERA, while with lesser offences the ERA resorts to administrative measures.

The ERA is in the process of creating a dedicated Compliance & Enforcement Directorate to combat environmental crime in general.

The Radiation Protection Board, the Civil Protection Department and the medical service support the ERA and the Police in the fight against waste crime. The Civil Protection Department reported two cases in connection with waste crime (the chemicals and sodium cyanide cases), the medical service reported one case in connection with chemicals that were finally identified as not harmful.

#### **4.4. Cooperation and exchange of information among national authorities**

##### *4.4.1. Cooperation and coordination*

At the national level, cooperation and exchange of information is facilitated through established contact points within the various authorities responsible.

As Malta is a small country, all the persons responsible from all the authorities involved know each other. The persons responsible in the Police, the ERA, Customs, the Radiation Protection Board and the Civil Protection Department reported that cooperation on major incidents was efficient. Though this informal way of cooperating is obviously working well on a day-by-day-basis, major incidents can only be handled successfully if clear and definite structures are determined. Without a clear delimitation of competences, the work of the authorities involved can be expected to be less effective in more complex cases. Hence, the Maltese authorities are working on a document defining the roles and responsibilities of any authority involved with waste crimes.

Apart from that, the Customs Department cooperates closely with the ERA on waste crime matters, in particular with regard to procedures and tools to distinguish different types of waste.

Periodically the ERA conducts joint road inspections with respect to the domestic waste market in cooperation with Transport Malta, Customs Department and the Malta Police .

However, it seems that coordination of necessary measures as regards waste crime could be improved and a re-allocation of responsibilities could be helpful. When the evaluation team asked the ERA representatives about its strategy for incidents involving dangerous material or waste in the Malta Freeport, they replied that it was up to the port authority to handle the hazards posed to Malta's inhabitants and the environment. However, according to the evaluation team the main responsibility in this area should not belong to the port authority.

#### *4.4.2. Access to information and focal points on intelligence*

Access to information is available to both the law enforcement and the judicial authorities. The most common channel of information used by the Malta Police is the SIENA platform.

However, Customs do not have access to SIENA, but there is an informal information exchange with the Police Force.

Nor does the ERA have access to law enforcement databases, but on a case-by-case basis the Malta Police support the ERA via information exchange.

Malta does not have a national focal point on intelligence for waste crime.

#### 4.5. Training

Training for ERA inspectors who are involved in the waste shipment inspections is given regularly. The inspectors are equipped with the necessary skills and knowledge in order to carry out their work efficiently, increasing productivity and the quality of work. This training prepares the inspectors to target and carry out inspections in accordance with the expected standards. Additional training was provided in relation to the use of GIS in order to allow for better information and data management in relation to the mapping and use of spatial data.

The following training is planned for 2018 and 2019:

- A one-day workshop will be organised for inspectors from the ERA, Customs, Malta Police and Transport Malta. It will provide useful information and tools for proper waste inspections whilst sharing practical information and best practices.
- On-site training involving all entities at various selected areas.
- Training for enforcement authorities to enable them to conduct inspections, thus classifying waste and non-waste in the absence of the ERA.
- Health and safety training during all forms of inspections, particularly when opening containers.
- Compulsory training courses organised by ERA in collaboration with a vocational educational institution (i.e. MCAST) for waste management operators.

General police training is provided by the Academy for Disciplined Forces. However, the ERA and the Academy are currently preparing a programme to provide specialised training on illicit waste for enforcement officers working within this field.

The Malta Police Force receives legal training organised by the ERA and facilitated by a lawyer specialising in the field of environmental crime. Training is provided at the Academy for Disciplined Forces, as well as at the University of Malta. However, there is no specific training as regards waste crime, as the training lectures cover all kinds of environmental crime. No training courses in criminology or investigative techniques with respect to waste crime were reported to the evaluation team.

Police reported that training is an issue that they still would like to work on with the ERA. Training was in fact described as largely a process of learning on the job. This issue seems to be identified and treated properly by Maltese authorities as ad hoc training will be given to ERA and Police forces as an initiative kick started by ERA.

Given the very specific nature of environmental crime, the Malta Police Force has requested CEPOL to provide training in various forms, such as residential courses, online courses or webinars. The training requested would help the law enforcement authorities to:

- Identify best practices in tackling environmental crime and how to deal with a potential increase of activities identified within this field;
- Become aware of available tools that can be used to tackle environmental crime;
- Increase knowledge and make use of existing agencies, organisations and networks working in the fight and prevention of environmental crime;
- Learn and eventually share best practices with other members of the law enforcement teams and with other European agencies.

Customs officials are not provided with special training in waste crime, but there is general training regarding all kind of material being shipped. Apart from Radiation detection, Customs continually monitor the Import Control System (Regulation (EU) 648/2005) which is the electronic security declaration management system for the import of goods into the EU Customs territory. Also, Customs carries out risk analysis on all cargo, local and transshipment. Other related work includes the monitoring of other systems and information gathering.

The Civil Protection Department conducts training, but obviously not with a focus on waste crime but rather technically, focusing on strategies and procedures when handling hazardous substances.

#### **4.6. Conclusions**

- The close and effective cooperation between the authorities involved in the fight against waste crime, facilitated by personal contacts between the relevant authorities, is a best practice.
- National investigative authorities, mainly the Police Force and the ERA have established an excellent level of cooperation as they meet on a regular basis, exchange information in the most efficient manner, and assist each other as necessary.
- Another good practice applied by the national authorities is the joint inspections coordinated by a national working group, particularly at the Malta Freeport and waste management facilities.
- Though the system seems to work on a day-by-day-basis, with particular regard to possible major incidents, the Maltese authorities should clearly define roles and responsibilities.
- Maltese structures should be improved in order to detect more waste crime cases, in particular with regard to the Malta Freeport and transshipment cases. Knowledge about waste crime should be spread, by training and by information exchange.
- Specific training in investigations – and not only on legal issues - should be provided to the staff of the Office of the Attorney- General, the Customs Department and the Malta Police. In particular, the lack of experience with more complex waste crime cases makes Malta vulnerable to organised crime.



- There should be judges and prosecutors who specialise in waste crime. This could be helpful in order to handle waste crime cases in an effective and competent way.
- According to the evaluation team, waste crime should be a higher priority for the Malta Police. The low number of police officers leads to a situation in which everyone is involved in every type of activity. Training should focus on practical aspects of waste crimes and the links with organised crime in order to give all staff an overall view of the nature of this crime area.
- In general, Malta should continue its negotiations with CEPOL in order to be provided with training.
- There does not appear to be any focus on intelligence-gathering regarding environmental crime or waste crime.
- A focal point with proven expertise should be identified in each institution.
- Regarding the use of investigative techniques, during the visit, the experts were informed that they are all, in principle, allowed on waste crime investigations, provided that they have been previously authorised by a magistrate. The exception is controlled deliveries that, under Maltese law, cannot be used in environmental crime investigations.
- The experts want to underline the innovative surveillance done by means of drones by the Malta Police Force, for which purpose no judicial authorisation is required, as well as the web-based GIS Viewer with online environmental spatial data, which is being developed by ERA and is expected to facilitate information exchange and data availability to be used in future investigations.

## 5. LEGAL ASPECTS

### 5.1. Substantive criminal law

#### *5.1.1. Description of national legislation pertaining to waste crime*

Title and relevant provisions in the national legislation Crimes Against the Environment Act (Chapter 522 of the Laws of Malta).

Article 3(2)(b): 'the collection, transport, recovery or disposal of waste, including the supervision of such operations and the aftercare of disposal sites, and including action taken as a dealer or a broker in waste management, which causes or is likely to cause the death or grievous bodily harm to any person or substantial damage to the quality of the air, the quality of soil or the quality of water, or to animals or plants;'

Article 3(2)(c): 'the shipment of waste, falling within the scope of Article 2(35) of Regulation No. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked.'

The definition and nature of the offence (criminal/administrative). The nature of the offence is criminal and in such cases, the prosecution has to prove both the mens rea and the actus reus of the perpetrator.

