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- Report on Ireland

Delegations will find attached the declassified version of the above document.

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- Report on Ireland

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**EVALUATION REPORT ON THE
EIGHT ROUND OF MUTUAL EVALUATIONS
'Practical implementation and operation of European policies on
preventing and combating Environmental Crime'**

REPORT ON IRELAND

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1. EXECUTIVE SUMMARY

The visit was well prepared by the Irish authorities and included meetings with the relevant stakeholders with responsibilities in the field of preventing and combating environmental crime as well as in the implementation and operation of European policies (e.g. The Department of Justice and Equality, the Department of Communications, Climate Action and Environment, An Garda Síochána, the National Waste Enforcement Steering Committee, the Environmental Protection Agency, the Waste Enforcement Regional Lead Authorities, the National Trans-frontier Shipments Office and other competent bodies).

In the course of the evaluation, the Irish authorities did their utmost to provide the evaluation team with information and clarifications on the legal and operational aspects of preventing and combating environmental crime, cross-border cooperation and cooperation with EU agencies.

Ireland is in the process of building up a robust system to protect the environment. While there is no single document establishing a comprehensive policy in respect of the protection of the environment, there are multiple policies in place comprehensively setting out the environmental policies to be pursued with respect to individual environmental aspects. Environmental regulators in Ireland are responsible for in excess of 500 environmental protection functions contained within 100 pieces of legislation, with the principal law being the Waste Management Act, 1996. Ireland launched its national waste management policy '*A Resource Opportunity*' in July 2012. It sets out a number of actions to be undertaken by 2020. Although the policy was meant to be subject to a mid-term review in 2016, the full review has not yet been completed. The Irish authorities expect that the finalisation of the EU Waste Package will provide a timely opportunity for an evaluation of “*A Resource Opportunity*”.

Many government departments, authorities and agencies have a statutory role in terms of environmental protection in Ireland. At central level, the Department of Communications, Climate Action and Environment is responsible for developing and maintaining the policies and legislative framework under which the regulatory bodies operate. As a result of the establishment of the three Waste Enforcement Regional Lead Authorities (WERLAs) and the National Waste Enforcement Steering Committee (NWESC), cooperation between the law enforcement authorities seems to be smooth and efficient. The NWESC in particular helps to guarantee a certain consistency in the approach to waste enforcement, ensuring intelligence-led and coordinated multi-agency enforcement and delivering efficiency gains in terms of getting the most out of the available funding. The multi-agency approach allowing for an informal exchange of views and knowledge is a clear example of best practice.

Significant responsibilities for environmental protection are vested in the Environmental Protection Agency (EPA) and 31 local authorities. Responsibility for the administration and enforcement of transfrontier shipments of waste lies with the the National Transfrontier Waste Shipment Office (NTFSO) within Dublin City Council (DCC) as the national competent authority. The NTFSO is a highly professional agency dedicated to combating illegal shipments of waste. However, the fact that it has only ten inspectors means that it may not have sufficient staff to fulfil its tasks.

Within the Office of the Director of Public Prosecutions (DPP) there is a unit dedicated to combating serious crime, including waste crime. No such structure has been developed within An Garda Síochána. There are no specialised courts for the adjudication of waste offences, nor are there any specialist judges.

The commitment of the Irish Government to supporting the enforcement of environmental regulation in Ireland has been demonstrated through continued investment in the network of local authority waste enforcement officers, increased resources for the EPA and the further development of the WERLA.

Multi-agency operations that have been facilitated through the National Waste Enforcement Steering Committee under the direction of the Department of Communications, Climate Action and Environment have secured several important environmental and criminal outcomes already. This approach has had tangible results for the various regulatory bodies in terms of identifying, stopping and prosecuting non-compliant activities in the waste sector. Multi-agency waste enforcement operations have resulted in the cessation of very significant illegal waste activities with corresponding environmental benefits on identified sites across the country.

Environmental legislation distinguishes between minor breaches which are recognised as summary offences (District Courts) and serious violations categorised as indictable offences prosecuted in Circuit Courts and higher courts. Although the notion of seriousness differentiates serious cases from minor ones and determines the competence of the relevant authorities, the aspects of seriousness are not clearly defined. Therefore it is likely that it may be differently applied by different bodies tasked with the prosecution of waste crime.

The investigation of serious waste crime offences is conducted by An Garda Síochána, the EPA, the WERLAs, local authorities and the NTFSO. The DPP is responsible for prosecutions of crimes that are considered serious by the referring authorities or are refused jurisdiction by the lower Courts.

The local authorities, the EPA and the NTFSO are responsible for criminal investigations in cases involving alleged waste crime. In the course of their investigations they may request the assistance of An Garda Síochána to assist them in exercising their powers. Cooperation between LEAs is effected via WERLAs and the National Waste Enforcement Steering Committee. The multi-agency approach has many strengths, e.g. the coordination of concerted efforts leading to successful prosecutions.

Protection of the environment is monitored on the basis of administrative and criminal sanctions. The Waste Management Act, 1996 provides for rules governing cases where an infringement should be classified as an offence. The administrative system of environmental protection is carefully aligned and adapted. However, as regards means of criminal protection there is an overlap of competences and gaps between the authorities.

Furthermore, cooperation between the stakeholders responsible for the enforcement of environmental law could be enhanced. By way of example, the NTF SO could establish closer cooperation with An Garda Síochána, including joint training and the exchange of information. This is particularly important since there is no single unit - nor any specialised investigators within An Garda Síochána - entirely dedicated to dealing with environmental crime. Cooperation between Law Enforcement Authorities (LEAs) and the judiciary is complex. As a result of the independence of the judiciary, there is no cooperation between judges and LEAs on the one hand and prosecutors on the other.

Statistics on waste crime could be better compiled at central level. Instead, such statistics are maintained by each individual authority responsible for combating waste crime. The reported statistics show the number of prosecutions, but do not contain any information regarding the number of investigations that were closed down or the number of convictions. In the opinion of the evaluators, it is crucial to compile relevant information at central level gathered from all the authorities involved in the prevention of and fight against waste crime in order to monitor the efficiency of the application of the existing law by the Law Enforcement Authorities (LEAs). It is therefore not easy to assess the efficiency of measures to combat waste crime in Ireland.

The EPA and the local authorities apply the 'polluter pays' principle, which is a useful tool for the prevention of environmental crime and the protection of the environment, especially in terms of the management of hazardous waste. It ensures that Ireland is economically protected from the consequences of environmental damage and guarantees that polluters compensate for any environmental damage caused.

Successful investigation and prosecution require specialised expertise and a detailed knowledge of waste legislation and the *modi operandi* of waste crime. One obstacle noted in Ireland is the way in which knowledge is spread out among LEAs and the judiciary. Judges and prosecutors are given little training in environmental crime. Even though both professions are trained in general criminal matters, environmental criminal law constitutes a complex legal discipline. Specialist training is therefore required for representatives of the judiciary, or at least for those handling cases involving waste crime. This seems to be even more important for the DPP and higher courts which deal with the most serious waste offences.

Cooperation with the private sector works well through the Industry Contact Group (ICG), with a direct channel to the National Waste Enforcement Steering Committee. Furthermore, there are numerous prevention campaigns and policies aimed at the effective prevention, detection and prosecution of waste crime. Prevention campaigns are organised within the broader framework of protection of the environment and education in the area of waste management. In the evaluators' view, education and prevention programmes targeted at society and industry may be regarded as an example of best practice.

Taking all factors into account, the evaluation team found in the Irish system many examples of best practices to be shared with the other Member States. Although the legislation seems to be dispersed due to the high number of legal acts addressing this issue, it is designed to protect the country from environmental crime. The prioritisation of environmental protection is achieved *inter alia* through significant efforts made by the Irish authorities to combat environmental crime and violations. The process could also be facilitated if more human resources were allocated for that purpose. Nevertheless, the overall opinion of the evaluators is positive due to the current structure of highly specialised bodies and staff dedicated to protecting the environment from environmental crime.

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2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997¹, a mechanism had been 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 which are 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 the 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 the relevant EU agencies.

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives² (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 law³ (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 waste⁴ (entry into force 12 July 2007) are particularly relevant in this context.

Following the decision made 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.

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

² OJ L 312, 22.11.2008, p. 3.

³ OJ L 328, 6.12.2008, p. 31.

⁴ OJ L 190, 12.07.2006, p. 1.

Furthermore, Directive 2008/98/EC requires that Member States draw up 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, defining targets and policies, and aiming to decouple economic growth from the environmental impact of waste generation.

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

Moreover, the Council Conclusions on Countering Environmental Crime of 8 December 2016⁵ 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 enhanced dialogue and cooperation with relevant international organisations. The Council Conclusions of 18 May 2017⁶ on setting the EU's priorities for the fight against organised and serious international crime between 2018 and 2021 also identified the fight against environmental crime as one of the EU's priorities.

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

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

⁶ 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. Ireland was the third 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, nominated by the Member States, was 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 to take part as observers.

The experts charged with undertaking the evaluation of Ireland were Mr Freddy Agerskov (Denmark), Mr Christian Tourniè (France) and Ms Kristina Persson (Sweden). The observers were also present: Ms Giovanna Giglio together with Mr Sławomir Buczma from the General Secretariat of the Council. The European Commission, Eurojust and Europol were not represented.

This report has been prepared by the team of experts with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Ireland between 25 and 27 October 2017, and on Ireland'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 on combating environmental crime

Environmental regulators in Ireland are responsible for in excess of 500 environmental protection functions contained within some 100 pieces of legislation. Moreover, many government departments, authorities and agencies have a statutory role in protecting the environment in Ireland, although significant responsibilities for environmental protection are vested in the Environmental Protection Agency (EPA) and 31 local authorities.

On 25 July 2012, the Minister for the Environment launched the Government's new waste management policy, entitled '*A Resource Opportunity*'⁷. The policy document sets out a number of actions, including:

- Maintaining the existing side-by-side competition model within the household waste collection market, but introducing a new regulatory regime in order to keep costs down for the consumer.
- A move away from landfill towards its virtual elimination and replacement through prevention, reuse, recycling and recovery.
- Holding householders responsible for proving that they use an authorised waste collection service or manage their waste in an environmentally acceptable manner.
- New service standards to ensure that consumers receive higher customer service standards from their operator. Charging structures will be more transparent and consumers will be able to compare costs and switch operators with ease.
- Establishment of a team of Waste Enforcement Officers for cases relating to serious criminal activity.
- The Producer Responsibility Initiative model will be examined as part of the Review of Producer Responsibility to ensure that industry and businesses meet their obligations as producers of waste.
- Significant reduction of Planning Regions from ten to three, allowing for greater efficiency in the delivery of planning while still recognising geographical variations.

⁷ <http://www.dcae.gov.ie/en-ie/environment/publications/Documents/46/A%20Resource%20Opportunity-%20Waste%20Management%20Policy%20in%20Ireland.compressed.pdf>

Each year local authorities draw up enforcement plans to allocate resources where they are most needed, based on the risk posed to the environment and what is deemed a priority at local or national level. Each year local authorities inform the EPA of their enforcement plans and their planned levels of activity, and subsequently submit data on completed activities alongside information on notable achievements and any discernible impacts. The EPA has designed a framework using this enforcement information, with the intention of assisting local authorities in implementing programmes of continual improvement in the area of environmental enforcement.

The National Waste Management Policy includes a commitment to carry out a review of the respective regulatory and enforcement roles of the EPA and local authorities, and a review group established for that purpose in 2013 identified the existing strengths and weaknesses in this area and made recommendations for the future. The group consisted of representatives of local authorities, the regional waste management offices, the EPA, the National Transfrontier Shipment Office (the NTFSO), the National Waste Collection Permit Office and An Garda Síochána.

The group recommended the establishment of three new regional lead authorities to drive improved performance and greater consistency in waste enforcement. The Department of Communications, Climate Action and Environment and the City and County Managers Association accepted the recommendations, and following an open and highly competitive bidding process, Cork County Council, Dublin City Council and Leitrim & Donegal County Councils (in a combined bid) were selected as the new Waste Enforcement Regional Lead Authorities for the Southern, Eastern and Midlands, and Connacht/Ulster Regions respectively.

The EPA Report *'Ireland Environment - An Assessment 2016'* constitutes the national evidence database regarding the condition of the natural environment and the challenges and opportunities associated with its protection and management. It charts both the successes and failures of the national environmental policy and is a critical resource for the State in planning for the next quarter of a century. This report is the latest in the EPA State of the Environment series, which is published every four years. The report outlines on a strategic level the current state of Ireland's environment. It provides an update on the environmental challenges that we face both nationally and globally.

The report adds to the range of thematic and research reports available from the EPA that cover many of the issues reported on in further detail. To complement this report the EPA has developed the 'Ireland's Environment'⁸ section on the EPA website, which provides up-to-date online information including environmental indicator data.

The enforcement policy of the EPA's Office of Environmental Enforcement (OEE) sets out the policy framework that the OEE uses when enforcing environmental legislation. This legislation includes the Environmental Protection Agency Acts (EPA Acts), the Waste Management Acts (WMA Acts), the Local Government (Water Pollution) Acts and the Air Pollution Act. The purpose of this policy is to inform stakeholders of the factors that will be taken into account in determining appropriate enforcement responses to contraventions of environmental legislation, including whether prosecutions will be pursued. A full list of OEE publications is available on the EPA's website⁹.

3.2. National programmes/projects with regard to waste crime

Ireland has a well-developed system of environmental legislation, much of which is based on EU directives. Environmental legislation is principally administered and enforced by the EPA, regional/local authorities throughout Ireland and Waste Enforcement Regional Lead Authorities (WERLAs).

The key pieces of environmental legislation are: Environmental Protection Agency Act (1992), Protection of the Environment Act (2003), Waste Management Acts (1996 to 2011), Air Pollution Acts (1987 and 2011), European Communities (Environmental Liability) Regulations (2008 – 2011) (Environmental Liability Regulations), COMAH - European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations (2000 – 2006), Local Government (Water Pollution) Acts (1977 – 1990), Water Services Acts (2007 – 2012), Dangerous Substances Acts (1972 – 1979), Fisheries (Consolidation) Acts (1959 – 2003).

⁸ <http://www.epa.ie/irelandsenvironment/>

⁹ <http://www.epa.ie/pubs/reports/enforcement/>

Primary legislation forms the framework, with regulations issued by the Minister under the legislation setting out the detail of the regulatory requirements. The legislation and main regulations are listed on the Irish Statute Book website¹⁰.

