



Council of the
European Union

Brussels, 29 January 2021
(OR. en)

5769/21

COPEN 49
ENFOPOL 36
ENV 54
CRIMORG 9
JAI 88
CATS 8

NOTE

From:	Portuguese Delegation
To:	Delegations
Subject:	8th Round of Mutual Evaluations - 'The practical implementation and operation of European policies on preventing and combating Environmental Crime' Follow-up to the Report on Portugal

As a follow-up to each Round of Mutual evaluations, each Member-State is requested to inform the General Secretariat of the Council of the actions it has taken on the recommendations given to it.

A follow-up report should be submitted within 18 months from the adoption of the report concerned.

Delegations will find in the Annex the follow-up report of Portugal regarding the recommendations that were made in the report ST 9098/19 for the Eighth Round of Mutual Evaluations.

EIGHTH ROUND OF MUTUAL EVALUATIONS ON ENVIRONMENTAL CRIME -

FOLLOW-UP TO REPORT ON THE PORTUGUESE REPUBLIC

In the context of the eighth round of Mutual Evaluations on “the practical implementation and operation of the European polices on preventing and combating environmental crime”. The evaluation report on **THE PORTUGUESE REPUBLIC** as set out in doc. **ST 09098/19, from the 8th of May 2019**, was adopted by the LEWP/COPEN WP on **the 14th of June 2019**. We hereby submit, according the procedures set out in doc. 15538/4/15, our report on the follow-up to the recommendations made to **THE PORTUGUESE REPUBLIC** on the above evaluation report.

Follow-up report on recommendations made to Portugal:

Recommendation n. 1 – *"is encouraged to review its system of administrative penalties, the grounds for their application and its capacity for a more efficient enforcement of final decisions (of criminal and administrative penalties)"*

Portuguese Comments and developments: Law 50/2006 of 29 August (Framework Law on Environmental Offences), already referred in the Report, was amended by Law 25/2019 of 26 March 2019. In particular, we refer to the amendment to Article 18 of the LQCA, "Right of Access", which, although with exceptions, has, as a general rule, in its no. 1 "The procedures of environmental inspection and surveillance should not be preceded by communication or notification to the entities concerned or to those responsible for the facilities or places to be inspected".

This amendment coupled with the provisions of Article 42 of the Framework Law on Environmental Offences, “cautionary seizure”, that allows the seizing for evidentiary and/or precautionary purposes, will lead to greater effectiveness in detecting irregularities and, consequently, to strengthening the investigation process, particularly as regards the evidence. So, as we know, if the evidence is strong, it will make the whole conviction procedure more easy and secure and will strengthens the capacity for more effective enforcement of final decisions.

IGAMAOT established internal criteria to support the inspection application of Article 279-A of the Penal Code, in terms of transboundary movements of waste. APA (coordinator), PGR, IGAMAOT and PJ are also developing a document with a technical- scientific methodology for the identification of substantial environmental damage on water resources, that could also allow a differentiation between administrative offense and environmental crime.

After obtaining the results of this methodology, it is intended to reconsider the extension of the development of the identification of environmental damage and differentiation between administrative offense and environmental crime to other areas such as the control of atmospheric emissions, waste management, and or other components environmental issues.

Republican National Guard (GNR) as law enforcement and inspective authority, it has contributed to a greater effectiveness of the final decisions that culminate in sanctions for violators, even though it is believed that there may be more administrative convictions.

Seeking greater efficiency and effectiveness in law enforcement, the Public Security Police (PSP) has increased the number of inspections carried out by itself or in collaboration with the administrative authorities and has also participated in various legislative processes and integrated working groups to adapt Portuguese law to European law.

Recommendation n. 2 - *"is recommended to continue working on collecting more comprehensive and integrated statistics comprising environmental crime and administrative violations so that the development of this phenomenon can be made more visible,"*

Portuguese Comments and developments: Much of the data referred is contained in the Annual Internal Security Report, a document prepared based on information collected and centralized by DGPJ, through the results obtained from disaggregated and detailed information submitted by each of the bodies and services of law enforcement considered for the preparation of the report. However, these results are silent regarding the activity of other entities, with emphasis on the matter in question, namely IGAMAOT, APA, ICNF and DGRM1. Thus, the creation of a platform that aggregates all data related to the activity of monitoring and combating environmental crime is being studied.