The minimum and maximum penalties or administrative sanctions for natural and legal persons

Article 4 of the Crimes against the Environment Act (Chapter 522 of the Laws of Malta) provides as follow:

'Whosoever, through imprudence or negligence shall commit an unlawful offence referred to in Article 3, shall on conviction, be liable –

(a) if the death of any person is caused thereby, to the punishments established in Article 225 of the Criminal Code increased by one or two degrees;

(b) if any grievous bodily harm with any of the effects mentioned in Article 218 of the Criminal Code is caused thereby, to imprisonment for a term not exceeding four years or to a fine (multa) not exceeding ten thousand euro (EUR 10 000);

(c) if any grievous bodily harm without any of the effects aforesaid is caused thereby, to imprisonment for a term not exceeding one year or to a fine (multa) not exceeding five thousand euro (EUR 5 000);

(d) in any other case, to imprisonment for a term not exceeding six months or to a fine (multa) not exceeding one thousand euro (EUR 1 000).'

Article 121D and Article 248E of the Criminal Code (Chapter 9 of the Laws of Malta) shall apply *mutatis mutandis* to the provisions held in Article 3 of the Crimes against the Environment Act (Chapter 522 of the Laws of Malta). These provisions cover corporate liability.

Article 121D states the following: 'where an offence ... has been committed by a person who at the time of the said offence is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the said offence was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (multa) of not less than twenty thousand euro (EUR 20 000), which fine may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organisation and Civil Procedure'.

In a similar vein, Article 248E(4) states the following: 'where the person found guilty of any offences under this sub-title:

(a) was at the time of the commission of the offence an employee or otherwise in the service of a body corporate, and

(b) the commission of the offence was for the benefit, in part or in whole, of that body corporate, and

(c) the commission of the offence was rendered possible because of the lack of supervision or control by a person referred to in Article 121D.

the person found guilty as aforesaid shall be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (multa) of not less than ten thousand euro (EUR 10 000) and not exceeding two million euro (EUR 2 000 000).'

The aggravating/mitigating factors Article 5 of the Crimes against the Environment Act (Chapter 522 of the Laws of Malta) provides as follows:

'(1) When as a result of the offence referred to in Article 3, a person shall perish, the offender shall be liable to the punishment of imprisonment for life.

(2) When as a result of the offence referred to in Article 3, grievous bodily harm is caused to any person, the offender shall be liable to the punishment established for offence of grievous bodily harm under Articles 216 or 218 of the Criminal Code, as the case may be, increased by one or two degrees according to the gravity of the offence:

Provided that if grievous bodily harm is caused to two or more persons the punishment laid down in this subarticle shall apply and shall not be awarded to its minimum.

(3) When as a result of the offence referred to in the last preceding article, any serious damage is caused to the quality of the air, soil or water, or to animals or plants, or in any other manner serious spoil is caused to the environment, the punishment shall be that of imprisonment for a term from eight months to seven years or a fine (multa) of not less than twelve thousand euro (EUR 12 000) and not exceeding two million and five hundred thousand euro (EUR 2 500 000), or such imprisonment and fine (multa).

#### *5.1.2. Other rules or judiciary instructions*

This is not the case.

#### *5.1.3. Determination of the seriousness of waste crime*

Article 5 of the Crimes against the Environment Act (Chapter 522 of the Laws of Malta) states that the seriousness of the offences listed in Article 3 depends on whether the act causes:

- Death of the person;
- Grievous bodily harm to the person as defined in Articles 216 or 218 of the Criminal Code (Chapter 9 of the Laws of Malta);
- Serious damage to the quality of the air, soil or water, or to animals or plants, or in any other manner serious spoil is caused to the environment.

#### *5.1.4. Links with other serious criminal offences*

So far, Malta has not encountered any link between major waste crime and other forms of serious crime.

#### *5.1.5. The role of the NGOs*

In accordance with Article 3 of the Voluntary Organisations Act (Chapter 492 of the Laws of Malta), a voluntary organisation can be registered as a legal person in terms of the Second Schedule to the Civil Code or by another special law. The legal personality of the NGOs is acquired through the formal recognition of the State.

NGOs can report crime but they cannot be a civil party in criminal proceedings, and this is because Malta's legal system enables a person to be a civil party only if that person proves the existence of a direct interest.

Regulation 13 of the Prevention and Remedying of Environmental Damage, (Subsidiary Legislation S.L. 549.97) enables an NGO to request the ERA to take the necessary actions in accordance with the said Regulations, including both preventive and remedial action. However, the NGO must prove that it is 'affected or likely to be affected by environmental damage or has a sufficient interest in environmental decision-making relating to the damage'.

## **5.2. Procedural, jurisdictional and administrative issues**

### *5.2.1. Difficulties encountered with regard to evidence*

Waste crime cases are often settled outside court through administrative procedures pursuant to the requirements of the Environment Protection Act (Chapter 549 of the Laws of Malta), hence the courts were not in a position to provide feedback due to the low number of prosecutions and convictions.

### *5.2.2. Measures other than criminal or administrative sanctions*

The Criminal Code (Chapter 9 of the Laws of Malta) regulates confiscation within criminal proceedings. A confiscation order is a penalty or measure imposed by a court on a natural or legal person, following proceedings in relation to a criminal offence, resulting in the definitive deprivation of property. Pursuant to the existing provisions on the disposal of confiscated assets in the Criminal Code, all property is confiscated in favour of the government of Malta, and the Registrar of the Criminal Court is responsible for its disposal. The government as owner has the discretion to apply various disposal options, although there are no particular legal provisions which regulate these actions. These options are: sale to the public, transfer to institutions or authorities, social re-use and destruction.

In case of the transmission and execution of confiscation orders between Malta and a Member State, the Confiscation Orders (Execution in the European Union) Regulations (Subsidiary Legislation 9.15) apply. These Regulations transpose 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.

### *5.2.3. Treatment of seized objects*

The Customs Department has the power to seize or detain goods following an inspection until the competent authority (the ERA) has received sufficient information to decide on further actions required. In the case of any illegal waste detected at ports, the current practice is that the container remains in port. Any costs will have to be borne by the shipping agents representing the shipping lines. However, currently there are discussions at the national level to find suitable locations to develop a facility for storing any seized objects.

Seizure always depends on the gravity and seriousness of the perpetration, as the Customs Department reported.

Where the Civil Protection Department is involved, it will keep seized objects on its own premises.

### 5.3. Environmental restoration

The operator is responsible for remedying the damage caused and for paying all the expenses incurred. In accordance with the Prevention and Remedying of Environmental Damage Regulations (Subsidiary Legislation 549.97), the 'operator' is 'any natural or legal, private or public person who operates or controls the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity'. However, in cases where the operator fails to remedy the situation or cannot be identified, the ERA takes all the necessary measures to repair the damage.

If the operator fails to remedy the situation, the ERA has the right to initiate cost recovery proceedings against him, or if appropriate, a third party, in relation to any measures taken within five years of the date on which these measures have been completed or from the date when the liable operator is identified.



## 5.4. Jurisdiction

### *5.4.1. Principles applicable to the investigation of waste crime*

Article 5 of the Criminal Code (Chapter 9 of the Laws of Malta) states that criminal proceedings may be instituted in Malta against any person who commits an offence in Malta, or at sea in any place within the territorial jurisdiction of Malta or against any person who commits an offence at sea beyond such limits on board any ship or vessel belonging to Malta.

### *5.4.2. Rules in case of conflicts of jurisdiction*

Given that such a situation has not been encountered to date, it is assumed that efforts will be undertaken to resolve the issue in much the same manner as other issues where there is the potential for a conflict of jurisdiction.

However, such conflicts are usually resolved through the application of Subsidiary Legislation 9.20, 'Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Proceedings Regulations', which transposes Council Framework Decision 2009/948/JHA into the Laws of Malta. If no solution can be found through this mechanism, then the issue is referred to Eurojust, which is the competent authority to determine such procedural matters.