In responding to the challenges presented by waste crime, Ireland has reviewed the following areas:

- The structures in place to deal with deposits of illegal waste - this stemmed from the creation of the Office of Environmental Enforcement (OEE) and the establishment of an Enforcement Network, as well as the consolidation of the system for administering transboundary shipments of waste from 35 competent authorities to just one. Given the dispersal of responsibilities amongst different local authorities, the Department of Communications, Climate Action and Environment has underpinned the identification and systematisation of best practice in fixing new policy directions and the EPA in developing practice and methodological guidance.
- How the resources provided by the competent authorities (special funding) were allocated, and how an additional 120 waste enforcement officers were employed.
- How enforcement was organised, and the need to up-skill or train waste enforcement officers using the Recommended Minimum Criteria for Environmental Inspections (RMCEI) approach.
- How to achieve consistent waste enforcement policies - through a policy direction and a code of practice. Circular WIR: 04/05 - Policy guidance issued under section 60 of the Waste Management Act, 1996 - encourages an intensification of action against illegal waste activity (which includes the unauthorised disposal of waste, such as the abandonment, dumping or uncontrolled disposal of waste) and lays down guiding principles for dealing with illegal waste activity in order to ensure the protection of the environment and human health. Where illegal deposits are discovered, this policy direction sets the standard in terms of the response expected from the regulatory authorities - the EPA and the local authorities, - who are obliged to ensure that the necessary remedial measures will be taken to ensure that sites are restored and that waste illegally deposited on them is appropriately disposed of or recovered. Certain sites such as wetlands are to be remediated at all times, and the regulatory authorities are to pursue illegal holders of waste in accordance with the maximum potential sanctions available under the law in order to maximise the deterrent factor and aim to eliminate the economic benefit deriving from such illegal activity.

¹⁰ www.irishstatutebook.ie

- How to secure better outcomes through the use of sanctions, and also how to interact with the constitutionally independent Irish court service with a view to more effective use of the courts.
- How to ensure a coherent approach to determining the environmental risks associated with illegal waste sites with a view to site remediation - this has led to the publication of a code of practice by the EPA on its website¹¹.
- How to secure the required results within a reasonable timescale, and how to deter unauthorised waste activities.
- Establishment of a National Waste Enforcement Steering Committee.
- Joint operations, including checkpoints conducted by personnel from the various enforcement agencies represented on the NWESC.
- Joint investigations, including taking part in International Letters of Rogatory (ILOR).
- An Garda Síochána developed a training course relating to investigative interviewing techniques, which was undertaken by WERLAs in October 2017. The course is also scheduled to be rolled out again to facilitate the upskilling and training of additional Authorised Officers working in the field of investigating environmental Crime.
- Participation since 2016 in the 5 Agencies Waste Crime forum where knowledge, emerging issues and approaches to detection, prevention and general combatting of waste crime area.
- Participation in the 5 Agencies Waste Crime Analysts forum.

In order to enforce environmental legislation, the EPA and local authorities cooperate with many bodies such as Government Departments, the National Bureau of Criminal Investigation within An Garda Síochána (the Irish Police Force), the Director of Public Prosecution and other public sector bodies also involved in enforcement activities. To enforce international legislation, Ireland's regulatory bodies work with environmental regulators in other jurisdictions, in particular the Northern Ireland Environment Agency (NIEA) with regard to cross-border issues. International best practice in enforcement is determined through participation in the IMPEL Network, the European Union's informal network of European environmental regulators.

¹¹ <http://www.epa.ie/waste/policy/cop/>

Furthermore, the National Waste Enforcement Steering Committee (NWESC) has been established at central level and is made up representatives of the Department of Communications, Climate Action and Environment, the EPA, three Waste Enforcement Regional Lead Authorities, An Garda Síochána, the NTFSO, the National Waste Collection Permit Office, the Office of the Revenue Commissioners, the Department of Social Protection and three Waste Management Planning Offices. The Department of Communications, Climate Action and Environment chairs the NWESC. The Committee coordinates and supports the work of the lead authorities while focusing on organised criminal activity in the area of waste.

3.3. Statistics

3.3.1. Main trends with regard to waste crime

All data retained by An Garda Síochána inclusive of statistical analysis figures and trends fall within the remit of the Central Statistics Office. Statistical analysis can be sought from the Garda Analysis Service, which compiles keyword-based results with particular relevance to environmental crime.

The table below contains information from the EPA and the local authorities concerning legal actions carried out over the past five years.

Prosecution Actions					
LA Waste Prosecutions	2012	2013	2014	2015	2016
Section 18 WMA ¹²	44	8	11	20	9
Section 55 WMA	69	37	41	66	70
Section 32 WMA	106	72	95	68	71
Section 34 WMA	36	26	26	20	20
Section 39 WMA	44	51	67	37	46
Section 57/58 WMA (injunctions)	0	2	2	1	0
DPP ¹³ files/indictments	1	0	0	1	0
Prosecutions for failure to pay FPN ¹⁴	Not recorded	Not recorded	Not recorded	Not recorded	15
Other	54	107	135	205	104

¹² WMA: Waste Management Act, 1996

¹³ DPP: Director of Public Prosecutions

¹⁴ FPN: Fixed Penalty Notice

EPA Waste Prosecutions	2	6	3	6	1
Total Waste Prosecution Actions Closed during reporting year	356	309	380	423	336
Total Prosecution Actions Closed during reporting year (waste, water/wastewater, agriculture, air [incl. odour/dust], noise)	477	423	412	541	364

Percentage of Waste Prosecution Actions Closed compared to Total Enforcement Actions Closed during reporting year	75%	73%	92%	78%	92%
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In 2013, the combined efforts of local authorities and the EPA yielded 309 waste prosecutions. There were in total (again, based on the combined efforts of the EPA and LAs) 423 environmental prosecutions completed in 2013, with waste therefore accounting for 73% of actions.

The National Transfrontier Shipment Office (NTFSO) has observed a consistent trend over recent years through investigations relating to incorrect classifications of 'green-listed' waste and notification procedures. The shipment of used vehicles and used electronic equipment has decreased significantly since 2014 due to economic factors in West African countries of destination. The number of administrative errors recorded in Annex VII waste shipment documentation has also reduced significantly since the introduction of 'monitoring fees' in April 2012.

3.3.2. Number of registered cases of waste crime

Waste crime statistics are not compiled centrally, but rather maintained separately by each stakeholder agency. In respect of An Garda Síochána, these statistics are recorded within the Garda's PULSE system under a specific category setting.

Enforcement action against illegal waste activity, including the unauthorised collection of waste and illegal dumping, is a matter for local authorities and the Office of Environmental Enforcement of the Environmental Protection Agency (EPA). Statistics in relation to the number of prosecutions undertaken are accessible through the Local Government Management Agency's (LGMA) series of service indicator annual reports available from the publications section of the LGMA's website¹⁵ and the enforcement section of the EPA's website¹⁶.

Judicial statistics in relation to convictions for environmental crimes are maintained by the Courts Service. The Office of the Director of Public Prosecutions publishes statistics relating to indictable prosecutions and some summary prosecutions for regulatory crimes, including environmental crimes, in the Office's annual reports¹⁷.

3.4. Domestic budget allocated to preventing and combating waste crime and support from EU funding

The role of the Department of Communications, Climate Action and Environment (DCCAE) is to provide the legislative and policy framework under which both local authority and EPA enforcement action against waste crime is initiated. The Department encourages a multifaceted approach to tackling the problem, incorporating enforcement, public awareness and education, and, as such, provides funding to support the activities of the Waste Enforcement Regional Lead Authorities (WERLAs) and the network of local authority waste enforcement officers. In this regard, under Ireland's national 2017 budget the following funding is allocated by the Department:

¹⁵ <http://www.lgma.ie/en/serviceindicators/2004to2013>

¹⁶ www.epa.ie/enforcement/prosecute

¹⁷ www.dppireland.ie

Purpose of Funding	Allocation Amount	Organisation
Support for the network of local authority waste enforcement officers	EUR 7.5 million	31 Local Authorities
Support for the Waste Enforcement Regional Lead Authority Offices	EUR 1 million	3 Waste Enforcement Regional Lead Authorities
Support for the Office of Environmental Enforcement (OEE)	EUR 2.22 million	Environmental Protection Agency

Ireland does not benefit from EU funding to tackle waste crime.

3.5. Prevention of waste crime

The effective prevention, detection and prosecution of waste crime is an increasingly complex and multi-agency area of criminal justice. The role of the Department of Communications, Climate Action and Environment is to provide a comprehensive environmental legislative and policy framework within which the relevant enforcement authorities operate. Much enforcement activity takes place at local authority level, with the support of the EPA, the Revenue Commissioners, An Garda Síochána and other bodies.

The Department of Communications, Climate Action and Environment (DCCAE) utilises the Environment Fund to support a range of prevention and recycling initiatives, including the National Waste Prevention Programme. Details of a number of key programmes delivered by the Environmental Protection Agency (National Waste Prevention Programme), the Local Authorities (Environmental Awareness Officers) and the Regional Waste Management Planning Offices (Education and Awareness Campaigns) are outlined below. Finally, the role of industry is addressed under the heading 'Producer Responsibility Organisations'.

National Waste Prevention Programme (2016 Report)¹⁸

- Active since 2004, the programme combines core projects with support for shorter-term initiatives to promote resource efficiency;
- Core projects include Green Business, Green Healthcare and Smart Farming, which provide customised advice to improve profitability and improve business resilience by reducing costly inputs and behaviour;
- Supports circular economy business networks such as the SMILE resource exchange facilitating the transfer of surplus materials between businesses and community networks such as the Community Reuse Network of Ireland, representing charity shops, mattress recyclers and other stakeholders in the reuse community;
- Funded by the Irish Government.

Environmental Awareness Officers

Environmental Awareness Officers (EAOs) are employed by local authorities and are a vital resource in the development, dissemination and implementation of environmental awareness programmes. EAOs work within the community through interaction with schools, workplaces, local groups and the wider population to promote environmental awareness by providing information and education through the provision of talks, presentations, workshops and environmental education materials.

EAOs are also key drivers of important national environmental schemes such as Green Schools, National Spring Clean, TidyTowns, Local Agenda 21 and Waste Management Plans at local level. With a large network of local contacts and relationships which they have established with schools and local communities, EAOs are a key resource for local authorities to drive forward improvements in their local environment and increase environmental awareness within their functional area.

¹⁸ <http://www.epa.ie/pubs/reports/waste/prevention/reports/nwppannualreport2016.html>

The DCCAE provides administrative and organisational support for meetings of the local authority EAO network. EAO network meetings allow EAOs to come together to share ideas and best practice. These meetings also provide an opportunity for DCCAE and the Environmental Protection Agency to bring new policy developments and initiatives to the attention of EAOs while also allowing EAOs the opportunity to raise issues of importance at local level with the DCCAE.

Education and Awareness Campaign

The DCCAE has announced that EUR 1.6 million has been allocated as part of Budget 2018 to support an ongoing waste awareness campaign to assist householders in managing their waste.

The Regional Waste Management Planning Offices commenced a programme of education and awareness in early 2017 funded by DCCAE with radio advertisements encouraging the use of the brown bin and focusing on food waste prevention. This was backed up by social media campaigns to further encourage the use of the brown bin for food and other biodegradable wastes and focusing on food waste prevention. This was backed up by social media campaigns to further encourage the use of the brown bin. Another campaign (which is on-going) focuses on informing the public on exactly what can go into the household recycling bin. A national list of items and materials that can be placed in the recycling bin has been developed to reduce contamination. A recycling ambassadors programme has also been developed to directly engage with 15,000 citizens on how to recycle correctly. These ambassadors will spread the word to family, friends and colleagues.

The DCCAE also undertook an awareness campaign to inform people about the phasing out of flat-rate fees in 2017. The campaign are being carried forward into 2018 and will continue to help householders reduce, reuse and recycle waste.

Producer Responsibility Organisations

The concept of Producer Responsibility incorporates several distinctive features considered to be important for waste prevention and reuse. The Producer Responsibility Initiative (PRI) aims to prevent environmental problems at source via the provision of incentives for changes at the design phase of a product's life.

In 2014 the DCCAE commissioned a wide-ranging review of the existing Producer Responsibility Initiatives (PRI) which are currently in operation in Ireland. The PRI review examined the potential for further measures to enhance the prevention and minimisation of PRI waste and to encourage preparations for the reuse of recovered PRI waste resources.

The framework for waste prevention and reuse in Ireland is provided by the National Waste Prevention Programme (NWPP) supported by the EPA, local authorities, PROs and others. As a significant share of PRI products are not manufactured in Ireland, the key focus to encourage waste prevention is to persuade Irish businesses and the public to use more environmentally friendly products where alternatives exist.

Methodology for assigning an enforcement category to waste licensed industry

The EPA's Office of Environmental Enforcement (OEE) has developed a methodology for assigning an enforcement category to waste and IPPC-licensed facilities. The development of the methodology commenced in 2005, and it has undergone a number of testing regimes and revisions since its inception. The concept of assigning enforcement categories to licensed facilities was the subject of a joint EPA/IBEC conference held in May 2006. The OEE took account of a number of valuable comments received both during and following that conference and in September 2006 undertook a pilot phase testing of the methodology with a number of IBEC-nominated licensees. The methodology was further revised following the pilot phase testing.

The methodology is based on international best practices and comprises five key elements:

- an assessment of the complexity of activities,
- the emissions from the site,
- the location of the site,
- its current environmental performance, and
- the sensitivity of the facility's receiving environment.

The assessment is completed by licensees on an annual basis and will enable licensed facilities to assess their enforcement category with a view to improving their environmental performance. Failure to do so will not allow the OEE to adequately categorise licensed facilities and may result in an increased enforcement effort and subsequent additional charging by the OEE. The OEE has put together a guidance document which details each of the steps involved and outlines the information required to satisfy each of the key attributes of the methodology.