¹ Directorate-General for Natural Resources, Safety and Maritime Services

Regarding the collection and compilation of statistical data, GNR through SEPNA has made available all the statistics related to environmental crimes. Similarly, the PSP also has a national system in which are recorded all criminal and administrative offences, monitoring their status until their final dispatch to the competent judicial and administrative authorities.

With regard to criminal proceedings at the investigation stage, improvements have already been implemented in the support system for the processing of cases in the courts of the 1st instance in order to be able to collect and disseminate disaggregated information, by type of crime (in particular with regard to environmental crimes). Data quality analyses are under way with a view to assessing the possibility that such data may be disseminated in the future. Data on procedural species corresponding to administrative appeals are already collected. In order to also ensure the collection of data characterizing these appeals with regard to the type of infringement in question, in particular those of an environmental nature, a detailed analysis of the changes to be made to the system to support the processing of proceedings in the courts of the 1st instance was carried out in order to enable the production of indicators with this degree of disaggregation. This analysis is now under political discussion.

In addition, IGAMAOT has adopted an information management system, which allows collecting information on the environmental offenses applied and the criminal investigation processes delegated by the Public Ministry to IGAMAOT. IGAMAOT is also working on an IT Platform with the register of all national environmental administrative offenses, sanctioning and preventive measures, and court decisions, according to article 62° to 68° of the Law 50/2006 of 29 August (Framework Law on Environmental Offences).

Recommendation n. 3 - *“should encourage prosecutors and judges to play a more active role at EU level, in particular by joining the ENPE and the EUFJE,”*

Portuguese Comments and developments: The Public Prosecution Service is a member of ENPE since April 2019, taking part in its activities and disseminating the respective information and work documents, on a regular basis, internally and, where appropriate, externally. Additionally, the High Judicial Council in articulation with the following contacts with IGAMAOT and EUFJE decided, in February 2019, to inform directly the Judges of the Judicial Judiciary of the EUFJE registration form and statutes in order to, if they wish, personally, made their accession to the EUFJE.

Recommendation n. 4 – *"should enhance its training capacity to encompass a wide variety of practitioners involved in fighting environmental crime (such as law enforcement authority officers, prosecutors and judges)"*

Portuguese Comments and developments: In 2019, PSP organised two theoretical and practical courses (55 trainees) on Environmental Protection, in which also participated public attorneys and police officers from the National Police (Spain), Maritime Police (Portugal) and Federal Police (Brazil). PSP is also developing an informal cooperation of training and research with the University of Évora and the Project "Life Lines", for the protection of native wildlife. In addition, GNR/SEPNA has promoted several coordination meetings, inspection and training actions involving enforcement authority officers, prosecutors and judges in order to guarantee a more effective coordination in the fight against environmental crime.

With regard to the Judicial Police (PJ), this subject is included in the initial training – Trainee Inspectors' Course – as well as in training for Criminal Investigation Coordinators.

Similarly, given that the crime of "Pollution with Common Danger" falls within the investigative competence of the PJ, there is the need to implement training actions specifically targeted to the needs of professionals. Due to the constraints arising from the pandemic, these training actions have not yet been carried out over, these trainings will be promoted as soon as possible. To this end, contacts have already been made with IGAMAOT in order to establish a collaboration protocol in this area.

The High Judicial Council, over the last two years, has provided training actions, at the request of national and international entities, by the judicial magistrates, inviting them to participate in them. Since the publication of the last evaluation report, the Centre for Judicial Studies (CEJ) has provided specialized training on environmental issues, through its annual training plans. There were two training actions between 2019 and 2020 (Tutela of diffuse interests and Urbanism and the Environment) and one initiative is planned for 2020/2021 (Environment and Protection of Habitats).

In addition, IGAMAOT through protocols, consolidated the collaboration with PGR, including the protocol signed with IMPEL National Network. The IMPEL National Network includes other authorities, namely APA, 5 Commission of Coordination and Regional Development (CCDR), GNR and PSP. In 2021 is also predicted the integration of PJ.

Working sessions between the Prosecutor General's Office/Central Department of State Litigation and Collective and Diffuse Interests (PGR/DCCEIDC) and IGAMAOT, on waste and spatial planning have been agreed upon (suspended due to the pandemic), for knowledge sharing and technical discussion.

The Public Prosecution Service has impressed upon CEJ the importance and need of having training contents dedicated to environmental topics included in the initial and ongoing training of judges sitting in courts of law and of Public Prosecutors, so as to increase the ability to understand and to respond to environmental crimes, be it in the administrative offences field, be it in the criminal field.