## 5.5. Conclusions

- Malta has transposed into national law 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.
- The Office of the Attorney General is in charge of the drafting of Maltese legislation, including the transposition of relevant EU legal instruments. Depending on the subject, the Attorney General can be assisted by the sectoral ministry or public department responsible for sectorial policies. For the transposition of the Directive 2008/99/EU on waste crime the Office has counted on the technical assistance of the ERA.
- The Office of the Attorney General is also the designated National Contact Point for Eurojust. The experience of cooperation with Eurojust is very good and does not need to be improved. However, Eurojust has never been used for waste crime cases.
- Investigations into waste crime may lead to administrative or criminal actions. If the nature of the offence is criminal, the prosecution has to prove both the intention and the commission of the fact by the perpetrator. Administrative actions include pecuniary fines and the empowerment of the ERA to take action at the expense of the offender under the Environment Protection Act.
- Cases relating to waste crime are dealt with by the Court of Magistrates (Malta/Gozo). There is no specialised jurisdiction for waste crime or even for environmental matters. Evidence is collected by prosecutors.
- According to the information received from the Office of the Chief Justice, after the visit, new arrangements and assignments of Cases and Duties came into effect as from the 16th July 2018, by virtue of which all the pending criminal cases that were being heard by the previous magistrate and all the pending inquiries that were being heard by the previous magistrate will henceforth fall under the responsibility of a newly appointed magistrate.

- Regarding environmental restoration, the perpetrator (natural or legal, private or public person) is responsible for remedying the damage caused and for paying all the expenses incurred, based on the polluter-pays principle. In cases where the operator fails to remedy the situation or cannot be identified, the ERA takes all the necessary measures to repair the damage.
- The determination of the seriousness of waste crime is determined in accordance with Maltese legislation, which makes the assessment of the seriousness of such behaviour dependent on whether the act causes the death of or grievous bodily harm to a person or causes serious damage to the environment.
- However, there are no criteria, guidelines or instructions to define 'substantial damage' as provided for in Article 3 of Directive 2008/99/EU or 'serious damage' pursuant to Article 5 of the Maltese Implementing Act 'Crimes against the Environment'.
- During the visit to the Office of the Attorney General it was explained to the experts that the definition of the concept of 'serious damage' provided for by law is left to the discretion of the court.
- The expert team welcomes the interest of the present staff of the Office of the Attorney General in participating in training courses on waste crime, considering that it would be advisable to include them in the training and/or awareness programmes.
- The fight against organised crime should be carried out with a stronger focus on waste crime, as no links between those two fields of criminality have been found in Malta so far. Anyway, experiences from other Member States show that there is a strong link between organised and waste crime, which could probably be the case for Malta, too.

## **6. COOPERATION**

### **6.1. International cooperation**

#### *6.1.1. Forms of cooperation in cross-border cases*

In accordance with Article 50 of the Waste Shipment Regulations (Article 50 of Regulation (EC) No 1013/2006 on shipments of waste), Member States must cooperate with one another, bilaterally and multilaterally, in order to facilitate the prevention and detection of illegal shipments. From time to time, the Environment and Resources Authority (ERA) is asked to assist Customs in verifying whether the cargo of a container is classified as waste and if it is, the ERA has to confirm whether the movement of waste is being carried out pursuant to the requirements of the Waste Shipment Regulations.

Although Malta has no shared territorial boundaries with other countries, it collaborates well with other states whenever assistance is required. On several occasions, the ERA was asked to check and closely monitor selected shipments passing through Malta. On the other hand, Malta is not a waste importing country due to the lack of treatment facilities. Europol, Interpol and Eurojust and, in case of illegal shipments of waste, also IMPEL are the three main channels used for information exchange and Malta sends requests to other Member States as well as to non-EU countries. Requests for cooperation in investigations into illegal waste shipments are sent to the Maltese competent authorities via SIENA and assistance is provided accordingly through the same channels.

#### *6.1.2. Channels for the exchange of information and the use of EU databases*

Malta has a trans-frontier shipment (TFS) national contact point (NCP) under the umbrella of the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL). Any exchange of information between IMPEL's TFS NCPs is carried out through IMPEL's internal communication tool, known as basecamp.

EU databases are used following assistance requests by either Malta or other Member States involved in a specific waste crime investigation. Usually, the Malta Police uses Europol databases, and assistance could be requested from Europol/Eurojust/Member States depending on the circumstances of the case.

#### *6.1.3. Difficulties faced in judicial cooperation relating to waste crime*

So far no obstacles have been encountered.

#### *6.1.4. Operational performance of JITs in waste crime*

Malta has never participated in joint investigation teams (JITs) related to cross-border waste crime cases. However, Malta considers JITs to be a very beneficial tool for the investigation and prosecution of cross-border serious crime and therefore use of JITs would be resorted to whenever required.

The Maltese Customs Department is a member of the World Customs Organisation (WCO). The ERA reported that diplomacy is the main channel for international cooperation and that the ERA has diplomatic contacts with France, Spain, the Netherlands, Scotland and Norway.

### **6.2. Cooperation with EU agencies and networks**

#### *6.2.1. Cooperation with Europol and Eurojust*

Malta has a good cooperative relationship with Europol and regularly uses the SIENA platform to exchange information. When a particular investigation involves more than two Member States, it requests Europol's assistance.

In serious or important cases, requests for assistance are also made to Eurojust. When investigations involve other Member States and third countries, such as destination countries, Interpol channels are used to provide the relevant information requested.

Malta participated in the Tackling Environment Crime through Standardised Methodologies (TECUM) project, which was one of the EU joint police operation projects related to waste crime cases, and was supported by Europol.

#### *6.2.2. Experience resulting from the use of various environmental networks*

Malta is an active member of the Environment Crime Network (EnviCrimeNet) and the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL).

During the Maltese Presidency, Malta pushed action on environmental crime in the EU. In April 2017, Malta hosted a meeting of EnviCrimeNet.

Malta has been an active part of the IMPEL network for over 10 years and hosted a conference on the implementation and enforcement of environmental legislation in 2013. Malta participates in various projects as part of its expert groups' work programme, relating to the implementation of EU environmental law and other enforcement issues. The expert groups cover thematic areas concerning the environment including industry, air, water, land, waste and trans-frontier shipment of waste, nature protection and cross-cutting environmental issues. Malta has participated in several IMPEL projects that are beneficial to the authorities' workforce due to the exchange of good practices between experts in the field. Those projects are listed below:

##### Waste and TFS Expert Team.

- The aim of the waste shipment inspection planning project was to create waste shipment inspection plan guidance that would assist authorities in formulating inspection plans by the end of 2016. 'The Waste Shipment Inspection Plan for the Maltese Islands' was drafted in line with the guidelines drawn up under this project.
- The enforcement actions project encourages best practice in waste shipment inspections through a series of coordinated inspections and 23 exchanges. In 2012, during the enforcement actions III project, Malta participated in an exchange visit with Romania in order for both countries to gain experience related to the inspection of waste shipments.

- The IMPEL TFS national contact points project promotes international cooperation and uniform enforcement of the Waste Shipment Regulation. This project, which has been running for several years, has shown that it is essential that competent authorities work together. Collaboration facilitates the exchange of information and experiences, and discussions on interpretations and inspection approaches, between the designated national contact points (NCPs) for each country. Malta has participated very actively in these meetings from the very beginning of the project.
- IMPEL's annual conference on waste and TFS aims to bring together environmental inspectors, as well as customs and police officers and the judiciary. In fact, these annual conferences facilitate information sharing on waste shipment cases, encourage a uniform implementation of the regulation, and involve law enforcement agencies whilst collecting ideas for future work to further reduce illicit shipments of waste.

### **6.3. Cooperation between Malta and Interpol**

For investigations which involve Member States and third countries, such as destination countries, Interpol channels are used to provide the relevant information requested.

### **6.4. Cooperation with the private sector**

#### *6.4.1. Involvement of the private sector/public-private partnerships (PPP)*

The private sector is generally involved in the prevention of waste crime through awareness-raising campaigns related to waste management, such as the 'Don't Waste Waste' campaign:

<http://dontwastewaste.gov.mt/>.

In addition to this, the public is invited to report any environmental crimes through an ERA emergency contact number that is available 24/7. Moreover, the ERA has 'management agreements' with environmental non-governmental organisations in relation to site management, which also include provisions on selected aspects of waste management.

#### *6.4.2. Liability regarding the obligation to pass on information to competent authorities*

The private sector is liable under various regulations of the Environment Protection Act (Chapter 549 of the Laws of Malta) for not passing on information when required.