The EPA uses a methodology for achieving compliance with legislation and therefore cooperates closely with licence holders and non-licence holders. Companies and non-companies are rated according to their status as regards compliance, and the following actions can be tailored to specific categories of companies:

Criminal (Hit them hard - Enforce) - **Chancer** (Enforce) – **Careless** (Educate) - Confused (Enable)
- **Compliant** (Engage) – **Champion** (Recognise and reward – Promote best practice)

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3.6. Conclusions

- Ireland launched its national waste management policy '*A Resource Opportunity*' in July 2012. The document identifies a number of actions to be carried out by 2020. In 2013 a group was established to complete the review of the respective regulatory and enforcement roles of the EPA and the local authorities. The review resulted in the setting up of three regional lead authorities – WERLAs - in 2015. While the policy was meant to be subject to a mid-term review in 2016, the full review has not been completed. The Irish authorities expect that the finalisation of the EU Waste Package will provide a timely opportunity for an evaluation of “A Resource Opportunity”.
- The policy statement sets out the national agreed approach to the management of waste in Ireland in an overall perspective, and not only in terms of combating waste crime. When it comes to combating such crime, the policy states that enforcement will focus in particular on handling serious criminal offenders, and that there is a need for a more intelligence-led and coordinated multi-agency enforcement, aimed at ensuring targeted, timely and effective enforcement outcomes. In addition, the policy refers to the establishment of a team of waste enforcement officers for deployment in cases relating to serious criminal activity that will be prioritised in consultation with An Garda Síochána. In the evaluators' view there seems to be every prospect of fulfilling those policies, taking into account the role of the National Waste Enforcement Steering Committee and the multi-agency approach in terms of cooperation.
- No statistics on waste crime are compiled at central level. Instead, such statistics are maintained by each individual authority involved in preventing and combating waste crime. The reported statistics indicate the number of prosecutions, but do not contain any information on the number of investigations that were closed down or the number of convictions. In the evaluators' view, it is crucial to have access to centrally compiled relevant information provided by all the authorities involved in preventing and combating waste crime in order to assess the efficiency of the implementation of the existing laws by the LEAs.

- There is a domestic budget allocated to preventing and combating waste crime. In 2017 it was mirrored in the existing structures of the authorities involved in the fight against environmental crime to support the work carried out by WERLAs, waste enforcement officers of local authorities and the EPA's Office of Environmental Enforcement (OEE).
- In Ireland there are extensive prevention campaigns and policies aimed at effective prevention, detection and prosecution of waste crime in the multi-agency and complex area of criminal justice. Prevention campaigns are organised in the wider spectrum of environmental protection and education in the area of waste management. Special mention should be made of the EPA's *Methodology for assigning an enforcement category to waste*, which refers to different categories and actions to be undertaken in order to achieve compliance with legislation and cooperation with licence holders and non-licence holders. In the evaluators' view, education and prevention programmes targeted at society and undertakings should be regarded as an example of best practice.

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4. NATIONAL STRUCTURES

4.1. Judiciary (prosecution and courts)

4.1.1. Internal structure

In general, the Irish criminal procedure reflects a clear division between the investigative and prosecutorial aspects of a case. The general procedure in relation to prosecutions is that An Garda Síochána conduct investigations and, upon completion of investigation, they submit a file to the Office of the DPP.

Non-minor criminal offences must be tried before a jury pursuant to Article 38.5 of the Constitution (there are exceptions). The cases which proceed on indictment tend to be offences which are viewed as non-minor and accordingly outside the jurisdiction of the District Court. In such cases the practice is that the Gardaí must consult with the DPP before charging a suspect. When a file is submitted to the DPP in relation to non-minor matters, the DPP will decide whether or not to prosecute. The DPP thus receives a file after the completion of the Garda investigation.

The key functions of prosecutors within the Office of the Director of Public Prosecutions are:

- To decide whether a prosecution should be brought;
- To determine what charges should be preferred on the basis of investigations by An Garda Síochána (the national police) and other investigative agencies;
- To direct and conduct the criminal prosecution process in individual cases.

In less serious cases (minor offences), the DPP has authorised the Gardaí to prosecute summarily without reference to the DPP. The Director receives files from the relevant investigatory authorities relating to environmental crime and issues directions as to prosecution. There are specialised investigating authorities in relation to certain particular categories of crime – such as the EPA in respect of offences under the Waste Management Acts. The DPP has no investigative function and no powers to direct the Garda Síochána or other agencies in their investigations.

The EPA deals with environmental regulation, and prosecutions for breaches of licences. Local authorities and the NTFSO deal with summary prosecutions for environmental crimes and have the ability to refer cases to the DPP if the alleged offence is of a serious nature. The DPP meets with representatives of the EPA as the need arises with a view to discussing issues arising from the investigation and prosecution of environmental crimes. Waste crime cases are dealt with by a specialised unit within the prosecution service.

Training and instructions have been provided to the EPA and to regulatory bodies in general both on a formal basis and in the context of communications between the Office and local authorities and/or the EPA concerning individual cases. Written advice has been provided to the EPA in respect of individual cases, and at the same time general guidelines concerning prosecutions and investigations have been issued by the Office of the DPP to regulatory agencies.

There are two types of trial in Ireland: summary trial and trial on indictment.

Minor offences can be tried summarily in the District Court before a judge sitting alone, without a jury. Such offences are liable up to a fine (EUR 5,000) on summary conviction and/or imprisonment for up to 12 months. There is a deadline for summary trials. Prosecution has to take place within six months of the date of the offence, or within 12 months of the date on which the authority first became aware of the offence.

Indictable offences that are non-minor (or more serious offences or where jurisdiction is refused by the lower Courts) are tried in higher courts, namely the Circuit Court, the Central Criminal Court and the Special Criminal Court. Indictable offences are generally tried before a judge and jury. The maximum fine on conviction on indictment for waste offences is EUR 15 million and/or up to ten years' imprisonment.

Section 5 of the European Communities (Amendment) Act 1993 provides for a two-year time-limit in respect of proceedings for offences under regulations introduced under the European Communities Act 1972. They would include, for instance, the European Communities (Waste Directive) Regulations 2011, and the Waste Management (Shipments of Waste) Regulations 2007.

Section 11 of the Waste Management Act 1996 deals with the time limit. Proceedings, in relation to summary offences, may be commenced within 12 months of the date of the offence, within six months of when someone returns to the State or within six months from the date that the prosecutor comes into possession of sufficient evidence to prosecute. The Environmental Protection Act 1992 has similar provisions in section 11, with an overall time limit of five years.

Prosecutions for environmental crime are not dealt with by a specialist court or specialised judges.

4.1.2. Capacity of and obstacles to the prosecution and sanctioning of waste crime

The Office of the Director of Public Prosecutions regularly reviews the procedures in place within the Office in relation to the prosecution of environmental crime.

Training in investigative interviewing techniques has been delivered to local authority personnel nominated by Waste Enforcement Regional Lead Authorities to level 1 standard in order to strengthen capacity to prosecute and sanction waste crimes. This is to be advanced to a level 2 grade in the months to come.

The following main challenges were experienced in Ireland with regard to the prosecution and sanctioning of domestic and cross-border cases concerning waste crime:

- Contributions relating to the ‘clean-up’ costs;
- Crossover operations with other agencies encounter difficulties in terms of the relevant powers and legal tools available to each organisation (e.g. inability to apply for evidential warrants);
- The Office of the DPP recognises the desirability of improving interagency cooperation and developing specialist training in this area.

4.2. Law enforcement authorities

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

Within An Garda Síochána there are various units solely designated for the combatting of serious crime. With respect to Environmental Crime, the National Bureau of Criminal Investigation who operate as part of ‘Special Crime Operations’, take on the role of point of contact relative to Environmental Crime for the organisation. The Bureau has assigned a Detective Superintendent and Detective Sergeant to the applicable portfolio. This unit provides investigative expertise, and the additional tools available to Police Forces (when investigating Serious and Organised Crime) such as search and arrest capabilities, detention and interviewing of suspects, technical examination of evidence, seizure of assets, etc.

The particular expertise relevant to Environmental Crime, such as site analysis, sampling of toxic material, environmental impact, site restoration, etc. are provided through the EPA, the local authorities or other third parties.

In the view of the Irish authorities, this approach has proved very successful over the past decade where An Garda Síochána have assisted or led serious investigations involving serious breaches of Waste Crime Legislation. This has resulted in achieving convictions, and substantial fines, against individuals & companies who have been found guilty of crime in this area.

The National Bureau of Criminal Investigation has consistently assisted / supported the EPA and differing County Councils and other agencies in the investigation of Waste Crime. This approach is evidenced by the example of the involvement of An Garda Síochána in the current investigation into a domestic waste collector in the north of the country, where local Gardaí (with expertise in investigating serious crime) are assisting the local authority with a matter that is deemed to be a very serious breach of the Waste Management Act.

From an Irish Perspective, the structures currently in operation whereby a multi-agency approach is adopted through the WERLA arrangements, is proving very successful in identifying issues and problems that can be dealt with through local co-operation. Multi Agency Checkpoints are used to target certain types of criminal activity including the illegal movement of waste, etc. Regional / Divisional Traffic units work closely other agencies to assist them to identify this illegal activity, or as a consequence increase public awareness of certain issues.

As Environmental Crime has recently been elevated onto the EMPACT Priorities it is now elevated in importance as far as enforcement is concerned. This type of crime has not featured under the Irish SOCTA assessment as it is not viewed as being utilised by serious and organised crime groups, in this country, as vehicle for their criminal activity. There are individual instances where serious issues arise and they are dealt with as outlined above. Separately, particular matters such as ‘End of Life Vehicles’ are a matter for concern, and they are then the target of a focused operation both Nationally and Internationally (if the problem extends beyond the borders).

From an Irish Perspective, while there have been serious incidents particularly relating to illegal dumping by individuals and companies, etc., the requirement for a full time “single unit - nor any specialised investigators within An Garda Síochána - entirely dedicated to dealing with environmental crime” is not deemed a necessity at this time. The agencies tasked with regulating these areas are dedicated, and very focused in their approach to this type of crime. The Department of Communications, Climate Action, and Environment are allocating additional funding in the current year to address certain issues, and are adopting new technology such as drone surveillance to support their efforts. An Garda Síochána are supporting the evolving crime area through the approaches outlined and at this time believe that is adequate given the demands on a service that is emerging from austerity.

By virtue of the 2005 Garda Síochána Act, the police, when they prosecute in their official capacity, must do so in the name of the Director of Public Prosecutions and must comply with both the DPP’s general directions and with any specific directions given in an individual case.

The DPP has no role in deciding on a day-to-day basis what priorities should be set in an investigation, e.g. as regards the allocation of resources or the relative priority to be accorded to different or competing investigations at any given time. In general, the DPP has no authority to order the initiation of an investigation. The DPP's role commences after most of the investigative work has been completed by the Gardaí (or other specialist agency) and after a file has been submitted to her Office for a direction on prosecution. However, where the DPP is aware of information relevant to an investigation and communicates this to the Gardaí with the suggestion that an investigation be launched, the Gardaí generally comply with the DPP's suggestion.

The Gardaí may seek legal advice from the DPP as to the legal implications or requirements of a specific investigative step. For example, the Office of the DPP could advise that specific proof is necessary in relation to a particular type of charge or offence, which may influence the Gardaí in their investigation. However, the Office of the DPP can only provide advice as sought and any legal advice given does not amount to a direction.

Investigative authorities cooperate by working on a multi-agency basis in the investigation of large-scale environmental crime. Examples include;

- Garda investigation into illegal waste disposal in relation to a site in Donegal;
- Garda investigation into illegal waste disposal in relation to a site in Kildare (offence occurred in 2008 and involved the extradition of the suspect in order to be charged).

The Garda National Bureau of Criminal Investigation (GNBCI) is Ireland's law enforcement point of contact and as such sits on the National Waste Enforcement Steering Committee. In conjunction with the latter, joint investigations are conducted with the EPA and local authorities.

4.2.2. Investigative techniques/tools

All tools available to An Garda Síochána are utilised on a case-by-case basis depending on the nature of the incident discovered/reported. As a modern police force, An Garda Síochána has the ability to deploy all investigative tools within its armoury to combat waste crime. These are supplemented by the deployment of specialist technical units and interviewers who in major cases augment the resources already available to local management.

4.2.3. Capacity of and obstacles to the successful investigation of waste crime

An Garda Síochána have a number of trained members based with the Dublin Traffic Unit who have specific training in the assessment of incidents involving environmental waste products.

The Criminal Assets Bureau (CAB) use 'Profilers' assigned to individual cases. The 'Follow the Money' initiative is among the investigative tools used. Allied to this are the Financial Investigation Unit (FIU), the Garda National Computer Crime Investigative Bureau (GNCCIB) and the Garda National Economic Crime Bureau (GNECB), all of which are available to be used in the investigation of waste crime.

The following main challenges were experienced in Ireland with regard to the successful investigation of domestic and cross-border cases on waste crime:

Domestic

In domestic cases the structures of multi-agency operations require a substantial effort in terms of coordinating all the stakeholders in the various agencies. The enforcement of waste legislation requires specialist expertise, a detailed knowledge of waste legislation and legal proceedings and a strong commitment to the task of protecting the environment through strong and effective enforcement; in that respect we are fortunate that significant expertise and experience has been developed within the local authority system. There are many waste enforcement officers who have regularly carried out dangerous operations and endured threats and intimidation, and who have consistently secured important enforcement prosecutions.

Cross-border

In cross-border cases, evidence and the use thereof necessitates a large volume of documentation. One practical example of this was in the misclassification of waste which passed through this jurisdiction resulting in difficulties with the administrative aspect of the sharing of evidence required in the separate States.

4.3. Other authorities/institutions

The Department of Communications, Climate Action and Environment (DCCAE)

The DCCAE provides the legislative and policy framework under which regulatory bodies operate. Waste policy has evolved in Ireland in recent years. A combination of clear government policy, a comprehensive legislative framework, the completion of waste management plans and the provision of enhanced enforcement structures has provided the basis for a radical modernisation of Ireland's waste infrastructure and services.

It also ensures that all of its policies are in line with EU and global obligations. These policies are of vital national strategic importance and play a major role in underpinning our national economic development. Since the areas for which the Department is responsible are, by their nature, undergoing substantial and rapid change, the Department is actively engaged in shaping and responding to that change in collaboration with its agencies, other government departments and its stakeholders.

The Minister for Communications, Climate Action and Environment

Under the Waste Management Act 1996 (WMA) as amended, the Minister for Communications, Climate Action and Environment is responsible for developing and maintaining policy and the legislative framework for waste management in Ireland. This framework must effectively reinforce the waste hierarchy.

Waste enforcement

Waste enforcement is exercised on the ground primarily by local authorities and the Environmental Protection Agency (EPA), and the Minister is precluded by law (Section 60(3) WMA) from exercising any power or control in relation to the performance by the EPA or a local authority of any of the functions conferred on them under that Act.

The primary objective of local authorities in terms of waste enforcement is to achieve regulatory compliance in relation to waste activities in the functional area covered by the specific local authority. This covers a wide range of roles, but can be grouped into the following categories:

(a) Regulatory enforcement

Undertaking inspections and taking appropriate measures to ensure compliance with relevant legislation. This includes the enforcement of regulations in relation to, for example: waste facilities; waste collection; end-of-life vehicles (ELVs); waste electrical and electronic equipment (WEEE); food waste; packaging; plastic bags; batteries and accumulators; registration of sewage sludge facilities; use of sewage sludge in agriculture; farm plastics; tyres and waste tyres; and the prohibition of waste disposal by burning.

