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NOTE

From: Luxembourg delegation
To: Delegations

Subject: Eighth Round of Mutual Evaluations - 'The practical implementation and operation of European policies on preventing and combating environmental crime'
Follow-up to the report on Luxembourg

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 with regard to the recommendations given to it.

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

Delegations will find in the Annex the follow-up report on Luxembourg regarding the recommendations that were made in the report contained in 7947/1/19 REV 1 for the Eighth Round of Mutual Evaluations.

**EIGHTH ROUND OF MUTUAL EVALUATIONS ON THE PRACTICAL IMPLEMENTATION AND
OPERATION OF EUROPEAN POLICIES ON PREVENTING AND COMBATING ENVIRONMENTAL
CRIME**

Follow-up report on the recommendations given to Luxembourg

In the context of the eighth round of mutual evaluations on the practical implementation and operation of European policies on preventing and combating environmental crime, Luxembourg was evaluated in the same way as all the other EU Member States. The evaluation report on Luxembourg (7947/1/19) was adopted at the LEWP/COPEN Working Party meeting on 27 May 2019. In accordance with the mutual evaluation procedure (15538/4/15), this note constitutes the follow-up report on the recommendations given to Luxembourg as contained in the above evaluation report.

Recommendation 1

‘As a priority, develop the forces responsible for investigation, detection and law enforcement in relation to environmental crime, including waste crime, by significantly increasing the human resources allocated to this area at both Environment Agency level and police level. Increasing human resources will make it possible to adjust the frequency and nature of checks and investigations.’

Luxembourg agrees with the evaluation team on the importance of checks and investigations as tools to prevent and combat environmental crime, and on the observation that increasing human resources is an appropriate means of developing those tools.

Accordingly, since the evaluation team visited Luxembourg, the number of staff in the Checks and Inspections Unit of the Environment Agency has increased by 75%. This considerable increase in staffing levels and the specific know-how acquired by the staff through their professional experience has allowed the Checks and Inspections Unit to improve the effectiveness of its checks and investigations.

Luxembourg also undertakes to regularly assess any need for additional recruitments.

Recommendation 2

‘Ensure an appropriate level of specialisation in the very technical and complex field of environmental crime, including waste crime, to strengthen the capacity of the specialised officers already working in the Checks and Inspections Unit.’

Luxembourg agrees that officers working in the Checks and Inspections Unit must have an appropriate level of specialisation in the field of environmental crime in order to be able to carry out their tasks. To that end, the officers concerned undergo general training provided by the National Institute for Public Administration as soon as they take up their duties. Similarly, officers regularly take part in continuous training throughout their career with the aim of providing them with the necessary scientific knowledge or updating such knowledge.

It should also be noted that police officers in the Criminal Investigation Department must undergo special professional training in the investigation and detection of offences and in the criminal provisions of the respective laws.

Luxembourg undertakes to regularly assess any training needs and, if necessary, to adapt the training programmes in consultation with all the relevant stakeholders.

It also notes with interest that Article 17 of the proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC provides for the strengthening of training activities throughout the law enforcement chain.

Recommendation 3

'Ensure specialised and continuous training of all parties involved in combating environmental crime, including waste crime, whether at the level of the administrative, police, customs or judicial authorities.'

As is the case for officers working in the Checks and Inspections Unit, all civil servants working for the State of Luxembourg, as soon as they take up their duties, undergo training designed to prepare them as effectively as possible for their future duties. In addition, all civil servants are offered continuous training throughout their career.

It should be noted that officers involved in combating environmental crime also take part in specialised training abroad, organised in particular by the authorities of neighbouring countries.

Luxembourg undertakes to regularly assess any training needs and, if necessary, to adapt the training programmes in consultation with all the relevant stakeholders.

It also notes with interest that Article 17 of the proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC provides for the strengthening of training activities throughout the law enforcement chain.

Recommendation 4

'Establish a form of regular, formalised and structured cooperation between all parties working in the area of environmental crime, including waste crime.'

Luxembourg would point out that cooperation and exchanges of information already exist between the various services involved at national level in the field of environmental crime and that this cooperation has often been successful in the past.

Luxembourg takes note of the recommendation and undertakes to explore the possibility of establishing regular, formalised and structured cooperation between all parties concerned in the field of environmental crime.

It also notes with interest that Article 19 of the proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC requires the establishment of coordination and cooperation at strategic and operational levels between all competent authorities involved in preventing and combating environmental crime.

Recommendation 5

‘Establish national contact points within all the competent authorities in the area of environmental crime in order to improve the exchange of information at international level and in particular put in place an effective system for exchanging information with other countries by creating official national contact points (SPOC).’

Luxembourg takes note of this recommendation, which would further improve the flow of information and reduce the risk of loss of important information at international level. In that respect, it should be noted that an officer in the Checks and Inspections Unit is the national Waste and TFS contact point in the IMPEL network (*European Union Network for the Implementation and Enforcement of Environmental Law*).

Recommendation 6

‘Ensure active participation of the Luxembourg police and judicial authorities in international cooperation on environmental crime, including waste crime, by taking part in the activities of European and international bodies and networks in this area.’