#### *6.4.3. Experience of cooperation with the private sector*

The experience of cooperation with the private sector is related to the awareness-raising campaigns.

### **6.5. Conclusions**

- Over the last 10 years, Malta has played an active role in different international networks such as EnviCrimeNet and IMPEL and it cooperates well with the European Network of Prosecutors for the Environment (ENPE) and the European Union Forum of judges for the environment (EUFJE). Malta seems to be very well integrated in the European and international institutions and networks involved in the fight against waste crime. Malta collaborates well with other states whenever assistance is required. This can be considered a good practice.
- Europol, Interpol and Eurojust are the three main channels used for information exchange and requests sent to other Member States as well as non-EU countries. Cooperation requests in investigations into illegal waste shipments are sent to the Maltese competent authorities via SIENA. Assistance is provided through the same channels.
- Despite their declared limited experience in illegal waste shipments, the Maltese authorities were able to ensure the return of illegal waste shipments in the specific case of five containers of demolition waste shipped from Malta to Spain.



- During the visit, the team was informed that as a transit country for waste shipments (illegal or not) the Customs Department often uses the Risk Information System (RIF) when conflicting or incorrect movement documents are detected, by sending information on the potential risks through an RIF form to the Member State(s) concerned.
- The experts were convinced that international cooperation between Malta and other states works well on the several occasions where the Maltese authorities, in particular the ERA, were requested to check and monitor selected shipments passing through Malta.
- However, the experts are also of the opinion that Malta would benefit from a formal structure for cooperation and the exchange of information between all internal stakeholders, to help it respond more quickly and efficiently to international requests. In this context, it would be advisable to set up a joint database within the structure of the Malta Police Force or Customs, available to the ERA and the judiciary through a formal network, for a swifter response.
- Malta is now participating in the European Multidisciplinary Platform Against Criminal Threats (EMPACT) in the area of environmental crime.
- Malta has not participated in a JIT yet, but has expressed its willingness to do so.

## **7. ILLEGAL TRAFFICKING OF WASTE**

### **7.1. National structure**

#### *7.1.1. Authorities involved in preventing and fighting the illegal shipment of waste*

The authorities responsible for inspections are the Environment and Resources Authority (ERA), Customs, Transport Malta and the Malta Police Force. The ERA is responsible for the implementation of the Waste Shipment Regulations. Customs is mainly responsible for carrying out inspections with other entities (as required) at or close to ports, whilst Transport Malta and/or the Police are responsible for all road-side inspections with the assistance of other entities, where required.

Transport Malta is also the flag authority responsible for issues with ships' registration in connection with waste crime.

#### *7.1.2. Detection of illegal shipments of waste*

Illegal shipments of waste in Malta are usually detected through inspections, which are carried out by the various national authorities. Any consignment of hazardous waste leaving Malta has to be given clearance by the ERA.

Hereunder, is a summary of the procedure applicable to inspections:

- The first step is an administrative check of the movement documents and export documents, which is in accordance with the requirements of the Waste Shipment Regulation. The ERA is responsible for receiving and acknowledging these documents, and sending them to Customs for release. Customs is then responsible for stamping the documents and clearing the container. The details of export documents are validated following a risk assessment based on the mean value method, which determines if the exporter is a potential risk. Movement documents are validated prior to being sent to Customs in order to ensure that a bank guarantee is actually in place, i.e. sufficient money is available to cover the shipment. This procedure was established in accordance with a bilateral agreement between the ERA and Customs.
- The second step is to establish whether the waste load requires an inspection based upon a risk analysis. This analysis takes into consideration various aspects, including past compliance of the exporter, place of generation, indicated country of destination and type of source of the waste being loaded for export. If the loading of waste is being carried out at a waste generation point which is not a pre-authorised waste management facility, inspections are usually carried out according to the details provided by the exporter. Inspections at authorised waste management facilities are also carried out and such facilities are obliged to inform the ERA of any planned loading of waste for export.
- The export of waste from Malta to non-EU countries is monitored through the increased collaboration between Customs and the ERA. A working group (Customs, Police, the ERA & Transport Malta) was also created to coordinate inspections at various locations around Malta. Road inspections are carried out close to authorised waste management facilities, the Valletta Gateway Terminals, Malta Freeport Terminals and at points where illegal storage of waste is detected or suspected.

### *7.1.3. Specific points regarding the illegal shipment of waste*

The Maltese experience is quite limited due to the limited number of cases.

The Freeport in Birzebugia has to be notified about any shipment 24 hours in advance of the ship's arrival in Malta. Any information given is distributed to the Member States via the Risk Information System. Customs reported the detection of consignments of scrap metal (Malta does not have proper treatment facilities for scrap metal after dismantling) used to cover other kinds of hazardous waste. Moreover, Customs reported two containers cases of radioactive submersible stainless steel pumps from India which were going to Spain and another two containers of contaminated and radioactive stainless steel products going to southern Europe. Problematic consignors were reported to be mostly located in India and Pakistan. In conclusion, some illicit organic content in containers was reported.

So far no incidents requiring the intervention of the flag authority have occurred.

### *7.1.4. Measures on shipment of waste*

The following two measures are implemented by the ERA to ensure that waste is exported to countries which are capable of treating it in an environmentally sound manner:

- Through an agreement between the ERA and Customs, waste is not allowed to depart from Malta unless the ERA confirms that, following an administrative check of the movement documents and export documents, the export will take place in accordance with the requirements of the Waste Shipment Regulations.
- Pursuant to the requirements of the Waste Shipment Regulations, the ERA asks all exporters to submit recovery certificates (if required) to ensure that the waste has been treated in an environmentally sound manner.

## 7.2. Inspections

### *7.2.1. Methodology of inspections and follow-up*

The national authorities consider inspections to be the most effective mechanism to detect and prevent irregularities. However, these inspections can only be effective if they are based on accurate risk assessments, including efficient and effective information and intelligence sharing, increased interaction with import, transit, and export countries, and better insight into the criminal market and trends within and outside the EU.

There is close cooperation between the Police Force and the ERA. Inspections are usually scheduled, but some are also carried out randomly.

It is important to stress that containers are only opened by Maltese authorities and their contents inspected if a prior X-ray scan gives rise to suspicion. If an X-ray scan is not carried out, the container is given clearance. This seems to be an issue as the hazardous characteristics of waste can only partly be discovered by X-ray scanning and by practitioners' experience when assessing the scan images. Containers are selected for scanning on the basis of a risk analysis exercise which may include a documentary check. However, a negative scanning image does not preclude a physical of the container's contents.

### *7.2.2. Specific inspections with regard to waste electrical and electronic equipment (WEEE) and end-of-life vehicles (ELVs)*

There is no specific analysis to identify illegal flows of WEEE, but Customs does not allow the export of used electrical and electronic equipment (EEE) unless it is confirmed that the goods to be exported are not classified as waste.

Customs did not report any incidents with regard to ELVs. As Malta does not have facilities to treat hazardous scrap metal, scrap metal from ELVs is exported after dismantling.

### 7.2.3. *First inspection plan*

The first 'Waste Shipment Inspection Plan for the Maltese Islands' is already in force.

National competent authorities, mainly the Malta Police, Customs, the ERA and Transport Malta (TM) have established an excellent level of cooperation and therefore any irregularities detected are followed by an investigation and, if required, even confiscation measures.

The Waste Management (Shipments of Waste) Regulations, (Subsidiary Legislation 549.65) state that in addition to the penalties for which the offender may be held liable, *'the court may order any person who has been found guilty of committing an offence under these regulations to pay for the expenses incurred by the competent authority in terms of these regulations as a result of the said offence, the revocation of the permit issued by the competent authority and the confiscation of the corpus delicti, including the vehicle, if the case may be.'* The general provisions applicable to confiscation measures in the Criminal Code (Article 23, 23A, 23B and 23C) apply in such cases.

### 7.2.4. *Challenges with regard to returning illegal waste shipments*

The main challenges encountered when returning illegal waste shipments to the state of origin is the lack of information from third parties including foreign competent authorities, even through official diplomatic channels.

However, Customs reported good relations with other states with regard to the sending back of containers.