(b) Address unauthorised waste activities

Enforce provisions of the WMA in relation to unauthorised waste activities. This encompasses a broad range of possible infringements of legislation, from individual householders or businesses not handling waste correctly to large-scale illegal deposits of waste. Sections 32, 34, 39, 55 and 56 of the WMA may be used to address these issues. However, as provided for in the Section 60 Policy adopted by each local authority in 2009, the higher courts may also be approached for this purpose.

(c) Historical landfills

This role is especially important in relation to dealing with landfills which were not properly licensed between 1977 and 1996 ('historical landfills'). Local authorities are obliged, in cooperation with the Department of Communications, Climate Action and Environment, to progress such sites to Certification stage by the EPA.

(d) Ensuring compliance by the local authorities themselves

A considerable amount of environmental work carried out by local authorities relates to waste management activities. The operation of bring-back centres, civic amenity sites and community composting schemes etc. has a highly beneficial role.

(e) Litter

There is a considerable overlap between enforcement of the Litter Act and of the Waste Management Act. For example, litter patrols are often the first to come upon other unauthorised waste activity.

(f) Complaints

Responding to complaints is a significant part of local authority waste enforcement activity.

It is a matter for each individual local authority in the first instance to deal with any instances of illegal disposal of waste in their area and to take the appropriate enforcement action. Local authorities have significant powers available to them under the WMA to enable them to tackle illegal waste activity, including, *inter alia*, the power to:

- Investigate complaints;
- Prosecute offences;
- Apply to the Courts for the imposition of fines;
- Enter and inspect premises at any time where there are reasonable grounds for believing that there is a risk of environmental pollution;
- Direct a holder of waste to dispose of it in a certain way and in a specific timeframe;
- Request the assistance of An Garda Síochána in the exercise of these powers;
- Monitor and inspect waste holding, recovery and disposal facilities.

Notwithstanding these very significant powers and responsibilities, in recent years there has been considerable centralisation of waste management functions previously discharged by individual local authorities. Waste management planning now takes place on a regional basis and has moved from ten to three regions in line with the ongoing programme of reform of local government. Local authorities' role in relation to the trans-frontier shipment of waste has been consolidated into the NTFISO Office. Similarly, the establishment of the National Waste Collection Permit Office (NWCPO) has significantly streamlined the collection permitting system from 34 authorities into a single entity. In this context Waste Enforcement Regional Lead Authorities (WERLAs) have been established to coordinate waste enforcement actions within regions, setting priorities and common objectives for waste enforcement, ensuring consistent enforcement of waste legislation across the three existing waste management planning regions while still leaving local authority personnel as first responders on the ground to specific breaches of waste legislation as outlined previously.

The EPA carries out its waste enforcement functions through the Office of Environmental Enforcement (OEE), and the Office of Environmental Sustainability (OES).

The OEE was established in 2003 as a Directorate within the EPA. It has a mandate to deliver enhanced environmental compliance through enforcement of EPA licences issued to waste, industrial and other activities. It exercises a supervisory role in respect of the environmental protection activities of local authorities. In this regard, the OEE acts as a resource to members of the public who have exhausted all other avenues of complaint. The OEE's main functions are to:

- improve overall compliance with environmental protection legislation;
- raise awareness about the importance of enforcement of environmental protection legislation;
- enforce Integrated Pollution Prevention and Control licences, waste licences and Urban Waste Water Discharge licences;
- audit and report on the performance of local authorities in their environmental protection functions, including enforcement in respect of breaches of waste permits, taking action on illegal dumping, implementation of waste collection permits, and enforcing producer responsibility initiatives in areas such as packaging waste;
- take action against local authorities that are not discharging their environmental protection functions properly;
- prosecute, or assist local authorities to prosecute, significant breaches of environmental protection legislation, in a timely manner;
- assist local authorities to improve their environmental protection performance on a case by case basis, through establishing an enforcement network to promote information exchange and best practice, and by providing guidance.

In terms of its supervisory role in relation to local authority enforcement performance, the OEE may:

- request information from local authorities on the discharge of their statutory environmental protection functions;
- carry out broad assessments of their environmental performance, such as environmental audits;

- provide advice, recommendations, assistance or support;
- where appropriate, issue a direction to a local authority to take specific action within a specified timescale where the OEE is of the view that there is a real and imminent risk of significant environmental pollution due to a local authority's failure to carry out its statutory environmental protection functions or to follow advice or recommendations made by the OEE.

The OEE also coordinates the Network for Ireland's Environmental Compliance and Enforcement (NIECE) network.

Further enforcement responsibility is assigned to the Office of Environmental Sustainability (OES), including:

- producer responsibility enforcement related to WEEE and batteries;
- maintenance of the National PCB (polychlorinated biphenyls) Inventory;
- preparation of the National Waste Report.

Each of these Waste Enforcement Regional Lead Authorities (WERLAs) have responsibility for coordinating waste enforcement actions within regions, setting priorities and common objectives for waste enforcement, ensuring consistent enforcement of waste legislation across the three existing waste management planning regions while still leaving local authority personnel as first responders on the ground to specific breaches of waste legislation.

National Waste Enforcement Steering Committee

In light of the multiple regulatory code breaches that go hand in glove with illegal waste activity, the work of the WERLAs is overseen by a National Steering Committee. The Committee determines national waste enforcement priorities for the WERLAs and drives consistency at a central level. The Committee is drawn from representatives from a wide range of regulatory authorities in order to provide strategic support to the WERLAs to deal with:

- strategic national waste enforcement issues;
- serious criminal offenders such as cross border issues or major illegal dumping in the State;
- intelligence-led and co-ordinated multi-agency enforcement;
- securing targeted, timely and effective enforcement outcomes.

The Committee coordinates and supports the work of the lead authorities while providing a focus on organised criminal activity in the waste area. National waste policy recognises that there is need for a more coordinated strategic response to this growing threat and the establishment of the WERLAs working with a National Waste Enforcement Steering Committee has enhanced the capacity of local authorities to organise strategic operations involving targets associated with waste crime and facilitates more coordinated inter-agency operations taking place on a regional basis.

The National Waste Enforcement Steering Committee also plays a key role in this regard, tasked as it is to:

1. Provide strategic and practical support to local authorities within the regions to deal with:
 - strategic national waste enforcement issues;
 - serious criminal offenders such as cross border issues or major illegal dumping in the State;
 - coordination of waste enforcement issues where other offences such as tax fraud, welfare fraud, or other criminality are involved and other agencies affected;
 - intelligence-led and co-ordinated multi-agency enforcement;
 - securing targeted, timely and effective enforcement outcomes.
2. Support and monitor the implementation of agreed national waste enforcement priorities as identified by the Department of the Environment on an annual basis.
3. Serve as a forum for the exchange of information and good practices with a view to enhancing prevention and suppression of illegal waste activities.
4. Identify specific and emerging national waste enforcement challenges.
5. Develop a long-term, comprehensive and integrated strategy on prevention and supervision of illegal waste activities.
6. Serve as an advisory body to the OEE, CCMA, and the Department of the Environment, on projects relating to the prevention and suppression of illegal waste activity.
7. Suggest priority areas of waste crime to be targeted and supported and to facilitate interventions.
8. Identify serious national waste enforcement issues and liaise with other agencies and departments and cross border agencies in formulating appropriate responses.

9. Provide for joined up enforcement between the relevant national competent authorities - WERLAs, EPA, NTFSO, and Regional Planning Offices.
10. Plan operations to include the creation of a national team to be deployed to tackle organised criminal waste activity as required.

The National Transfrontier Waste Shipment Office (NTFSO)

The NTF SO was established in 2007 as part of Ireland's transposition of Regulation (EC) No 1013/2006 of the European Parliament and of the Council (the Waste Shipment Regulation). The Office operates under the aegis of Dublin City Council which was designated as the National Competent Authority for all waste exports and imports under the Waste Management (Shipments of Waste) Regulations 2007. Previously, the activities of the Office were discharged by individual local authorities. The NTF SO therefore provides a streamlined and consolidated service that has resulted in a consistency of approach and interpretation of waste shipment legislation, and generated efficiencies for the business community as primary users of the services of the Office.

The NTF SO has a dedicated enforcement team in place to tackle the illegal shipment of waste abroad. Under the Waste Management (Shipment of Waste) Regulations 2007, the TFS Office, as Ireland's competent authority, has the following powers of enforcement:

- to direct that a prior written notification for consent be sent to and through it for any shipment of waste;
- to direct that shipments of waste may enter or leave the State at a specified port or place within the State;
- to direct a person who undertakes the shipment of waste to effect and maintain a financial guarantee;
- to seize, take in charge, recover or dispose of a consignment of waste or a part thereof where it has reasonable grounds to suspect that any provision of the Waste Management (Shipment of Waste) Regulations or the TFS Regulation has not been complied with as respects the consignment or a part thereof, as the case may be;
- to request any local authority to cooperate in enforcement activities for the purposes of the TFS Regulation and the Waste Management (Shipment of Waste) Regulations and the local authority so requested shall cooperate with such a request;

- to direct the keeping of records by a specified person of the source of, and particulars concerning the transport, delivery and receipt of, waste and, as the case may be, the recovery or disposal thereof, and the persons to whom such records shall be made available;
- to direct the prevention and control of litter and nuisance from odours and any other environmental impacts that may arise from the transport of waste and generally with respect to the handling of waste whilst it is being moved;
- to impose on a person undertaking the shipment of waste such charges as are necessary to defray any costs reasonably incurred by it in performing any function under the Waste Management (Shipment of Waste) Regulations with respect to the waste, including enforcement requirements and charges for consignment forms;
- to direct a person who undertakes the shipment of waste or who is the consignee of waste imported into the State, to return the waste to its place of origin or to such other place as may be specified in the direction and to take such measures as may be so specified in relation to the waste, including the recovery or disposal of the waste in such manner or at such facility as may be so specified;
- to prohibit the import or export of any shipment of waste, or of a class or classes of waste, or of any shipment, class or classes of waste intended for any specified purpose;
- to carry out inspections on board trains, ships, or aircraft;
- to direct any establishment or undertaking to provide particular information in relation to a shipment of waste;
- to invoke a financial guarantee so as to effect the return of the waste and its disposal or recovery thereafter where take-back is required;
- to undertake such enforcement actions, as appropriate, in cooperation with other competent authorities.

All enforcement activities carried out by the NTFSO are based on an annual risk-based RMCEI Plan. Annual statistics are reported to the EPA and, via the Department, to the Basel Convention.

The NTFSO and Revenue's Customs Service have a Memorandum of Understanding (MOU) under which there is joint cooperation on specific targeted operations dealing with environmental crime. While the Irish Coast Guard is primarily search and rescue service, there is no similar MOU between the NTFSO and the Irish Coast Guard.

The National Waste Collection Permit Office (NWCPO)

The NWCPO processes waste collection permit applications and reviews applications for all local authorities. It maintains the Waste Collection Permit register and associated IT system and websites, revokes Waste Collection Permits as appropriate, and provides data reports to relevant stakeholders where required. The enforcement of Waste Collection Permits is the responsibility of the relevant local authority. The NWCPO provides affidavits for legal proceedings where required in the first instance.

4.4. Cooperation and exchange of information among national authorities

4.4.1. Cooperation and coordination

The National Waste Enforcement Steering Committee (NWESC) facilitates co-operation and exchange of information between the various regulatory authorities. It is drawn from representatives of a wide range of regulatory authorities in order to provide strategic support to the WERLAs, including representatives from the Department of Communications, Climate Action and Environment, the National TFS Office, the WERLA offices, An Garda Síochána, The Department of Employment Affairs and Social Protection, the Office of the Revenue Commissioners and the Environmental Protection Agency. This structure facilitates close co-operation between the various authorities and enables multi-agency operations to be planned and carried out as appropriate. The role of the NWESC is to provide strategic and practical support to local authorities within the regions to deal with:

- strategic national waste enforcement issues;
- serious criminal offenders such as cross border issues or major illegal dumping in the State;
- coordination of waste enforcement issues where other offences such as tax fraud, welfare fraud, or other criminality are involved and other agencies affected;
- intelligence-led and co-ordinated multi-agency enforcement;
- securing targeted, timely and effective enforcement outcomes.

The success of the enhanced waste enforcement structures is evident in the commitment and active participation of all the representatives on the national steering committee. The impact of the work of the NWESC is tangible and the high-level support has filtered down through each of the regulatory bodies and resulted in enhanced enforcement processes for all involved. Each region has established a multi-agency working group comprising members of the WERLAs, the NTFSO, An Garda Síochána, and the Department of Social Protection, Work Place Relations and Revenue. The purpose of these networks is to develop inter-agency relationships, facilitate knowledge sharing and organise intelligence-led investigations into suspected unauthorised waste activity to improve enforcement efficiency.

The establishment of the WERLAs, together with the supporting and driving structure of the NWESC, has created a network of regulatory bodies involved in waste crime and puts Ireland in a better position to respond to the threat of waste crime in a co-ordinated and strategic manner. It facilitates more co-ordinated multi-agency operations on a regional basis.

This approach has had tangible results for the various regulatory bodies in terms of identifying, stopping and prosecuting non-compliant activities in the waste sector. The success of these operations has been due to the planned and co-ordinated approach taken and the co-operation of all agencies involved. While it is legally sensitive to give details of specific operations due to ongoing prosecutions, multi-agency operations under the direction of the NWESC have resulted in the cessation of very significant illegal waste activities with corresponding environmental benefits on identified sites across the regions. In addition to this cessation, other outcomes have included: orders to remediate the sites concerned; the identification and seizure of stolen car parts and illegal drugs by An Garda Síochána with a number of arrests being made; the seizure and detention of goods under the Finance Act by the Office of the Revenue Commissioners; the identification by the Work Place Relations Commission of infringements of the Payments and Wages Act 2000 and the Working Time Act 1997; and on-going investigations by the Department of Social Protection. Follow-up steps continue to be taken by the agencies involved with a view to taking proceedings further where warranted.

With regard to the specific question of whether national authorities have encountered practical obstacles in their cooperation, national authorities have not had any issue with regard to the co-operation and exchange of information among all stakeholders. All organisations work together on an inter-agency basis as representatives of their respective national/regional authorities working within the overall enforcement of the law and regulations governing environmental crime.

4.4.2. Access to information and focal points on intelligence

An Garda Síochána does not encounter any difficulties in accessing information from national authorities. All information is exchanged under the remit of Section 8 of the Data Protection Act 1988 as amended and used for the purpose of criminal investigations.

In addition, this information can be shared in accordance with provisions under the Consolidated Social Welfare Act. This piece of legislation enables the sharing of information between specified bodies including government departments, local authorities and An Garda Síochána.