In the context of the project "Waste Force - Waste Enforcement Forensics and Capacity Building"², IGAMAOT, as beneficiary, with CEJ and PGR, carried out a training, which aimed to boost the activities and capacities of the national authorities involved in combating illegal waste trade and management, including APA, 5 CCDR, AT, GNR, PSP, with international participants and trainers from IMPEL, ENPE and EUFJE.

In 2021 is predicted the promotion of a protocol with the objective to implement training actions between IGAMAOT and the Judiciary Police.

Recommendation n. 5 – *"should strengthen its capacity to fight environmental crime more effectively by establishing a formal and permanent platform at national level for cooperation and for coordinating the work of the relevant authorities, including public prosecutors, and should enhance the exchange of information between the competent authorities,"*

Portuguese Comments and developments: Following recommendations by INTERPOL, resulting from a resolution taken at the INTERPOL Centennial Summit, in November 2014, in Monaco, GNR through SEPNA suggested the creation of a national structure called the National Environmental Security Taskforce (NEST) that aims to promote the articulation between the services and bodies with responsibilities in matters related to environmental crime and crime against nature, as well as to provide a forum for discussion on these matters in order to support the Government in the definition and evaluation of instruments to fight environmental crime.

² The WasteForce project is funded by the European Union's Internal Security Fund — Police (ISFP/2017/AG/ENV/821345)

This group envisages its organization based on an Executive Committee, providing in its composition several entities suggesting the GNR/SEPNA as coordinating entity whose capillarity and proximity to the sectorial entities is of great significance, bearing in mind that it is up to GNR to ensure compliance with the legal and regulatory provisions regarding the protection and conservation of nature and the environment, placing it in a unique position to assume such responsibilities. GNR expresses its readiness for the creation and coordination of NEST, considering that it can greatly benefit from all interinstitutional cooperation in the fight against environmental crimes.

At the level of the Ministry of the Environment, a Working Group was created with the purpose to specifically combat criminal and administrative offences related to Waste from Electric and Electronic Equipments (WEEE's), with the participation of several entities including the security forces.

In addition, we inform that the Public Prosecution Service is a member of IMPEL National Network, set up and operating under the auspices of IGAMAOT.

Recommendation n. 6 – *"is encouraged to invest in the focal point established by the GNR and to extend it to a platform supporting and stimulating a multidisciplinary approach towards environmental crime, and to make the focal point a more active partner at international level (e.g. at Interpol, Europol and EU level),"*

Portuguese Comments and developments: As a National Contact Point for environmental crime, GNR will continue to play an important role in the coordination of EMPACT activities during the next cycle and will maintain its action of coordination and organization of international operations aimed at combating environmental crime.

Recommendation n. 7 - *“should establish multiannual programmes/plans setting out a clear and realistic approach to be taken by the law enforcement authorities and environmental agencies fighting environmental crime, and to issue annual reports on enforcement at national level,”*

Portuguese Comments and developments: IGAMAOT, APA and 5 CCDR established annually National Plans for Environmental Inspection and Monitoring - PNFIA, which in terms of inspection (IGAMAOT) includes the priorities defined on environmental crime. Environmental inspections from IGAMAOT cover environmental legislation, the selection of targets is carried out based on risk analyses, and include participation in programs and projects to prevent and combat environmental crime, also across borders, namely the EMPACT and IMPEL - Transfrontiers Shipments of Waste (TFS and SWEAP) operational actions.

In addition, a close relationship with the Public Ministry was promoted, within the scope of Protocols signed between IGAMAOT and the Prosecutor General's Office, in matters related to criminal investigation and administrative offenses.

The Prosecutor General's Office, following the publication of Law No 55/2020 of 27 August 2020, which «Defines the aims, priorities and criminal policy guidelines for the biennium 2020-2022, in compliance with Law No 17/2006 of 23 May 2006, which approves the Criminal Policy Framework Law», as well as of previous self-binding instruments, issued Directive No. 1/2021 that drew a distinction between segments of environmental crime in conformity with national and international guidelines in order to foster better articulation with international fora and with national areas of action and inspection plans (PNFIA). This Directive is available at <https://www.ministeriopublico.pt/iframe/diretivas>, highlighting the point "P) Forest fire crime and crimes against the environment and trafficking in protected species.”