### 7.3. Conclusions

- ERA checks the requirements laid down in the WEEE Directive while carrying out inspections, particularly regarding the distinction between used EEE and WEEE. According to the information collected, the Customs Department does not allow the export of used electrical and electronic equipment (EEE) or end-of-life vehicles (ELV) if the goods to be exported are classified as waste.
- However, in the absence of specific analysis to identify illegal flows of WEEE, the evaluation team is of the opinion that the Maltese custom authorities, should be encouraged to adopt a more proactive approach by implementing the inspection and monitoring measures provided for by Article 23 and Annex VI to Directive 2012/19/EU on waste electrical and electronic equipment (WEEE), such as testing (and keeping records of) the functionality of the items being shipped in order to demonstrate that they constitute used EEE rather than WEEE. This is advisable bearing in mind that WEEE, namely computers, TV sets, refrigerators and freezers, is a complex mixture of materials and components that because of their hazardous content, and if not properly managed, can cause major environmental and health problems.
- Maltese authorities seem to have a close look at the export of domestic ELV's, as the Compliance and Enforcement Directorate seems to be able to detect illegal shipments prior to exports. However, the evaluation team is of the opinion the Custom's inspections practice in the freeport focusing on exports of ELVs and used vehicle parts should be reconsidered keeping in mind the considerations mentioned before – even though, as informed by Maltese authorities, most of the time ELVs are included in the export of metal scrap.
- This is necessary in order to comply with Annex I(3) to Directive 2000/53/EC on end-of-life vehicles by ensuring the correct depollution of end-of-life vehicles, namely by removing batteries and liquefied gas tanks, neutralising potential explosive components, removing and separating fuel, motor oil, transmission oil, gearbox oil, hydraulic oil, cooling liquids, antifreeze, brake fluids, air-conditioning system fluids and any other fluid contained in the end-of-life vehicle, such as the components identified as containing mercury.

- The clearance system of the ERA and Customs seems to be a viable way to detect illegal waste trafficking. Paperwork is checked electronically in a way that can be considered a best practice.
- Checks conducted only by paperwork facilitate illegal activities. Waste crime offenders are known to make false statements in movement and freight documents in order to keep the authorities away and avoid inspections. A higher detection rate could therefore be achieved by checking containers physically and organoleptically, taking more samples and analysing them thoroughly.
- Joint random inspections are carried out by the ERA, Customs and Malta Police. Increasing the number of these checks or doing a higher level of analytical preparation should increase the likelihood of detecting waste crimes.
- The investigations conducted by the ERA can lead to either administrative measures or criminal measures.



## **8. MANAGEMENT OF HAZARDOUS WASTE**

### **8.1. The classification of hazardous waste and challenges in its management**

In recent years, the Environment and Resources Authority (ERA) has detected a number of cases of illegal dumping of hazardous waste by private companies and individuals. For instance, the authority has detected:

- two quarries which were illegally operating as a landfill;
- skips with unseparated and hazardous waste (such as electronic material) being systematically dumped with no safety measures in place to safeguard any possible contamination.

The ERA is in constant discussion with the Customs Department regarding misclassification of waste and/or wrong declaring of cargo. It is acknowledged that waste management operators need to be properly trained as they are the first line of defence in the waste management system. In light of this, the Waste Management Plan referred to in the questionnaire provides for the training of all those who collect or transport waste on a professional basis, dealers, brokers and waste treatment operators, so that they may possess qualifications/certification to assist in the correct classification of waste. Compulsory training courses organised by ERA in collaboration with a vocational educational institution (i.e. MCAST) for waste management operators started during the last quarter of 2018.

## **8.2. The system of inspections and the authorities involved**

In accordance with Regulation 32 of the Waste Regulations (Subsidiary Legislation 549.63), 'establishments or undertakings which carry out waste treatment operations, establishments or undertakings which collect or transport waste on a professional basis, brokers and dealers, and establishments or undertakings which produce hazardous waste shall be subject to appropriate periodic inspections by the competent authority' (ERA). Scheduled inspections of authorised facilities are carried out based on risk assessment. However, unscheduled inspections are also carried out as required.

Regulation 14 of the Waste Regulations describes the waste consignment process that calls for any person intending to transfer hazardous waste or any non-hazardous waste as prescribed by the competent authority within the Maltese territory to inform the ERA of the intended transfer at least 15 days before the actual transfer is planned to take place. Such a permit process ensures the traceability of hazardous waste disposal.

For criminal proceedings to be launched there must be substantial damage to the environment and the case must be sufficiently serious.

### **8.3. Measures for the protection of the environment and human health in the treatment of hazardous waste**

Such measures are taken in accordance with the provisions of the Waste Regulations, (Subsidiary Legislation 549.63), which transpose Directive 2008/98/EC. The objective of these Regulations is to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing the overall impact of resource use and improving the efficiency of such use.

### **8.4. Trends in illegal hazardous waste management**

In the last few years, it has been noted through enforcement experience that the use of sea containers for the illegal storage and sorting of waste is common practice. The ERA is actively trying to eradicate this type of illegal waste management through enforcement.

### **8.5. Conclusions**

- There are no facilities in Malta capable of managing hazardous waste, resulting in no imports of waste.
- There are some abuses concerning hazardous waste. The Civil Protection Department mentioned a case where sodium cyanide barrels had been deposited in a camping area. The authority dismantled the material, but the investigations could not reveal any link with organised crime.

- 2 % of the waste generated within the country is hazardous waste. The relevant industries from this perspective are pharmaceuticals, energy, construction and tourism.
- Some of the offences detected in Malta in relation to hazardous waste are committed through misclassification. Therefore, establishing the gravity of the offence can be a considerable challenge.
- Regarding misclassification of waste and/or wrong declaring of cargo, there is a clear need for waste management operators to be properly trained, as they are the first line of defence in the waste management system. In light of this, training should be provided to all those who collect or transport waste on a professional basis, dealers, brokers and waste treatment operators.
- In other Member States, the team of experts observed the operational units using portable instruments to analyse waste in real time. The adoption of similar measures in Malta would allow the Maltese authorities to quickly identify the contents of containers in order to determine the composition of the waste and its classification and dangerousness during physical inspections, allowing fraud with regard to the declaration of hazardous waste to be rapidly detected.

## 9. ILLEGAL PRODUCTION OR HANDLING OF DANGEROUS MATERIALS

### 9.1. The concept of dangerous materials

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| <b>Motor Vehicles (Carriage of Dangerous Goods by Road) Regulations</b><br><br><i>Subsidiary Legislation 65.22</i> | These Regulations define 'dangerous goods' as follows: <i>'those substances and articles, the transport of which by road is prohibited or authorised only in certain circumstances by Annex A and Annex B to the ADR'</i> (the European Agreement concerning the International Carriage of Dangerous Goods by Road, concluded in Geneva on 30 September 1957).  |
| <b>Dangerous Imitations Order (Order No. 49 of 2001)</b><br><br><i>Subsidiary Legislation 427.07</i>               | Regulation No 2.2 defines 'dangerous goods' as follows: <i>'not foodstuffs, possess a form, odour, colour, appearance, packaging, labelling, volume or size, such that it is likely that consumers, especially children, will confuse them with foodstuffs and in consequence place them in their mouths, or such or ingest them, which might be dangerous and cause, for example, suffocation, poisoning or the perforation or obstruction of the digestive tract'</i> . |

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| <p><b>Dangerous Substances Regulations</b></p> <p><i>Subsidiary Legislation</i><br/>427.14</p> | <p>These Regulations provide for the packaging, labelling and registration of certain substances. In accordance with these Regulations, the following are considered to be 'dangerous':</p>   |
|  | <p><i>'(a) explosive substances and preparations: solid, liquid, pasty or gelatinous substances and preparations which may also react exothermically without atmospheric oxygen thereby quickly evolving gases, and which, under defined test conditions, detonate, quickly deflagrate or upon heating explode when partially confined;</i></p> |
|  | <p><i>(b) oxidising substances and preparations: substances and preparations which give rise to a highly exothermic reaction in contact with other substances, particularly flammable substances;</i></p>   |
|  | <p><i>(c) extremely flammable substances and preparations: liquid substances and preparations having an extremely low flash-point and a low boiling-point and gaseous substances and preparations which are flammable in contact with air at ambient temperature and pressure;</i></p>  |
|  | <p><i>(d) highly flammable substances and preparations:</i></p> <p><i>(i) substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any application of energy, or</i></p>  |