The NTFSO has adequate access to other judicial resources both prior to and during investigations. The NTFSO liaises on a regular basis directly with other enforcement agencies exchanging information and sharing data. The NTFSO currently has access to the following additional databases and registers:

- customs databases for specific query requests;
- arrangements are currently being developed by Revenue and the NTFSO that would allow the NTFSO direct access to certain eManifest data held by Revenue;
- National Waste Collection Permit Office (NWCPO) – access to collection permit registers and annual waste returns, waste facility permits and annual waste returns;
- access to EPA Waste Licence Registers and annual returns (public registers);
- DCC Waste Regulation Management System (WRMS) and DCC Waste Brokers & Dealers Registers.

There is no specific focal point for intelligence on waste crime within An Garda Síochána. However the Garda National Criminal Intelligence Unit (GNCIU), based at the Garda Security and Intelligence Section, is the focal point for all intelligence retained by the organisation.

Each stakeholder organisation is also responsible for its own collection and secure storage of data and information. This can be shared on a multi-agency, case-by-case basis.

4.5. Training

Judiciary

Training events attended in the area of Environmental Law/Crime were as follows:

2013

EJTN Seminar: Access to Courts in Environmental Law Matters, October 2013, Lisbon, attended by a Circuit Court judge. The judge wrote a report on the event on her return which was circulated to all judges, who were also provided with links to the details of other seminars.

2015

Planning and Environmental Law Conference, November 2013, Dublin, attended by a High Court judge. In addition, a guide produced by the Irish law firm A&L Goodbody, entitled 'Practical Law, Multi-jurisdictional Guide: Environment' is available to judges from the Judicial Researchers Office.

2016

A member of staff of the Office of the Director of Public Prosecutions attended an Environmental Law Conference hosted by the EPA and the Irish Centre for European Law in September of 2016. The conference dealt with recent developments in the area of Environmental Law including areas of cross-border prosecution and enforcement.

The District Court judiciary has links with University College Cork and is kept apprised of all academic matters relating to environmental law by a member of the Law Faculty. District Court judges are also kept informed of issues as they arise in different District Court districts and in other jurisdictions, and of course of ECJ case law.¹⁹

Furthermore, a PowerPoint Presentation, 'Costs and The Aarhus Convention', was given to judges of the Superior Courts at a conference in July 2014 and the matter was subsequently debated.

Law enforcement agencies

An Garda Síochána provides investigation techniques and interviewing skills to enforcement authorities in the area of environmental and waste crime-related matters. Members of An Garda Síochána themselves receive training in chemical, biological, radiological and nuclear defence (CBRN). This includes the Garda reaction and deployment to chemical waste incidents. However, staff dealing with environmental crime have not, to date, participated in training by CEPOL. An Garda Síochána also actively participates in exercises surrounding Major Emergency Planning as part of its statutory obligations. In respect of financial investigation, selected Garda members are also trained in asset profiling skills which can be used in the investigation of waste crime.

Investigative Interviewing Techniques training has been delivered to local authority personnel nominated by WERLAs to Level 1 standard. Training to Level 2 standard will take place in the coming months.

¹⁹ After the on-site visit, the evaluation team was informed that the District Court conference will take place in 2018 and will focus on Evidential issues arising on Non Garda Prosecutions in the District Court & rulings on Evidential Matters arising [including environmental and waste management, Com. Reg. HPRA, RTB, and EWB]; Environmental Crime: Effective Penalties, Consistency and Transparency; Evidence and Prosecuting and Defending non Garda Prosecutions; Evidence and Prosecuting and Defending non Garda Prosecutions. Consideration is also being given to have the topic at a session of other Jurisdictional conferences in 2018.

Law officers

Training in the areas of regulatory offences and corporate liability was provided to staff in the Office of the Director of Public Prosecutions in May 2017 and in preceding years. Lectures on white collar crime were also given in October 2016. Several members of staff have attended external training run by the Kings Inns Law School and obtained diplomas in white collar/corporate crime.

Local authorities

The Environment Services Training Group (ESTG) of the Local Authority Services National Training Group was set up to meet the emerging requirements of the Environment Services sector through the provision of new and existing courses at the Regional Training Centres.

A comprehensive programme of courses has been developed for a broad range of disciplines delivered from five training centres in Ballincollig, Roscrea, Castlebar, Stranorlar and Dublin.

The Group currently consists of a cross section of representatives from government departments, local authorities, SOLAS, and the National Federation of Group Water Schemes.

The ESTG aims are:

- provision of training to a broad range of staff within local authorities and the private sector;
- to act as a centre of learning for those working in the local authority and the private sector;
- to develop and deliver courses that meet the changing needs of the current environment.

By way of example a list of training provided for 2016/2017 is outlined below. These training courses were attended by more than 360 personnel.

	Course
Castlebar	Hazardous Goods Awareness
	Waste Facility Operative
	Environmental Legislation
	Waste Management: Policy & Legislation - Module 1
	Hazardous Goods Awareness
	Managing Difficult and Aggressive Behaviour

Roscrea	Appropriate Assessment Screening Training Waste Management - Policy & Legislation Waste management - Regulation of Waste Activities Environmental Inspection Skills Waste Management Legislation Refresher Course
Dublin	Waste Legislation Update Environmental Inspection Skills
Stranorlar	Waste Legislation Refresher Environmental Inspection Skills
Ballincollig	Training for Trade Effluent Environment Inspection Skills Managing Difficult & Aggressive Behaviour

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4.6. Conclusions

- There are two types of trials in Ireland, summary trial and trial on indictment. Minor waste offences laid down in the Waste Management Act which are punished by a fine not exceeding EUR 5 000 and/or by imprisonment for up to 12 months can be tried summarily in the District Court before a judge sitting alone without jury. Non-minor or more serious indictable offences are tried in the higher courts (Circuit Courts). Indictable offences are generally tried before a judge and jury. There are no deadlines for prosecuting an indictable offence.
- There are no specialised courts or judges for the adjudication of waste offences. However, the need for specialised judges in environmental crime is highlighted in the Council conclusions on Countering Environmental Crime of 8 December 2016.
- Prosecution is shared between the Office of the DPP on the one hand and the environmental authorities (the EPA, local authorities and NTFSO) on the other. The Office of the DPP is responsible for prosecutions of crimes that are considered non-minor or serious and the environmental authorities are responsible for prosecutions of minor crimes.
- There are no common national guidelines defining when a crime is minor or serious. In the '*Code of Practice for the Development of an Enforcement Policy for Unauthorised Waste Activities*' (Section 3.4.2) of 2009, the EPA specified that crime is serious: when there is a significant degree of criminality on the part of offender; or when previous administrative or civil responses to contravention by the suspect have not resulted in compliance; or where the State or community expects that a crime will be dealt with by prosecution conducted in public before a court and usually carries the risk of imprisonment in serious cases; or when the crime produced significant real or potential harm to the State or the community, including harm to the environment, culture heritage, economy, resources, assets or well-being of the State or its citizens; or when the crime is of such a nature or magnitude that it is important to deter potential offenders and prosecution will act as a very effective deterrent. No formal multi-agency review of these guidelines has been carried out since 2009.

- In addition, only minor offences can be dealt with in the District Court. Case law has set out the relevant criteria in deciding whether an offence is minor. These are the severity of the punishment prescribed for the offence and the moral quality of the act constituting the offence. The circumstances of a case may make it of a serious nature unfit to be dealt with summarily. The main factor is whether the sentencing options open to the District Court would be adequate to deal with the alleged conduct complained of having regard to all of the circumstances of the case and in particular the seriousness of the offence. Aggravating factors such as a multiplicity of offences, the previous record of the offender are relevant to the determination²⁰.
- Although LEAs take account of the EPA guidelines which define situations where an offence can be deemed serious, these guidelines are not binding on the judiciary. Therefore, taking into account the lack of common national guidelines to define the seriousness of an offence, and the crucial role played by the seriousness of an offence in determining the competent authorities and the legal actions to be taken (administrative/criminal procedure, summary trial or trial on indictment), there is a clear need, in the evaluators' view, to develop a common definition to be applied by all bodies involved in the fight against environmental crime.
- The decision to prosecute or not is taken in accordance with the prosecution policy of the State, with the primary criterion being whether or not prosecution is in the public interest. Other criteria that is taken into consideration is the seriousness or scale of impact on the environment and/or human health, where there is premeditated disregard for environmental law and particularly offences involving falsification of records, the duration of the offence, the scale of financial gain and previous history of convictions.
- DPP prosecutors have no investigative functions and no power to direct An Garda Síochána or other agencies in their investigations. Nevertheless, the DPP prosecutors may advise investigators in general matters. There is a unit with responsibility for, inter alia, waste crimes, but the six to seven designated prosecutors are also responsible for other types of crimes.

²⁰ Please refer to published Guidelines for Prosecutors (4th Edition) of the Office of the DPP.

- There is no unit within An Garda Síochána dedicated to the investigation of environmental crime and there are no specialised environmental police investigators. It was however reported that An Garda Síochána deploys the capacities of other specialists Garda units in serious waste crime, such as the Financial Investigation Unit (FIU), Garda National Computer Crime Investigation Bureau (GNCCIB) and the Garda National Economic Crime Bureau (GNECB) in addition to the Criminal Assets Bureau (CAB) who use 'follow the money' as an investigative tool. In the opinion of the evaluators, a specialised competent unit within the police force could enhance the capacity to investigate waste crime more efficiently, in particular serious organised crime. Its importance is stressed in the above-mentioned Council conclusions of 8 December 2016.
- When investigating a waste crime, An Garda Síochána uses all the investigative technique tools available to it, depending on the nature of the suspected crime. The only investigative technique that cannot be used is telephone interception, which is used for intelligence purposes and not as evidence in criminal proceedings. These investigative tools are deployed on a case by case basis and are dependent on the circumstances unique to each investigation and its alleged perpetrators.
- Other investigative authorities such as the EPA, local authorities, and NTFSO have statutory powers to summarily prosecute offences before the District Court without reference to the DPP. The authorities have provided guidelines explaining when agencies should pursue a prosecution in the District Court and when other administrative measures should be applied (Code of Practice for the Development of an Enforcement Policy for Unauthorised Waste Activities).
- Responsibility for environmental law enforcement is shared between the EPA, local authorities and the NTFSO. Local authorities and the NTFSO (but not the EPA) may impose fixed fines without prosecuting the offence in the District Court. Nevertheless, these agencies cooperate closely when it comes to investigations of waste crime in their respective areas. An Garda Síochána cooperates with the environmental agencies on a multi-agency basis in the investigation of large-scale environmental crime and whenever the enforcement authorities ask for assistance. In the evaluators' view, the relevant authorities should seek to investigate and prosecute violations together with An Garda Síochána in order to form a more nuanced picture of offences with an economic background.

- Over EUR 100 million has been provided by central Government since 2003 to fund a network of 120 waste enforcement officers across the country. This has been supplemented by the establishment and staffing of the three WERLA offices, the cost of which has again been met by the DCCAE. EPA funding continues to rise year on year (from EUR 24.9 million in 2016 to EUR 34.8 million in 2018).
- Regardless of the overall funding allocated by the Government, in the opinion of the evaluators, Ireland should keep under review the capacity of the EPA and the NTFSO with regard to the human resources to allow them to continue to fulfil more effectively their tasks regarding the detection and the handling of environmental crime cases.
- Under the Waste Management Act 1996, the Minister for the Department of Communications, Climate Action & Environment is responsible for developing and maintaining the policies and legislative framework under which the regulatory bodies operate. The Department ensures that its policies are in line with EU and global obligations.
- Through the establishment of the three Waste Enforcement Regional Lead Authorities (WERLAs) and the National Waste Enforcement Steering Committee (NWESC), the cooperation between law enforcement authorities seems to be smooth and efficient. Especially the NWESC achieves a consistency of approach to waste enforcement, ensuring intelligence-led and coordinated multi-agency enforcement and delivering efficiency gains in terms of making the most of available funding, as outlined in the Action Plan. In the evaluators' view, the multi-agency approach, allowing for close cooperation and an informal exchange of views and knowledge, is clearly an example of best practice.
- The cooperation between LEAs and the judiciary is more complex. Due to the independence of judges, there is no cooperation between judges and LEAs or between judges and prosecutors.
- On the other hand, cooperation between prosecutors from the DPP and LEAs has been built up with a view to discussing issues relating to ongoing investigations and prosecutions of environmental crimes. In the view of the evaluators, this cooperation could be expanded, as both sides would benefit from such cooperation. Although the DPP is responsible for the most serious waste crimes in Ireland, statistics show that it deals with only a few cases each year. Thus to maintain specialised expertise in this field, it is important to have expert knowledge on the legislation and practical expertise. One way to strengthen cooperation between the DPP and LEAs could be to take part in joint training exercises.

- When it comes to the training of personnel, An Garda Síochána provides training on investigative techniques for the EPA and local authorities. Garda officers based in the Dublin Traffic Unit are specialised in and provide training on the examination of environmental waste products. An Garda Síochána and Revenue Customs do not have any official training in environmental enforcement. Training would allow experts from the various agencies to pass on their knowledge and experience of environmental regulations to Garda investigators.
- Few training opportunities are offered to judges and prosecutors. Even though both categories are trained in general criminal matters, in the evaluators' view, EU environmental law is a complex issue, especially in terms of the application of criminal law and principles. Special training is therefore advisable for DPP prosecutors and for judges. This seems to be particularly important for the DPP prosecutors and Higher Courts responsible for dealing with the most serious waste offences, which are rarely handled by them.

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5. LEGAL ASPECTS

5.1. Substantive criminal law

5.1.1. Description of national legislation pertaining to waste crime

The term ‘*waste crime*’ as such is not mentioned in Irish legislation. However, the term ‘*waste*’ appears in various forms and is central to the Waste Management Act 1996 as amended. National waste policy and legislation, including waste offences and penalty provisions, is the responsibility of the Minister/Department but implementation is a matter for local authorities or the EPA. The Waste Management Act (Section 10) specifies the penalties that apply when someone is found guilty of breaching either its requirements or the obligations specified in its subsidiary legislation.

Primary responsibility for the management of any waste, including costs for its removal or disposal, lies with the holder of the waste, i.e. the natural or legal person in possession of the waste, or the producer of the waste. The Waste Management Act 1996 (as amended) imposes a general duty of care on holders of waste, under which a person may not hold, transport, recover or dispose of waste in a manner that causes, or is likely to cause, environmental pollution. Penalties for serious dumping offences provided for under the Waste Management Act are substantial. Persons who are found to be responsible for, or involved in, the unauthorised disposal of waste are liable to a maximum fine of € 5 000 and/or imprisonment for up to 12 months on summary conviction, and to a maximum fine of Euro 15 million and/or imprisonment for up to 10 years on conviction on indictment.