Luxembourg takes note of this recommendation and undertakes to explore the possibility of increasing the active participation of its police and judicial authorities in international cooperation on environmental crime.

In that regard, it would also point out that an officer of the Grand-Ducal Police has applied for a position as a contact point for CEPOL (European Union Agency for Law Enforcement Training) in environmental matters. Officers of the Grand-Ducal Police, in collaboration with the Environment Agency, cooperate with their colleagues in neighbouring countries to carry out roadside checks on the national and international transportation of waste and hazardous materials.

Recommendation 7

‘Develop an environmental crime strategy by means of an action plan or similar strategy document setting out the political priorities and the roles of all the authorities involved in combating this type of crime.’

Luxembourg takes note of this recommendation and undertakes to explore the possibility of drawing up such an action plan or similar strategy document.

It also notes with interest that Article 20 of the proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC provides that Member States should establish, publish and implement a national strategy on combating environmental criminal offences.

Recommendation 8

‘Develop the capacity for risk assessment and a proactive approach to combating environmental crime, including waste crime, this often being a hidden form of crime.’

Luxembourg is aware that the development of a risk assessment capacity and a proactive approach are very effective working methods in combating environmental crime. Due to the recent creation (in 2016) of the Checks and Inspections Unit and the need to ensure that staff are adequately trained staff as a first step, these working methods have not yet been fully developed.

Recommendation 9

‘Further develop checks in relation to dangerous materials (waste and non-waste) and, to that end, do more work on the basis of risk assessments and on monitoring waste flows.’

Luxembourg would point out that the increase in the number of staff in the Checks and Inspections Unit has enabled it to gradually increase the number of checks, including on hazardous materials.

Recommendation 10

‘Examine and develop possibilities for collaboration with the private sector and national NGOs.’

Luxembourg takes the view that collaboration with the private sector and national NGOs is crucial, and undertakes to explore the possibility of establishing more formalised collaboration. It should also be noted that Article 49(2) of the amended Waste Management Law of 21 March 2012 explicitly entitles private individuals to ask the competent authorities to apply administrative measures.

Recommendation 11

‘Create a shared database with statistics on environmental crime, including waste crime, which is centralised at national level, so as to be able to manage and analyse statistical data from all the authorities operating in this field.’

Luxembourg recognises the benefits of such a database and notes with interest that Article 21 of the proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC provides that Member States should collect, publish and transmit certain statistical data relevant to the field of environmental crime with a view to monitoring the effectiveness of their systems to combat such crime.

Recommendation 12

‘Develop, in Luxembourg, databases containing all the information relating to the production, transport and destination of waste.’

Luxembourg recognises the benefits of such a database and notes with interest that Article 21 of the proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC provides that Member States should collect, publish and transmit certain statistical data relevant to the field of environmental crime with a view to monitoring the effectiveness of their systems to combat such crime.

Recommendation 13

‘Strengthen the system of penalties for environmental offences as regards the maximum criminal penalties and the maximum amounts to be paid in the case of fines or administrative penalties, as these penalties are currently considered to be inadequate and therefore not a sufficient deterrent.’

Luxembourg agrees with the evaluation team that the systems of penalties for environmental offences must be strengthened. Partly in response to the evaluation report, tougher prison sentences and criminal sanctions are gradually being introduced into the environmental legislation.

The draft law amending the amended Waste Management Law of 21 March 2012, which transposes Directive (EU) 2018/851, thus provides for an increase in the financial penalties and prison sentences that can be imposed. The maximum amount of a first-degree fine rises from EUR 250 to EUR 1 000 and a second-degree fine from EUR 100 000 to EUR 750 000. The maximum term of imprisonment is increased from six months to three years. Similarly, like other environmental legislation, this draft law provides for administrative sanctions, an instrument mainly to sanction breaches of administrative obligations such as failure to draw up plans or submit reports.

Recommendation 14

‘Establish a legal catalogue of specific aggravating and attenuating circumstances, legal criteria for determining the severity of waste crimes, and sentencing guidelines or guidance with regard to environmental crime.’

Luxembourg undertakes to explore the possibility of implementing this recommendation and also notes with interest that Articles 8 and 9 of the proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC provide for aggravating and mitigating circumstances to be taken into account when applying sanctions.

Recommendation 15

‘Simplify recourse to special investigative techniques, which are essential in combating waste crime and which could be used if custodial criminal penalties were higher.’

The increase in penalties provided for by the draft law amending the amended Waste Management Law of 21 March 2012, as referred to under recommendation 13 above, will allow for the use of special investigative techniques. Those special investigative techniques are as follows:

- systematic observation (Article 48-13 of the Code of Criminal Procedure);
- identifying the call data of telecommunications devices from which or to which calls are or have been made or locating the origin or destination of telecommunications (Article 67-1 of the Code of Criminal Procedure);
- infiltration (Article 48-17 of the Code of Criminal Procedure);
- special surveillance measures (Article 88-2 of the Code of Criminal Procedure);
- the obligation of a credit institution to provide information at the request of the investigating judge (Articles 66-2 and 66-3 of the Code of Criminal Procedure);
- the collection of human cells under physical restraint (generation of a DNA profile) (Articles 40 and 48-5 of the Code of Criminal Procedure).