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|  | <p><i>(ii) solid substances and preparations which may readily catch fire after brief contact with a source of ignition and which continue to burn or to be consumed after removal of the source of ignition, or</i></p> <p><i>(iii) liquid substances and preparations having a very low flash-point, or</i></p> <p><i>(iv) substances and preparations which, in contact with water or damp air, evolve highly flammable gases in dangerous quantities;</i></p> |
|  | <p><i>(e) flammable substances and preparations: liquid substances and preparations having a low flash-point;</i></p>   |
|  | <p><i>(f) very toxic substances and preparations: substances and preparations which in very low quantities cause death or acute or chronic damage to health when inhaled, swallowed or absorbed via the skin;</i></p>   |
|  | <p><i>(g) toxic substances and preparations: substances and preparations which in low quantities cause death or acute or chronic damage to health when inhaled, swallowed or absorbed via the skin:</i></p>   |

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|  | <i>(h) harmful substances and preparations: substances and preparations which may cause death or acute or chronic damage to health when inhaled, swallowed or absorbed via the skin;</i>  |
|  | <i>(i) corrosive substances and preparations: substances and preparations which may, on contact with living tissues, destroy them;</i>  |
|  | <i>(j) irritant substances and preparations: non-corrosive substances and preparations which, through immediate, prolonged or repeated contact with the skin or mucous membrane, may cause inflammation;</i>  |
|  | <i>(k) sensitising substances and preparations: substances and preparations which, if they are inhaled or if they penetrate the skin, are capable of eliciting a reaction of hypersensitisation such that on further exposure to the substance or preparation, characteristic adverse effects are produced;</i> |
|  | <i>(l) carcinogenic substances and preparations: substances or preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce cancer or increase its incidence;</i>  |



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|  | <i>(m) mutagenic substances and preparations: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce heritable genetic defects or increase their incidence;</i>  |
|  | <i>(n) substances and preparations which are toxic for reproduction: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may produce, or increase the incidence of, non-heritable adverse effects in the progeny and, or an impairment of male or female reproductive functions or capacity;</i> |
|  | <i>(o) substances and preparations which are dangerous for the environment: substances and preparations, which, were they to enter the environment, would present or may present an immediate or delayed danger for one or more components of the environment.'</i>  |

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| <p><b>Dangerous Substances and Preparations Regulations</b></p> <p><i>Subsidiary Legislation</i><br/>427.28</p>                                | <p>These Regulations apply to the classification, packaging and labelling of dangerous preparations, and to those preparations which may present hazards, whether or not they are classified as dangerous within the meaning of these Regulations, which such preparations placed on the market.</p> <p>These Regulations are very extensive and can be found on the following website:<br/><a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10765&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10765&amp;l=1</a></p>                                |
| <p><b>Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations</b></p> <p><i>Subsidiary Legislation</i><br/>499.12</p> | <p>These Regulations regulate the movement, transfer and handling of dangerous cargoes, bunkers, ballast and tank cleaning operations on all ships and at all marine terminals and facilities within or connected to the internal and territorial waters in Malta. In accordance with these Regulations: 'dangerous goods' means:</p> <p><i>'(i) good classified in the IMDG Code;</i></p> <p><i>(ii) dangerous liquid substances listed in Chapter 17 of the IBC Code;</i></p> <p><i>(iii) liquefied gases listed in Chapter 19 of the IGC Code;</i></p> <p><i>(iv) solids referred to in Appendix B of the BC Code.'</i></p> |

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| <p><b>Pollution caused by Certain Dangerous Substances discharged into the Aquatic Environment Regulations</b></p> <p><i>Subsidiary Legislation</i><br/>549.10</p> | <p>These Regulations require a person wishing to discharge any of the listed substances into the water to seek and obtain prior authorisation and to abide by the conditions set out in the licence. These Regulations list the 'dangerous substances' in the Annex, available on the following website:</p> <p><a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11497&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11497&amp;l=1</a></p>  |
| <p><b>Dangerous Goods (Air Navigation) Regulations</b></p> <p><i>Subsidiary Legislation</i><br/>499.44</p>   | <p>These Regulations prohibit an aircraft from carrying or being loaded with any dangerous goods, unless the operator is approved under this Regulation and such goods are carried or loaded in accordance with:</p> <p>(i) the conditions to which such approval may be subject; and</p> <p>(ii) the Technical Instructions.</p> <p>These Regulations define 'dangerous goods' as follows: '<i>any article or substance which is identified as such in the Technical Instructions</i>'.</p> <p>The 'Technical Instructions' are defined as follows: '<i>the 2005 – 2006 English language edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air, approved and published by decision of the Council of the International Civil Aviation Organisation.</i>'</p> |

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| <p><b>List of Poisonous Substances Order</b></p> <p><i>Subsidiary Legislation</i><br/>458.10</p> | <p>This legislation sets down a list of substances, which are to be considered as poisonous substances in accordance with the Schedule to the Order.</p> <p><a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11250&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11250&amp;l=1</a></p>  |
| <p><b>The Medicines Act</b></p> <p><i>Chapter 458 of the Laws of Malta</i></p>                   | <p>The Act makes provision for matters connected with the manufacture, preparation and assembly of medicines, and, more specifically:</p> <ul style="list-style-type: none"> <li>• the wholesale distribution, storage, destruction, disposal, advertising and authorisation of medicinal products and any activity connected therewith;</li> <li>• the regulation of the sale of medicinal products, pharmacies and related pharmaceutical activities; and</li> <li>• any other matters ancillary thereto or connected therewith.</li> </ul> <p>For example, Article 96 of the Act:</p> <p><i>'Without prejudice to the provisions of the Pesticides Control Act, it is prohibited to sow, cast, put or place, or cause to be sown, cast, put or placed in or upon any land or other exposed place any grain, seed, meal, or flesh which has been so dipped or steeped in poison, or has been so mixed with poison or other ingredient or preparation as to be rendered poisonous and calculated to destroy life.'</i></p> <p><a href="http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8924&amp;l=1">http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8924&amp;l=1</a></p> |

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| <p><b><u>Pesticides Control Act</u></b></p> <p><i>Chapter 430 of the Laws of Malta</i></p> <p>and the relevant regulations made under this Act.</p> | <p>An Act providing for the control of pesticides including 'biocidal products' which are defined as: <i>'the active substances and preparations containing one or more active substances, in the form in which they are supplied to the user, intended to destroy, deter, render harmless, prevent the action of, or otherwise exert a controlling effect on any harmful organism by chemical or biological means'.</i></p> <p>'active substances' are defined as <i>'chemical substances or microorganisms including viruses, which have a general or specific action against harmful organisms or on plants or plant products.'</i></p> <p>A Pesticides Control Board was also created, pursuant to Article 10.</p> <p>Penalties are also in place for infringements of the provisions of the Act.</p> <p><a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8896&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8896&amp;l=1</a></p> |
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|---|---|
| <p><b>The Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Implementation Regulations</b></p> <p><i>Subsidiary Legislation</i><br/>427.66</p> | <p>These Regulations brought into force in Maltese legislation the REACH Regulation.</p> <p><a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10802&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10802&amp;l=1</a></p>   |
| <p><b>Dual-Use Items (Export Control) Regulations</b></p> <p><i>Subsidiary Legislation</i><br/>365.12</p>   | <p>These Regulations define 'dual-use items' as '<i>any used or unused items, including software and technology, which can be used for both civil and military purposes, and including all goods, which can be used for both non-explosive uses and for assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices</i>'.</p> <p>The aim of this legislation is to regulate the export and transit of dual-use items.</p> |
| <p><b>The Importation Control Regulations</b></p> <p><i>Subsidiary Legislation</i><br/>117.14</p>   | <p>Schedules I and II</p> <p>Regulates the importation of substances into Maltese Territory, including certain dangerous materials.</p> <p><a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=9290&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=9290&amp;l=1</a></p>  |

## **9.2. Types of illegal activities related to illegal production and handling of dangerous materials and current trends in that field**

Please see above.