The penalties apply to any person guilty of an offence. Where offences are committed by a corporate body, individual directors, managers and secretaries can be found criminally liable if it is demonstrated that they did, or failed to do, something that led to the offence; civil clean-up orders can also be made against directors of companies where it is demonstrated that those directors had an active and controlling role.

Penalties imposed on conviction are at the discretion of the presiding justice as criminal sanctions are a matter for the courts. However the regulatory enforcement authorities (again by reference to Policy Direction WIR 04/05) are required by the Department of Communications, Climate Action and Environment to pursue illegal holders of waste looking to the maximum potential sanctions available in law.

5.1.2. Other rules or judiciary instructions

In line with government policy there is an increase in the use of higher courts (Circuit and High Courts). The 'Focus on Environmental Enforcement in Ireland' report notes that, for example, the High Court has been used on a number of occasions to secure environmental outcomes. In addition, in a series of correspondence with the Committee for Judicial Studies, the Irish authorities have highlighted the challenges posed by waste crimes to the national body charged with providing information and support to judges.

5.1.3. Determination of the seriousness of waste crime

While criminal sanctions are a matter for the courts, the following characterises the approach taken with respect to sentencing:

- judicial discretion (with guidance from the legislature and superior courts);
- legislation typically provides for a maximum fine and prison sentence but the range of sentencing options is more extensive;
- the principle of proportionality: the gravity of the offence and the personal circumstances of the offender (including financial means and mitigating factors);
- retribution, deterrence, rehabilitation, public protection.

Indicators for the severity of sanctions are gravity and previous record.

5.1.4. Links with other serious criminal offences**Example A: Fuel Laundering**

Enforcement in relation to illegal diesel laundering activities is primarily a matter for the Revenue Commissioners from the point of view of avoiding loss of revenue to the Exchequer. The role of the Department of Communications, Climate Action and Environment is to assist local authorities in carrying out their role as competent authorities under waste legislation, i.e. to take the necessary measures, on behalf of the State, to ensure that any waste generated and left abandoned by diesel launderers is disposed of, without endangering human health and without harming the environment.

Given the links between illegal diesel laundering and organised criminality, the Irish Revenue Commissioners are fully supported in this area by An Garda Síochána. Searches are regularly undertaken by Revenue's Customs Service, with support (for safety and security reasons) of An Garda Síochána as part of intelligence-led operations led by Customs, which have resulted in a number of significant seizures of diesel and the closing of diesel-laundering plants, particularly in border counties.

Considerable success has been achieved over recent years in combatting fuel fraud, through a combination of stringent new supply chain controls, rigorous enforcement action and the introduction, in conjunction with the UK authorities in April 2015, of a new fiscal marker for marked fuels.

Revenue works closely with An Garda Síochána in acting against fuel fraud, and the relevant authorities in the State cooperate closely with their counterparts in Northern Ireland, through cross-border enforcement groups, to target the organised crime groups that are heavily involved in this criminal activity. This work is supported and facilitated by the establishment, in the framework of “A Fresh Start: the Stormont Agreement and Implementation Plan”, of a Joint Agency Task Force, which includes Revenue, An Garda Síochána and their Northern Ireland counterparts.

Example B: Metal Theft

An Garda Síochána has implemented a Metal Theft Crime Prevention and Reduction Plan, which was developed in close cooperation with the stakeholders who participated in a metal theft forum established by An Garda Síochána. The forum includes stakeholders particularly affected by this type of crime, including the Irish Farmers' Association, the Irish Creamery Milk Suppliers Association, the Electricity Supply Board, telecoms firms, transport companies, brewing concerns and the Department of Communications, Climate Action and Environment. The metal theft plan is designed to provide for an effective and multi-agency response to the incidence of metal theft. In line with the framework set out in the plan, An Garda Síochána has implemented a range of initiatives to tackle those involved in this form of criminality.

As criminals often seek to sell stolen metals through scrap yards and metal recyclers who are permitted under waste legislation, the Department of Communications, Climate Action and Environment introduced amending legislation to the Waste Facility Permitting Regulations in order to ensure all necessary provisions, particularly those relating to traceability, are in place to avoid situations that might be exploited by criminal elements.

The following additional requirements on all permitted facilities when receiving/purchasing waste, have been introduced in this regard:

- a) the production of proof of identity and current address of the person supplying the material;
- b) records must be kept of the registration number and waste collection permit number of the delivery vehicle;
- c) records must be kept describing the materials, time and date of sale, weight and amount paid etc.;
- d) a signed statement by the person supplying the material that they are the lawful owner of the material or have the consent of the lawful owner to sell the material.

5.1.5. The role of the NGOs

There are no restrictions under Irish law for NGOs to report a crime and also be *parte civile* in the criminal proceedings. Citizen involvement in reporting environmental crime or related environmental issues is encouraged in Ireland and provides important on-the-ground information for public bodies to act on. Various phone lines, apps and web-based systems are now operated by public bodies to make reporting pollution easier and instant.

The EPA's smartphone app *See it? Say It!*²¹ helps people to report environmental crime such as fly-tipping, littering and backyard burning. Local authorities receive in the region of 50 000 to 60 000 complaints annually in relation to environmental issues, of which approximately 68 % are related to waste. The app can be downloaded by visiting iPhone or Android app stores.

²¹ <http://www.epa.ie/enforcement/report/seeit/>

5.2. Procedural, jurisdictional and administrative issues

5.2.1. *Difficulties encountered with regard to evidence*

In general the Irish authorities did not report any difficulties with regard to the collection of evidence. However, court and administrative proceedings (e.g. powers to obtain appropriate warrants) do pose difficulty for some State agencies as they do not have extensive powers of search and evidence gathering.

5.2.2. *Measures other than criminal or administrative sanctions*

Under Section 61 of the Criminal Justice Act 1994, where a person has been convicted of any offence, a court may order forfeiture of property which was used or intended to be used for the commission of a crime. That Act also allows a court to make an order for the confiscation of the proceeds of crime after a person has been convicted of an offence on indictment.

The statutory remit of the Criminal Assets Bureau (CAB) is to carry out investigations into the suspected proceeds of criminal conduct. The CAB identifies assets of persons which derive, (or are suspected to derive), directly or indirectly from criminal conduct. It may then take appropriate action to deprive or deny those persons of the assets and the proceeds of their criminal conduct. The legal basis for this action is the Proceeds of Crime Act 1996, as amended.

National waste policy and legislation provides for a number of sanctions and fines applicable where breaches of waste legislation are investigated. These measures include:

Landfill Levy

Circular WIR 04/05 states that in addition to criminal sanctions, the regulatory authorities shall pursue illegal holders of waste looking to the maximum potential sanctions available in law and a landfill levy as per the Landfill Levy Regulations and civil remedies under Sections 55 to 58 of the Waste Management Act 1996 to recover the costs of measures taken to prevent or limit environmental pollution caused by waste.

Waste Collection Permit

Where local authorities are encountering compliance issues with waste collectors they may form the opinion, or legislation may dictate, that the waste collection permit in question should or shall be reviewed. This guidance aims to outline the relevant legislation and procedures that need to be considered by local authorities in recommending the review of a waste collection permit to the National Waste Collection Permit Office (NWCPO).

The NWCPO is required to initiate a review of the permit when requested by a local authority in accordance with specific procedures. The decision of the NWCPO may be to amend the permit conditions, direct measures to be taken, take no action, or revoke the waste collection permit (Section 34A(5) of the Waste Management Act) as appropriate.

Fit and Proper Person Provision

The regulatory regime around waste collection has been significantly strengthened since the publication of *A Resource Opportunity* and robust controls have been put in place to ensure that only '*fit and proper*' individuals and companies are allowed to hold waste collection permits. Section 34D of the Waste Management Act 1996 sets out the '*fit and proper person*' test in primary legislation. It stipulates, inter alia, that a person is not fit and proper to hold a waste collection permit if she or he:

- has been convicted of offences set out in Section 34D(a) of the Waste Management Act 1996;
- has had a permit revoked under Section 34A of the Waste Management Act 1996, save where such a permit was surrendered;
- has had a Court Order made against them under Section 57 or 58 of the Waste Management Act 1996;
- does not have the requisite technical knowledge or qualifications to carry on the activity in accordance with the requirements of the Waste Management Act 1996 and the conditions of the waste collection permit; or
- is not in a position to meet financial commitments or liabilities that will be entered into or incurred to which the waste collection permit relates.

Government policy is to apply the 'polluter pays' principle. This means that the generator of the waste is obliged to ensure that the waste is properly managed. This applies equally to householders and Irish businesses. In pursuit of the polluter pays principle, the Irish government has imposed producer responsibility obligations on several sectors and waste streams, most notably packaging, farm plastics, waste electrical and electronic equipment, batteries, end-of-life vehicles, and tyres.

This national legislation is enforced by both the EPA and the local authorities and both regulatory bodies apply the polluter pays principle. The EPA uses, inter alia, the successful 'Name and Shame' policy, revealing those companies that do not comply with the EPA's instructions and orders. The companies are displayed on the EPA's website under National Priority Sites and their names are later published in the newspapers.

A local authority cannot grant a permit unless satisfied that:

- the activity will not cause environmental pollution;
- emissions will not contravene relevant standards or exceed emission limits;
- the best technology not entailing excessive cost will be used.

Waste permit application forms and information sheets are available from each local authority.

Furthermore, the NTFSO has a range of other measures available apart from criminal sanctions:

- impoundment and seizure of vehicles (WMA and WSR);
- instruction to cease export or movement of waste (WSR);
- instruction to repatriate waste shipment (WSR);
- issuance of monitoring fees and repatriation fees (WSR);
- invoicing of enforcement costs to alleged offender (WSR);
- revocation of the Brokers/Dealers Certificate of Registration (B&D Regs).

5.2.3. Treatment of seized objects

The costs of temporary storage of seized objects during an investigation are allocated to the companies concerned.

5.3. Environmental restoration

In general, the relevant local authorities hold ultimate responsibility for restoring the environment. The financial provision processes in place in Ireland are well advanced with over EUR 600 million secured to secure against environmental liabilities. Given the scale of the activity associated with sites of this nature, the financial provisions that the EPA requires of its licence holders are noteworthy. While local authorities are responsible for alleviating the threats posed to the local environment by unauthorised waste practices, they have recourse through the courts for a recovery of these costs. If the offender is deemed liable pursuant to Section 58 of the Waste Management Act 1996, he or she will defray the costs of environmental restoration.

The local authorities also receive financial support from the Department of Communications, Climate Action & Environment as and when the need arises, in order to ensure that the environment is protected.

5.4. Jurisdiction

5.4.1. Principles applicable to the investigation of waste crime

Irish courts have no jurisdiction to prosecute waste crimes committed partially or entirely outside Irish territory.

5.4.2. Rules in the event of conflicts of jurisdiction

As regards the implementation of Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, Ireland declares that 'no transposition measures are necessary as Ireland is already compliant with this measure'.

5.5. Conclusions

- No single piece of Irish legislation refers to environmental law. Instead, a large number of legal instruments govern the management of waste and outline the responsibilities of waste generators, waste management organisations (private companies and local authorities), waste planning authorities and waste regulators. The principal law is the Waste Management Act 1996, as amended.
- Both natural and legal persons can be held liable for criminal offences, including waste crimes. Liability is clearly defined through the seriousness of the offence or the intent of an offender. These factors are taken into account when deciding whether or not to prosecute.
- One of the criteria used to determine the seriousness of a waste crime is the penal value. If the expected sanction is a fine exceeding Euro 5 000 (EUR 4 000 for TSF offences) or imprisonment exceeding 12 months, it is considered a serious waste crime and the Office of the DPP is responsible for deciding whether or not to prosecute. Another criterion taken into consideration is the gravity of the offence itself, although there are no legal criteria to determine this.
- Ireland has a number of non-criminal sanctions available to regulators by virtue of existing environmental legislation. In addition, regulators use some sanctions, such as environmental audits, warning letters, statutory notice, revision/refusal or revocation of licences/permits, suspensions, injunctions, and the '*name and shame*' procedure. This procedure, developed by the EPA, motivates companies to observe the laws and rules of conduct (and thus prevents waste crimes) by publishing the names of offending companies.

- National legislation is enforced by both the EPA and the local authorities and both regulatory bodies apply the 'polluter pays' principle. This principle is set out in Article 14 of Directive 2008/98/EU and is included in the Irish Action Plan '*A Resource Opportunity*'. The offender deemed liable for damage must pay the costs of restoration but in general the relevant local authorities hold ultimate responsibility for repair. The EPA provided a '*Guidance on Financial Provisions for Environmental Liabilities*' in 2015 to ensure that the damages are paid by polluters. Under Irish environmental law, the EPA may require licensees under the various EPA authorisation regimes to make adequate financial guarantees to manage any potential environmental liabilities which may occur as a result of their licensed activities. Financial guarantees aim to cover the potential cost of restoration of the environment in the event that an incident occurs at a licensed facility and/or the costs of managing the closure, decommissioning, and/or aftercare provisions at a licensed facility in the event of an insolvency.
- The EPA performed a study on the use of administrative sanctions for environmental offences instead of prosecution ('*A Study on the use of Administrative Sanctions for Environmental Offences*'). In this study, the EPA has taken into account that the pursuit of a criminal prosecution is frequently difficult and time-consuming, mainly because criminal law entails particular procedural safeguards, which seem inappropriate and heavy-handed where the harm caused is not truly 'criminal' in intent. Nevertheless, the outcome of the evaluation was to proceed with criminal sanctions.
- The EPA is both citizen-friendly and company-friendly, engaging in direct contact and publishing information on its webpage: <http://www.epa.ie>. This transparent approach makes its efforts to manage environmental issues more viable and more accessible to the public.

6. COOPERATION

6.1. International Cooperation

6.1.1. Forms of cooperation in cross-border cases

Ireland has ratified the Council of Europe's mutual assistance instruments, such as the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (1959 Convention), however the State has not yet ratified the Convention of 20 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000 MLA Convention). Despite this, mutual legal assistance is covered by the Criminal Justice (Mutual Assistance) Act 2008 which provides for the enactment of international agreements between Ireland and other countries on mutual assistance in criminal matters including the issue of environmental crime.

The Minister for Justice and Equality is the central authority for mutual legal assistance and in this regard is responsible for receiving and ensuring the execution of incoming requests. In practice, the Minister's functions are carried out by civil servants in the Department's Criminal Mutual Assistance and Extradition Division.