GNR/SEPNA as environmental police, with powers to monitor, supervise, report and investigate all breaches of legislation aimed at protecting nature, the environment and the natural heritage, throughout the national territory, in addition to routine monitoring and investigation actions, has a number of thematic operations relating to the environment and nature conservation planned in order to address the most problematic spectrum of illicit environmental offences. Similarly, PSP performs, on its own or in collaboration with the administrative authorities, national, regional and local operations and inspections in areas such as waste, polluting emissions or protected species.

Recommendation n. 8 – *“is recommended to work on guidelines clarifying the existing legislation applicable for fighting environmental crime, focusing on the terms used therein, such as 'substantial damage', or 'organised crime', for easy use by the law enforcement authorities and environmental agencies,”*

Portuguese Comments and developments: As already mentioned in the Report, Article 279(6) of the CP covers the densification of what is the ‘substantial damage’ and Article 299(5), the meaning of ‘criminal association’. However, in the area of environmental crime and clarification of the concepts of the existing law, there is no single aggregating instrument, with clarifications of the particularly applicable legislation, the truth is that there are a number of guiding instruments, in particular case law.

Thus, within the framework of the case-law, the judgment of the Oporto Court of Appeal of 9 April 2014 expressly refers to the substantial damage: “(...) damage must be "substantial" (within the concept defined by the law itself), in such a way that they can be reflected either on collective or individual rights, affecting social well-being in substance.”; “As a crime of concrete danger other than a crime of common danger, it is sufficient to fill in such elements merely to endanger the legal assets mentioned therein, regardless of the occurrence of a danger situation for an undifferentiated and indeterminate number of objects of action sustained by legal property”.

With regard to the concept of “criminal association”, the jurisprudence is relatively extensive, standing out, as examples:

- Judgment of the Coimbra Court of Appeal of 27 November 2013: “The crime of criminal association requires the congregation of three essential elements: an organisational element, an element of associative stability and an element of criminal purpose;
It is consummated with the founding of the association for the purpose of committing crimes, or – in relation to non-founding associates – with subsequent accession, the agent being punished independently of the crimes committed by the associates and in royal competition with them.’

- Judgment of the Court of Appeal in Évora of 11 October 2016: ‘For the existence of the crime of criminal association (...), there must be a plurality of individuals, with the minimum organizational structure and with a common sense of attachment of its members to any process of formation of the collective will; I MEAN, I’LL GO. Thus, this crime occurs when two or more people decided to create a permanent, organised and stable structure with a view to committing themselves to crime (...), and the existence of any process of formation of collective will; ...’
- Judgment of the Court of Appeal of Coimbra of 14 December 2017: “I – Crime of criminal association requires the congregation to: an organizational element; an element of associative stability, and an element of criminal purpose II – depending on what the association is to: last in time (even if not determined in order to achieve its criminal end); have a minimum organizational structure that gives a certain stability; to highlight a process of formation of collective will; to show a common sense of connection to an autonomous reality. III – There is a group of people who come together to commit various crimes against the heritage, who plan and execute them in a given period of time, but where there is neither a leader nor a command structure and a process of formation of the collective will we are facing a gang”.

Beside this, as already mentioned, work is ongoing on the definition of a technical-scientific methodology for differentiation of substantial damage that could allow to distinguish between administrative offences and environmental crimes concerning pollution of water resources. These guiding documents could be used by environmental authorities, namely at the moment when an infringement is noticed.

Recommendation n. 9 – *“is encouraged to improve IGAMAOT's inspection efficiency by strengthening the human resources earmarked for that purpose,”*

Portuguese Comments and developments: For the performance of inspection actions, IGAMAOT reinforced its human resources, with Senior Officers and Inspectors, through: (inter)career mobility and opening of internal recruitment procedures.

Recommendation n. 10 – *"should consider designating specialised prosecutors and facilitating their work by establishing a network for the exchange of knowledge and experience."*

Portuguese Comments and developments: The Prosecutor General's Office, following the publication of Law No 55/2020 of 27 August 2020 which «Defines the aims, priorities and criminal policy guidelines for the biennium 2020-2022, in compliance with Law No 17/2006 of 23 May 2006, which approves the Criminal Policy Framework Law», as well as of previous self-binding instruments, issued Directive 1/2021, with a view to a concentrated distribution of criminal investigations to certain magistrates, in order to promote the specialization of knowledge, the interlocution with supervisory bodies and the creation of a national network of prosecutors in environmental crime, as is clear from point P) ii of the Directive, already mentioned in the response to Recommendation 7.