## **9.3. Procedural aspects**

### *9.3.1. The means of collecting evidence and of handling dangerous materials*

The national authorities have not yet encountered any cases of illegal production or handling of dangerous materials.

The material is safely contained and the area in which the material is found is made safe after its removal. This process might require decontamination of the area, and waste generated during this process would also be removed. The cost of this decontamination process is met by the Civil Protection Department (CPD), unless ownership of the material is known, in which case the owner is charged for this cost. There also exists an MOU between the CPD and the ERA whereby the ERA will bear the costs of storage and disposal of such material if ownership is unknown. Temporary storage is done either on site, if possible, or else at the premises of a third party waste collector at a cost established by third parties. Initial analysis is done by the CPD using in situ equipment; analysis for the purpose of identifying and quantifying material can only be carried out at Malta University, although samples are sometimes sent abroad for analysis, depending on the material in question. For the analysis of CBRN material, the CPD can request assistance from the Organisation for the Prohibition of Chemical Weapons (OPCW). No written standard operating procedures (SOP) exist, however most entities in Malta always contact the CPD when such material is found.

### *9.3.2. Cooperation with European and international partners*

### *9.3.3. Techniques of investigation*

As Malta has limited experience in the field, its authorities have had no experience of using either financial or cyber investigatory techniques.

However, it should be highlighted that about 95 % of the containers leaving Malta Freeport are scanned for radioactivity using seven sets of detector gates. Eight or nine cases were recently reported by the Civil Protection Department.

Procedures usually start when the ERA contacts the Civil Protection Department, which assesses whether the item is radioactive or not. Serious radioactive threats could even arise from a proliferation of Plutonium or Uranium. There was one reported case of an illicit consignment of caesium 137, which was sent back to the consignor and the state from which it originated.

The Civil Protection Department reports around 2 000 HAZMAT calls per year concerning gas, gasoline and other materials.



#### *9.3.4. Main obstacles to successful investigation and prosecution*

The main obstacle is the lack of specialised practical knowledge in this criminal area.

#### *9.3.5. Training*

No regular training is currently being provided. However, the Academy of Disciplined Forces is currently preparing a programme to provide specialised training on investigations related to chemical, biological, radiological and nuclear materials.

### **9.4. Conclusions**

- Article 217 of the Criminal Code of Malta punishes grievous bodily harm committed by means of any explosive, or any burning or corrosive fluid or substance. Where the offence is committed by means of any explosive fluid or substance the minimum punishment is imprisonment for two years, and the provisions of the Probation Act (Chapter 446 of the Laws of Malta) would not be applicable.
- Additionally, Articles 311-325A of the Criminal Code of Malta specifically provide for criminal activities involving dangerous materials such as chemical, biological, radiological and nuclear materials (CBRN).
- In case of potential threats, if CBRN or other dangerous materials are found, the responsible entities in Malta immediately contact the Civil Protection Department (CPD) which carries out the initial analysis equipped with hazardous materials suits (HAZMAT suits), also known as decontamination suits. Subsequently, samples are sent to Malta University for the purpose of identifying and quantifying the material or, depending on the material found, samples can also be sent abroad. Specifically for the analysis of CBRN material, the CPD can request assistance from the Organisation for the Prohibition of Chemical Weapons (OPCW).

- The Civil Protection Department works closely with Customs and communicates immediately any event to all services, including the medical services.
- Over the last 20 years, only two situations have been reported to the authorities: one involved private premises that had allegedly been contaminated by poison or chemical substances; the area had been cleared. The other involved a public area affected by chemical substances. In the latter case the medical department was called, the area was decontaminated and around 50 kg of chemicals were isolated in bags and shipped for analysis.
- According to the authorities, although neither written SOPs nor regular training is provided, an efficient network of informal contacts has been established.
- Once again, in relation to the organisation of internal cooperation, the experts concluded that there is a lack of solid structures and stable rules. Therefore, in their opinion it would be beneficial for the environment, security and public health if the authorities competent to deal with waste crime in general, and the threats posed by chemical, biological, radiological and nuclear materials in particular, were able to address such situations swiftly and in a coordinated form. On this basis, the experts consider that rules should be laid down on SOPs, clearly establishing the competences of each participant, mutual cooperation, exchange of information, shared databases and training sessions, including on joint operations.
- For this reason, training on illegal production and illegal handling of dangerous materials should be provided, as is currently planned by the competent authorities.
- Malta Freeport must be considered as a place in which the handling of dangerous materials could easily occur. Checks and inspections at Malta Freeport should also be improved with respect to illegal dangerous materials.

## 10. FINAL REMARKS AND RECOMMENDATIONS

### 10.1. Suggestions from Malta

No comments.

### 10.2. Recommendations

As regards the practical implementation and operation of the Directives and the Regulation, the expert team involved in the evaluation of Malta was able to satisfactorily review the system in Malta.

Malta should conduct a follow-up on the recommendations given in this report 18 months after the evaluation and report on progress to the Working Party concerned.

The evaluation team thought it appropriate to make a number of suggestions for the attention of the Maltese authorities. Furthermore, based on the various good practices, related recommendations to the EU, its institutions and agencies, Europol in particular, have also been put forward.

#### *10.2.1. Recommendations to Malta*

1. Malta should consider setting up a more formal framework for cooperation in order to clearly lay down the roles and responsibilities of the competent authorities;
2. Malta should consider increasing the number and the efficiency of physical inspections and scan procedures of the containers;
3. Malta should consider increasing the number of specialised staff for physical inspections of containers;
4. Malta should consider, as a matter of priority, developing a system to collect reliable and updated statistics on waste crime, including the number of notifications, investigations, prosecutions and convictions, as well as the number of administrative procedures and fines;
5. In order to improve the detection rate of waste crimes, specialised training – including operational and investigative aspects – for the competent authorities is highly recommended; Levels of awareness of Malta's important role, due to its geographical and strategic position as a gateway to the EU internal market, should be increased.

### *10.2.2. Recommendations to the European Union, its institutions, and to other Member States*

The evaluation team also identified a number of good practices in Malta that could be shared with the Member States, such as:

- Personal contacts facilitating effective cooperation between the competent authorities involved in the fight against waste crime;
- Malta's openness to using new technologies such as CCTV and drones;
- Joint random inspections, based on a risk assessment, performed by Customs, the ERA and Police Force.

## **ANNEX A: PROGRAMME FOR THE ON-SITE VISIT AND PERSONS INTERVIEWED/MET**

### **Eighth Round of Mutual Evaluations**

*'Practical Implementation and Operation of European Policies on Preventing and Combating Environmental Crime'*

**18 – 20 July 2018**

#### **Wednesday 18 July**

**09.30 - 10.00:**

Transport from Osborne Hotel to Malta Police General Headquarters, Floriana.

**10.00 -10.30:**

Introductory meeting at the Malta Police General Headquarters, Floriana.

Meeting with the responsible officers from the Ministry for Home Affairs and National Security and officers from the Malta Police.

**10.30 - 12.30**

Meeting on CBRN matters at Malta Police Headquarters, Floriana.

Participants: Malta Police, Civil Protection Department, Trade Services Directorate, Ministry for Health, Radiation Protection Board and officers from the Ministry of Home Affairs and National Security.

**12.30 - 14.00:**

Lunch for Evaluators, officers from the Ministry for Home Affairs and National Security and Malta Police.

Venue: Malta Police General Headquarters, Floriana.

**14.00 - 14.30:**

Transport from Malta Police General Headquarters, Floriana to Customs Department, Valletta.

**14.30 - 16.00:**

Meeting at Customs Department, Valletta with Customs officials.

**16.00 - 16.30:**

Transport from the Customs Department, Valletta to hotels.

**16.30 - 17.30:**

Internal meeting at the Osborne Hotel.

**19.00 - 19.30:**

Walk from hotel to d'Office Restaurant, Valletta.

**19.30 - 21.30**

Dinner hosted by the Ministry for Home Affairs and National Security.

Venue: d'Office Restaurant, Valletta.

**21.30:**

Walk from d'Office Restaurant, Valletta to hotels.

**Thursday 19 July**

**10.00 – 10.30:**

Transport from Osborne Hotel to Malta Freeport, Birżebbuġa.