In relation to outgoing requests, the Director of Public Prosecutions is the judicial authority for the purpose of Article 24 of the European Convention on Mutual Assistance in Criminal Matters. When requests are submitted by An Garda Síochána or other investigative agencies, the Director of Public Prosecutions will examine the supporting evidence, along with the legality and proportionality of the request. The DPP, if satisfied, will issue the request and send it to An Garda Síochána or other investigative agency for onward transmission to the central authority. The Minister's function is essentially to transmit the request on behalf of the prosecution service and investigative agency.

Ireland receives International Letters of Rogatory (ILORs) from relevant countries upon which An Garda Síochána conducts parallel investigations. The receipt of such requests relates specifically to information and actions sought from competent authorities outside the jurisdiction with a view to obtaining evidence from within the State to assist in criminal investigations or proceedings. These have been utilised in previous cases and when enacted have formed the basis for successful investigations.

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

Information is routed through the National Criminal Intelligence Unit of An Garda Síochána. The National Bureau of Criminal Investigation (GNBCI) acts as the national point of contact on the National Waste Enforcement Steering Committee. In recent times information has been shared with Europol, channelled through a Detective Sergeant of An Garda Síochána based within Europol, via the SIENA string 1191146.

6.1.3. Difficulties faced in judicial cooperation relating to waste crime

Irish authorities reported that they use International Letters of Rogatory (ILORs) and conduct parallel investigations to overcome difficulties. As regards specifically waste crime, it seems that the Irish authorities do not need to engage in any international cooperation other than that related to the application of Regulation No 1013/2006.

6.1.4. Operational performance of JITs in waste crime

An Garda Síochána does not participate in JITs, although this form of international cooperation is laid down in the Criminal Justice (Joint Investigation Teams) Act 2004. An Garda Síochána does however use International Letters of Rogatory (ILORs) and parallel investigations in such cases.

6.2. Cooperation with EU agencies and networks

6.2.1 Cooperation with Europol and Eurojust

An Garda Síochána liaises with Europol and Eurojust when it receives information surrounding waste crime. The Irish authorities reported that, in general policing terms and across all spectrums of crime, the co-operation between An Garda Síochána and Europol and Eurojust is positive.

The state authorities are aware of the products and tools offered by Europol such as SOCTA or Early Warning Notifications but have not used these to date.

Revenue have an officer based at Europol.

6.2.2. Experience resulting from the use of various environmental networks

At the time of the on-site visit An Garda Síochána was aware of but have not attended any recent EnviCrimeNet General Assembly meetings.²² In September 2017 An Garda Síochána attended a 'TECUM Project' (Tackling Environmental Crimes throUgh standardised Methodologies) workshop in The Hague. The project aims to fill operational gaps in the cross-border fight against environmental crime by sharing information on a police to police basis via the SIENA message system. As part of this project, An Garda Síochána is now engaged in specific information-led operations as part of a Europe-wide fight against environmental crime.

The NTFSO is an active member of IMPEL (European Union Network for the Implementation and Enforcement of Environmental Law). It participates on a regular basis in joint enforcement projects, attending quarterly and yearly meetings, inspection exchanges and workshops, sharing its knowledge, experience and best practice of enforcement with other IMPEL members. In the opinion of NTFSO, participation in the IMPEL network is of great assistance to the Office and would be of even greater benefit with the full participation of all the countries involved.

Along with the Scottish EPA (SEPA), Ireland led a project developing guidance on financial provision for environmental liabilities in 2016 and 2017.

The EPA participates on the 5 Agencies Waste Crime Forum along with the Environmental Agency in England, the Northern Ireland Environment Agency, the Scottish EPA and Natural Resources Wales. The WERLAs represent Ireland on the 5 Agencies Waste Crime Analysts group.

²² After the on-site visit, the evaluation team was informed that An Garda Síochána on behalf of Ireland, have attended the Annual General Meetings of EnviCrimeNet in November 2017.

Ireland is one of the founding members of the European Network of Prosecutors for the Environment (ENPE) and has remained actively involved since its foundation in 2012. The EPA is a member of the board, and also a partner in the ENPE LIFE project. The EPA chairs the Working Group on Air Pollution prosecutions, one of the four LIFE project working groups.

The EPA has one member on ENPE, and one observer to the ENPE who is a solicitor within Dublin City Council. The DPP's Office has access to the ENPE website and attends regular training provided by the Academy of European Law (ERA). Meetings are held with Dublin City Council and the EPA concerning waste and environmental prosecutions. However, no DPP prosecutor attends the meetings of the ENPE.

A High Court judge is a member of the EU Forum of Judges for the Environment (EUFJE) and is regularly provided with information by that organisation. Through the EUFJE he also obtained membership of the World Commission on Environmental Law (WCEL). He has not yet attended any conferences in this capacity.

6.3. Cooperation between Ireland and Interpol

An Garda Síochána liaises with Interpol after receiving information concerning waste crime. In general policing terms and across all spectrums of crime, the co-operation between An Garda Síochána and Interpol is assessed positively.

6.4. Cooperation with the private sector

6.4.1. The involvement of the private sector/ Public Private Partnership (PPP)

An Industry Contact Group was established by the National Waste Enforcement Steering Committee (NWESC) in order to provide other stakeholders with the opportunity to contribute to the enhanced enforcement structures in the waste sector. The Industry Contact Group to the NWESC includes representatives from the waste industry, the Irish Waste Management Association and the producer responsibility compliance schemes.

This forum gives the waste industry an opportunity to contribute to the setting of enforcement priorities across the regions, to bring matters of concern to the attention of the regulators and enforcement authorities, and to shape the direction of waste enforcement in a way which ensures a 'level playing field' for all waste industry operators. The role of the Industry Contact Group of the NWESC is to provide a mechanism for the membership of the Group to discuss and consider waste enforcement matters and to maintain ongoing liaison with the NWESC. In particular, the Industry Contact Group provides strategic and practical support to regulators and enforcement authorities on the implementation of the agreed national waste enforcement priorities as identified by the Department and agreed by the NWESC on an annual basis and identifies stakeholders and mobilises ongoing participation in and support for the attainment of the objectives contained in national waste policies. The Group also supports the enforcement authorities in identifying specific and emerging national waste crime challenges and serves as a forum for the exchange of information and good practices with a view to enhancing prevention and suppression of illegal waste activities.

6.4.2 Liability regarding the obligation to pass on information to competent authorities

Shipment of Waste

The NTFSO's administrative function is to monitor all waste shipments into and from the State under the WSR and Broker & Dealer Regulations. Under the B&D Regulations the NTFSO requires private companies registered as a Waste Broker & Dealer with the Office to submit quarterly returns of all Green List waste exported during the preceding quarter.

Food Waste

Under Section 9 of the Waste Management (Food Waste) Regulations 2009, authorised waste collectors must provide an annual return to local authorities informing the local authorities of commercial customers who are refusing to avail of the source segregated waste collection service.

6.4.3. Experience of cooperation with the private sector

The 'polluter pays' principle is a fundamental principle of environmental protection and the Waste Management Act 1996 established a legislative basis for producer responsibility initiatives (PRIs). The principal PRIs in Ireland are in the areas of Waste Electrical and Electronic Equipment (WEEE), batteries, packaging, end-of-life vehicles (ELVs), tyres and farm plastics.

Under Section 39 of the Waste Management Act 1996, waste activities must have a waste licence from the EPA. A number of activities are exempted and instead require a waste permit from the local authority. Activities that need a permit include recycling and recovery facilities, car dismantling facilities and disposal facilities where the annual intake is less than 5 000 tonnes (excluding hazardous waste and landfills). These are generally smaller scale activities with low environmental risk.

In July 2014, the Department of Communications, Climate Action and Environment published a report²³ entitled 'Review of the Producer Responsibility Initiative Model in Ireland'. The report was wide-ranging and included segments on the existing PRIs, enforcement, competition among compliance schemes, information and awareness raising, corporate governance and potential new waste streams that might be covered by Producer Responsibility Initiatives in the future. One of the key recommendations of the report was that PRIs should assist authorities by making a contribution towards the costs associated with the enforcement of the regulatory framework under which they operate. In this regard financial contributions are being made by WEEE compliance schemes to the EPA to enforce the producer obligations of the WEEE Regulations in Ireland, the Packaging Compliance Scheme supports the costs associated with a PRI compliance officer in each of the three WERLA offices, while the Farm Plastics Compliance Scheme provides specialist support and intelligence to local authorities combating the unauthorised import and/or movement of farm plastics throughout the State.

²³ <http://www.dccae.ie/documents/PRI%20REview%202014.compressed.pdf>

6.5. Conclusions

- Ireland has not ratified the 2000 MLA Convention but mutual legal assistance is covered by the Criminal Justice (Mutual Assistance) Act 2008 which provides for the enactment of international agreements between Ireland and other countries on mutual assistance in criminal matters including the in the area of environmental crime.
- Ireland does not use the extensive range of tools offered by Eurojust and Europol with regard to waste crime, although its opinion on the quality of cooperation is positive. It does not take advantage of JITs and EnviCrimeNet either.
- Ireland has recently joined the ‘TECUM’ project in order to enhance its capacity to prevent, detect, investigate and prosecute cross-border cases of waste crime.
- Ireland has not been involved in the environmental crime priority "EU Policy Cycle for organised and serious international crime for the period 2018-2021".²⁴ Therefore, An Garda Síochána's involvement in this area and in the operational implementation of the EMPACT project (European multidisciplinary platform against criminal threats) would have additional advantages.²⁵
- Ireland is an active participant in IMPEL and, depending on the subject matter, is involved in related project work. The NTFSO is an active member of the network, as the agency is responsible for the enforcement of Regulation No 1013/2013.

²⁴ The evaluation team was informed that since the on-site visit, Ireland has elevated environmental crime onto its priority for the 2018-2021 policy cycle and has become relevant actor in December 2017 on the Operational Action Plan, Operation Action 7.1 of the EMPACT priorities.

²⁵ The evaluation team was informed that since the on-site evaluation visit, Ireland has attended several Europol meeting throughout Europe which have encompassed Environmental Crime as part of its EMPACT priority list.

- The EPA and the Dublin City Council (DCC) play an active role in the European Network of Prosecutors for the Environment (ENPE). Ireland is involved in the ENPE Life project. The EPA chairs the Working Group on Air Pollution and a prosecutor from the DCC is a member of the Working Group on Waste. However, the DPP does not take part in the ENPE. Since this network provides opportunities to exchange information and discuss common solutions on tackling waste crime with prosecutors from other Member States facing the same problems, the evaluators are convinced that it would be beneficial if prosecutors specialising in waste crime - as well as those from the DDP - were to be involved in this.
- A High Court Judge is a member of the EU Forum of Judges for the Environment (EUFJE) and receives information from that organisation.
- The Industry Contact Group (ICG), which has a direct link to the National Steering Committee, enables cooperation with the private sector. The ICG provides, in particular, strategic and practical support to regulators and enforcement agencies on the implementation of the agreed national waste enforcement priorities, as identified by the Department and agreed on an annual basis by the NWESC. It identifies stakeholders and encourages continued participation in and support for the attainment of national waste policy objectives.
- Since the collection and treatment of household and industrial waste are handled by the private sector, smooth cooperation between public bodies - such as the EPA and WERLAs - and the private sector is crucial. WERLAs cooperate with the private sector through the ICG. The EPA cooperates with the private sector on the basis of compliance and dialogue. Therefore, it would appear that there is close cooperation and good understanding between public bodies and the private sector as regards solving waste problems and observing national and EU legislation. Both share responsibility in this area, although their motivation may not be identical.

7. ILLEGAL TRAFFICKING OF WASTE

7.1. National structure

7.1.1. Authorities involved in preventing and combating illegal shipment of waste

Regulation 4 of the Waste Management (Shipments of Waste) Regulation 2007 (WSR) designates Dublin City Council (DCC) as the competent authority within Ireland responsible for enforcing the provisions of Regulation No 1013/2006 on shipments of waste (EWSR). The NTFSO was established by DCC in 2007 to ensure compliance with the requirements of the WSR and the EWSR.

Their waste enforcement unit (WEU) is responsible for carrying out inspections both at waste generator sites and at ports of export. The unit is also responsible for inspections at road checkpoints along with members of the Police and Revenue Customs Service units. The powers of WEU officers are set out in SI 419 of 2007, Waste Management (Shipments of Waste) Regulations which give effect to the provisions of Regulation (EC) No 1013/2006. Such powers include powers to prohibit and seize shipments, issue directions requesting information and prevent the disposal of waste and related nuisance arising from the shipment of waste. Files that are prepared for legal consideration by the WEU are handled by DCC's Law Department. If a barrister is required for a prosecution, they subcontract this resource.

Although the NTFSO is the sole agency with responsibility for the provisions of Regulation No 1013/2006, it conducts its work together with a number of other authorities including the police, Revenue Customs Service, local authority environmental departments, the EPA, the Health and Safety Authority and social welfare authorities.

7.1.2. Detection of illegal shipment of waste

A variety of methods are used to detect illegal shipments. The NTFSO carries out various inspections at waste generator sites and at ports of export to monitor waste shipments. The WEU has ten officers monitoring waste shipments for the entire country. It therefore has only limited capacity as regards the detection of offences. Detection is based on complaints, documentation, experience and random findings. Scanners operated by Revenue's Customs Service are used frequently to check the content of containers.

The NTFSO works with and shares intelligence with each of the relevant authorities. An effort is being made to improve intelligence systems. This work includes a project run with Customs to provide additional online waste shipment data. This project should result in higher detection rates.

The Office of the Revenue Commissioners was not involved in the PARCS WASTE Group (PARCS – Customs Action to protect Health, Culture Heritage, the Environment and Nature). The guidelines for customs controls on cross-border shipments of waste (2015/C 157/01) are not in use.

As regards formal agreements between Customs and other authorities, there is a formal Memorandum of Understanding (2014) between Revenue's Custom Service and the NTFSO to ensure compliance with the control procedures for the import and export of waste. A review of this MOU is currently underway.

7.1.3. Specificity of illegal shipment of waste

Disposal at Irish landfills is currently subject to a Euro 75/tonne levy. This makes the disposal of low value residues very expensive to treat. Low value residues include low grade plastic film from domestic waste collections and residues from construction and demolition waste processing facilities. The temptation to dispose of these waste types illegally is therefore strong. There have been a number of instances of such illegal waste disposal over the past couple of years.

The NTFSO is currently dealing with a number of large scale illegal dumping sites in Northern Ireland for waste that originated in the Republic of Ireland. These sites are subject to the repatriation procedures outlined in the EWSR. There may be an organised crime element involved in this dumping and a number of companies are involved in the investigation.