**10.30 – 12.30:**

Scanning of containers at Malta Freeport and road inspection.

Participants: Malta Police, Customs Department, Environment and Resources Authority.

**12.30 – 13.00:**

Transport from Malta Freeport to Hotel Phoenicia, Floriana.

**13.00 – 14.00:**

Lunch hosted by the ERA, Floriana.

**14.00 – 15.30**

Meeting with Environment and Resources Authority at Hotel Phoenicia, Floriana.

**15.30 – 16.00**

Walk from Hotel Phoenicia, Floriana to hotels.

**16.00 - 18.00**

Internal meeting at the hotel.

**Friday 20 July**

**08.30 – 09.00**

Walk from hotels to the Office of the Attorney General, Valletta.

**09.00 - 10.00**

Meeting with an officer from the Office of the Attorney General.

**10.00 – 10.15**

Walk from the Office of the Attorney General, Valletta to the Ministry for Home Affairs and National Security, Valletta.

**10.15 – 12.15**

Plenary Meeting at the Ministry for Home Affairs and National Security, Valletta.

Participants: Malta Police Force, Customs Department, Ministry for the Environment, Sustainable Development & Climate Change, Environment & Resources Authority, Civil Protection Department, Trade Services Directorate, Ministry for Health and Radiation Protection Board.

**12.15 – 13.15**

Light refreshments at the Ministry for Home Affairs and National Security, Valletta.

**13.30**

End of visit.

## **ANNEX B: PERSONS INTERVIEWED/MET**

**Meetings on: 18<sup>th</sup> July 2018**

*Venue: Police General Head Quarters Floriana*

| <b>Person interviewed/met</b> | <b>Organisation represented</b>                 |
|-------------------------------|---|
| Insp Colin Sheldon            | Malta Police                                    |
| Dr Tanya Melillo              | Ministry for Health                             |
| Dr Mike Spiteri               | Ministry for Health                             |
| Mr Paul Brejza                | Radiation Protection Board                      |
| Joseph Cremona                | Radiation Protection Board                      |
| Mr Michel Galea               | Civil Protection Department                     |
| Mr Mark Zammit                | Civil Protection Department                     |
| Mr Brian Montebello           | Trade Services Directorate                      |
| Dr Josette Zerafa             | Ministry for Home Affairs and National Security |
| Dr Stephanie Pappalardo       | Ministry for Home Affairs and National Security |



*Venue: Customs Department, Valletta*

| <b>Person interviewed/met</b> | <b>Organisation represented</b>                 |
|-------------------------------|---|
| Insp Colin Sheldon            | Malta Police                                    |
| Dr Josette Zerafa             | Ministry for Home Affairs and National Security |
| Dr Stephanie Pappalardo       | Ministry for Home Affairs and National Security |
| Mr George Scerri              | Customs Department                              |
| Mr Carmel Fabri               | Customs Department                              |
| Mr Camel Sammut               | Customs Department                              |
| Mr Romeo Dimech               | Customs Department                              |
| Mr Carmel Attard              | Customs Department                              |
| Mr George Agius               | Customs Department                              |

**Meetings on: 19<sup>th</sup> July 2018**

*Venue: Scanning of Containers at Malta Freeport and Road Inspection*

| <b>Person interviewed/met</b> | <b>Organisation represented</b>     |
|-------------------------------|-------------------------------------|
| Insp Colin Sheldon            | Malta Police                        |
| Mr Alfred Sharples            | Environment and Resources Authority |
| Mr Mark Sultana               | Environment and Resources Authority |
| Mr George Agius               | Customs Department                  |
| Mr Romeo Dimech               | Customs Department                  |
| Mr Paul Grech                 | Customs Department                  |
| Mr Robert Vassallo            | Customs Department                  |
| Mr Robert Demanuele           | Customs Department                  |
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*Venue: Phoenicia Hotel Floriana*

| Person interviewed/met   | Organisation represented   |
|--------------------------|--|
| Insp Colin Sheldon       | Malta Police   |
| Mr Alfred Sharples       | Environment and Resources Authority  |
| Mr Mark Sultana          | Environment and Resources Authority  |
| Ms Aimee Brincat         | Environment and Resources Authority  |
| Perit Michelle Piccinino | Environment and Resources Authority  |
| Mr Kevin Mercieca        | Environment and Resources Authority  |
| Dr Marguerite Camilleri  | Environment and Resources Authority  |
| Mr Giuseppe De Angelis   | Environment and Resources Authority  |
| Ms Priscilla Scerri      | Environment and Resources Authority  |
| Mr Luca Lacitignola      | Ministry for the Environment,<br>Sustainable Development and Climate<br>Change |

**Meetings on: 20<sup>th</sup> July**

*Venue: The Office of the Attorney General*

| Person interviewed/met   | Organisation represented                           |
|--------------------------|--|
| Dr Peter Grech           | The Attorney General                               |
| Dr Victoria Buttigieg    | Assistant Attorney General                         |
| Dr Elaine Mercieca Rizzo | The Office of the Attorney General                 |
| Insp. Colin Sheldon      | Malta Police                                       |
| Dr Josette Zerafa        | Ministry for Home Affairs and National<br>Security |
| Dr Stephanie Pappalardo  | Ministry for Home Affairs and National<br>Security |

*Venue: Plenary Meeting at the Ministry for Home Affairs and National Security*

| <b>Person interviewed/met</b> | <b>Organisation represented</b>  |
|-------------------------------|--|
| Insp Colin Sheldon            | Malta Police   |
| Dr Josette Zerafa             | Ministry for Home Affairs and National Security                          |
| Dr Stephanie Pappalardo       | Ministry for Home Affairs and National Security                          |
| Mr Brian Montebello           | Trade Services Directorate   |
| Mr Ian Muscat                 | Customs Department   |
| Ms Michelle Piccinino         | Environment and Resources Authority                                      |
| Ms Aimee Brincat              | Environment and Resources Authority                                      |
| Mr Luca Lacitignola           | Ministry for the Environment, Sustainable Development and Climate Change |
| Mr Mark Zammit                | Civil Protection Department  |
| Mr Albert Tabone              | Civil Protection Department  |
|                               |  |

## ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

| LIST OF ACRONYMS, ABBREVIATIONS AND TERMS | MALTESE OR ACRONYM IN ORIGINAL LANGUAGE | ENGLISH   |
|---|---|---|
| CBRN                                      |   | Chemical, biological, radiological and nuclear materials  |
| CEU                                       |   | Compliance and Enforcement Unit (it's a unit set up within the Environment and Resources Authority) |
| CPD                                       |   | Civil Protection Department   |
| EEE                                       |   | Electrical and Electronic Equipment   |
| ELV                                       |   | End of Life Vehicles  |
| EMPACT                                    |   | European Multidisciplinary Platform against Criminal Threats  |
| ENPE                                      |   | European Network of Prosecutors for the Environment   |
| ERA                                       |   | Environment and Resources Authority   |
| ESM                                       |   | Environmentally Sound Management  |
| EU  |   | European Union  |
| EUFJE                                     |   | European Union Forum of Judges for the Environment  |
| GIS                                       |   | Geographic Information System   |
| IAEA                                      |   | International Atomic Energy Agency  |
| IMPEL                                     |   | European Union Network for the Implementation and Enforcement of Environmental Law                  |
| JITs                                      |   | Joint Investigation Teams   |

|       |  |   |
|-------|--|---|
| MoU   |  | Memorandum of Understanding                                   |
| NCP   |  | National Contact Point  |
| NGO   |  | Non-Governmental Agency                                       |
| OPCW  |  | Organisation for the Prohibition of Chemical Weapons          |
| PPP   |  | Public-Private Partnership                                    |
| RIF   |  | Risk Information System                                       |
| SIENA |  | Secure Information Exchange Network Application               |
| SOP   |  | Standard Operating Procedures                                 |
| TECUM |  | Tackling Environment Crime through Standardised Methodologies |
| TFS   |  | Trans-frontier Shipment                                       |
| TM    |  | Transport Malta   |
| WCO   |  | World Customs Organisation                                    |
| WEEE  |  | Waste Electrical and Electronic Equipment                     |
| WSIP  |  | Waste Shipment Inspection Plan                                |

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