7.1.4. Measures on the shipment of waste

The prior written notification and consent procedure used between the NTFSO and other competent authorities serves to satisfy all parties that the shipment of waste has been conducted in an environmentally sound manner. The NTFSO keeps records of completed Annex 1B movement documents showing that the waste has been legitimately recovered or disposed of. The WEU investigates any queries arising from this process.

In the NTFSO's view, the process used to verify that waste is recovered in an environmentally sound manner in non-OECD countries is challenging. Establishing contact with the appropriate authorities, especially in Asia, is often difficult. Accordingly, the task of verifying that a shipment of waste can be recovered by a certain facility is not easy. Although updated contact lists are provided by the Basel Network, it is not always possible to contact the appropriate authorities.

Both green and amber waste shipments are monitored at the point of origin, during transit at checkpoints and at ports of export. The 3-day period of prior written notification can be used to target amber waste shipments for inspection. The WEU has powers to prohibit shipments if these are not handled in an environmentally sound manner.

7.2. Inspections

7.2.1. Methodology of inspections and follow-up

The inspection procedures used by the WEU have ISO 9001 and ISO 14001 certification. This provides a certain level of consistency and means that such procedures are carried out to an extremely high standard. Currently the WEU is piloting the use of mobile tablets to improve the efficiency of its inspections. This should help ease the administrative burden associated with inspections and give the WEU more time to carry out investigative work. The WEU also carries out yearly inspection exchanges with other Member States to ensure that procedures are consistent with the best practice of agencies in these Member States.

The NTFSO is part of the IMPEL network and is aware that mobile applications are currently being developed to assist inspection activities carried out by the relevant authorities. The NTFSO intends to improve its intelligence-gathering capacity to improve inspection techniques.

In the event of administrative irregularities, the shipment is generally allowed to proceed and an updated waste shipment document is requested. The incident is recorded on the WEU's IT system and a direction letter is sent to the responsible party. If a particular party is responsible for a number of these errors, an administrative fine of EUR 350 may be applied.

If there is an irregularity with the waste itself, the shipment/consignment can be sent back to the waste generation site for further investigation. In this instance, the local authority or the EPA will be informed accordingly, as they would be responsible for licensing the site. A EUR 750 is charged for such investigations. A decision on whether to take legal action regarding the shipment depends on the result of the investigation. If the irregularity is subject to either a TFS notification or a waste import, contact is made with the other competent authority involved.

7.2.2. Specific inspections with regard to Waste Electrical and Electronic Equipment (WEEE) and End of Life Vehicles (ELV)

The NTFSO is responsible for ensuring that the various categories of green and amber list of WEEE are shipped in accordance with the provisions of Regulation No 1013/2006. This is done administratively by the NTFSO and through the WEU's inspection regime. The NTFSO is therefore only able to report on WEEE that is shipped. National reporting of WEE recovery/recycling is covered by the two WEEE compliance schemes and is carried out in conjunction with the Department of Communications, Climate Action and Environment which monitors the overall flows of WEEE within the Republic.

The WEU's monitoring activities include the inspection of legitimate green and amber waste shipments but also the export of EEE/WEEE to third countries such as those in West Africa. This particular waste route has been targeted over the past few years on account of the high levels of non-compliance and concealment observed. The WEU has produced a guidance document for all stakeholders involved in EEE/WEEE, second-hand vehicles and used vehicle parts.²⁶ This document is used in combination with the EU Correspondents Guidelines No. 1 and provisions within Irish WEEE legislation to place the responsibility on shippers of EEE for proving that the waste is not WEEE.

The WEU conducts inspections of used vehicles and vehicle parts at ports of export. These are generally destined for West African countries. An onus is placed on the shipper to prove that the used vehicle and used vehicle parts are not end-of-life in accordance with the EU Correspondents Guidelines No. 9. Approximately 250 inspections were conducted in 2016. In cases where the vehicle is an end-of-life vehicle, shipment of the vehicle is denied and the local authority where the ELV originated is informed. The NTFSO does not have the authority to regulate any sites that illegally dismantle ELVs. However, it does inspect them from a waste shipment perspective, together with local and regional enforcement authorities.

The NTFSO also monitors imports of Category B and C insurance write-offs from the motor industry, predominantly from the United Kingdom. Vehicle parts from Category B vehicles can be reused if they are undamaged, but the vehicle shell must be crushed. They are therefore classified as waste. Category C vehicles can be repaired and put back on the road, but can also be cannibalised for parts which means they are potential waste. Fluctuations in the value of sterling versus the euro affect trade in these vehicles.

The WEU also conducts inspections of ELVs at authorised treatment facilities throughout the country. This includes baled and depolluted ELVs for export, imported ELVs, ELV components such as waste oil, batteries, tyres, fluids and waste from the shredding of ELVs destined for export.

²⁶http://www.dublincity.ie/sites/default/files/content/WaterWasteEnvironment/Waste/National_TFS_Office/Documents/GuideforShipmentsOfUsedVehiclesVehiclePartsandElectricalEquipment.pdf

7.2.3. First inspection plan

The First inspection plan was adopted and is available on the NTFSO website.²⁷

7.2.4. Challenges with regard to the taking back of an illegal waste shipment

Ireland exports a large proportion of the waste it generates, both hazardous and non-hazardous. Consequently, only a small amount of waste is imported annually. This mostly consists of refuse derived fuel from Northern Ireland. This means it is extremely rare that a waste shipment will need to be returned to another Member State.

As Ireland is a net waste exporter, a number of waste shipments have been repatriated to Ireland since the establishment of the NTFSO. These repatriations are conducted through the procedures agreed by the IMPEL network. One challenge is that the NTFSO has not always been informed by other competent authorities in a timely manner of instances of non-compliance. Another challenge has been to contact the owners of second-hand units who are no longer based in the country to take responsibility for an illegal shipment they organised.

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²⁷http://www.dublincity.ie/sites/default/files/content/WaterWasteEnvironment/Waste/National_TFS_Office/Documents/Waste%20Shipment%20Inspection%20Plan%202017%20-%202019.pdf

7.3. Conclusions

- The Dublin City Council (DCC) is the competent authority for enforcing the provisions of Regulation No 1013/2006. The NTFSO was established by the DCC in 2007 to ensure compliance with the requirements of waste management. This replaced a previous system for which 31 individual local authorities were responsible. The NTFSO is in charge of conducting inspections on waste sites, ports of export and road checkpoints.
- In addition, the NTFSO is empowered to conduct investigations and can require investigation assistance from An Garda Síochána. Files that are prepared for legal consideration are prosecuted by DCC's Law Department. If a crime is considered to be serious, the file is handed over to the DPP, which is responsible for deciding whether or not a prosecution should be made.
- The advantage of the establishment of a special authority dedicated to the cross-border shipment of waste is that the inspectors/investigators become experts in that field and deal exclusively with this type of work. On account of the complexity of the legislation and the need for its enforcement, there is a need for expertise and practical experience. The provisions taken ensure that such expertise and experience are available. However, the NTFSO employs only ten inspectors to carry out inspections and investigations in the WEU. Although these inspectors are well trained and dedicated to their work, in the evaluators' view they may not have sufficient human resources available to carry out efficiently inspections throughout the country and to ensure prosecution procedures are put in place as regards illegal shipments of waste.
- The evaluators identified a possible overlapping of competences between the NTFSO and the EPA. Those bodies have different responsibilities in the area of waste management and may make differing assessments as regards the classification of waste. However, as long as there is sufficient awareness and cooperation, including cooperation with Customs, the structure is considered to be an example of best practice.

- The NTFSO cooperates with a range of competent authorities responsible for environmental protection. An Garda Síochána provides assistance in the course of inspections and investigations. Since the illegal shipment of waste has financial implications, the involvement of An Garda Síochána in investigations carried out by the NTFSO helps bring the financial aspects of a particular case into focus. Thus, closer cooperation with An Garda Síochána may lead to prosecution at a higher court. In the evaluators' view, such cooperation provides also scope for shared training. As regards the exchange of information this is done where an investigation is ongoing. An Garda Síochána take information of all types of crime on a regular basis and action same either through its own structures or in co-operation with Agencies who retain a responsibility or regulatory function in said area.
- Cooperation with Revenue's Customs Service exists, but it could be enhanced, since Customs have a well established selecting and intelligence system that can be used to detect suspected exports of waste. Therefore, in the evaluators' view, the NTFSO should develop closer cooperation with Customs and that such cooperation should comprise training and exchange of information.²⁸ Customs have access to information about sender, cargo, destination, weight and value and the content of the containers. Accordingly, an inspection plan may be developed on the basis of Customs' data.
- The Irish Customs did not participate in PARCS WASTE group which was established to develop common rules of conduct for customs authorities. Customs do not make use of the Guidelines for customs controls on cross-border shipments of waste.
- The WEU's monitoring activities include the inspection of legitimate green and amber waste shipments. These shipments involve the export of EEE/WEEE to third countries, such as countries in West Africa. This particular waste route has been targeted over the past few years on account of the high levels of non-compliance and concealment observed. The development of contacts with competent authorities in final destination countries (Africa) could facilitate possible investigations into the illegal shipment of waste.

²⁸ After the on-site visit, Ireland provided information that the Revenue's Customs Service plays an important role in the multi-stakeholder efforts against waste crime in Ireland and has good relations with the NTFSO in enforcing the WSR.

8. MANAGEMENT OF HAZARDOUS WASTE

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

Hazardous waste is generated by all sectors of Irish society, from large industry, healthcare to small businesses, households and farms. It is, for the most part, managed by a professional hazardous waste industry and is treated appropriately and in accordance with legal requirements. Significant quantities of hazardous waste are generated, and there is scope to reduce this generation of waste through waste prevention programmes. Around half of Irish hazardous waste is exported for treatment. There are some problems with so-called 'unreported' hazardous waste in Ireland, where small amounts of consumer hazardous waste are produced in households and small businesses and are sometimes inappropriately managed.

From the beginning of 2015 up to the date of the evaluation visit, the NTFSO opened 149 investigations. 26 of these related to waste crimes involving hazardous waste.

In order to prevent the misclassification of hazardous waste, in 2015 the EPA produced a document entitled 'Waste Classification. List of Waste & determining if waste is hazardous or non-hazardous'. The content of this document is in line with the EU waste classification legislation. The document provides for the identification of hazardous components of waste and provides producers of waste with a procedure - based on up-to-date standards and information - for the identification and categorisation of hazardous components of waste.

The EPA uses *HazWasteOnline*, a web-based software package for classifying hazardous waste. The software provides waste producers, consultants, carriers and waste receivers with a simple, accurate and auditable tool for the classification of potentially hazardous and hazardous waste materials such as contaminated soils, filter cakes, sludge residues and wastes from organic processes. *HazWasteOnline* allows users to code and classify waste and assign the correct LoW entry to the waste. The EPA uses both the paper-based system and *HazWasteOnline* software.

HazWasteOnline is used if there is uncertainty regarding the classification of a mirror entry (e.g. bottom ash) or if there is a change in classification and LoW code (from hazardous to non-hazardous waste) registered by a hazardous waste management company. In this case, the tool is used and the EPA reviews, agrees to or challenges the classification given. In some circumstances, this tool does not fully provide for complex waste streams such as bottom ash. In such instances, further work is carried out in conjunction with the EPA to ensure full characterisation/description and classification.

Holders of waste are responsible for ensuring correct classification, which the waste collector needs to check and confirm. The EPA monitors it through the licensee enforcement. The EPA has, on occasion, required holders of waste to submit a classification reports for assessment of their waste. In addition, the WTF system administered by Dublin City Council (DCC) ensures traceability of hazardous waste shipped within the country. This is done through the DCC online WRMS system. The NTFSO is responsible for all shipments of hazardous waste from and into the country under the Regulation No 1013/2006. The NTFSO tracks these waste shipments by following the procedure of prior written notification and consent under Article 3 of the TFS Regulation. Through this system, the NTFSO administrative team processes and consents to applications for shipments of hazardous waste listed in the notification documents in Annex 1A of the above Regulation. The NTFSO WEU have the responsibility to carry out inspections and monitor all hazardous waste shipments within the country, in addition to carrying out inspections and monitoring international shipments of all waste types. In these, they take into account Annex 1A documentation and Annex 1B movement documents, which must physically accompany each and every hazardous waste shipment under the notification. Inspections of hazardous waste are carried out at the site of generation, in transit at checkpoints and at the port of export based on a risk assessment matrix and an inspection plan. In NTFSO's experience, the misclassification of hazardous waste as non-hazardous is infrequently encountered.

8.2. The system of inspections and the authorities involved

The following list covers the main types of hazardous waste legislation and inspection. The information for the EPA and local authorities is collated by the Office of Environmental Enforcement within the EPA.

- Section 39 of the Waste Management Act provides that a person shall not dispose of or undertake the recovery of waste (including the treatment of waste) at a facility, save under and in accordance with the terms of a waste permit
- Waste authorisations for the individual facilities can be either through an Industrial Emissions licence or waste licence issued for large or higher-risk facilities (which include all landfill sites), or alternatively through a waste facility permit issued by a local authority or a certificate of registration issued by a local authority or the EPA for smaller-scale and lower risk waste facilities
- Waste Management (Facility Permit and Registration) Regulation 2007, as amended.
- Local Authorities are the competent authorities for granting and enforcing Waste Permits and Certificates of Registration issued to Private Operators in respect of those waste activities listed in the Third Schedule to the Waste Management (Facility Permit & Registration) Regulations, as amended. The EPA is the competent authority responsible for issuing Certificates of Registration to local authorities.
- Waste Management (Registration of Brokers and Dealers) Regulation, 2008 provides for a registration system of waste brokers and dealers who arrange for the shipment of waste into, transiting through and shipments from the State in order to comply with the provisions of Regulation No. 1013/2006.
- Before a permit is issued by local authorities, site visits are generally carried out, depending on the risk of a facility. Risk prevention measures are checked. For instance, the Southern Region has issued a total of 377 permits/licenses covering 10 local authorities. The EPA has similar procedures in place for licensing facilities.

- Under the EC (Shipments of Hazardous Waste Exclusively within Ireland) Regulation 2011, the NTFSO is responsible for the administration and tracking of the movements of hazardous waste within the country through an online portal on the Waste Regulation Management System (WRMS). A Waste Transfer Form (WTF) tracking document must accompany each hazardous waste movement. The NTFSO carries out administrative inspections of WTFs at sites of generation, waste carriers, and receiving waste facilities. The frequency of these inspections is determined on the basis of risk assessment.

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

Every facility/person involved in hazardous waste management (collection, transport, treatment and storage) requires authorisation (permit or licence). Appropriate authorisations may be issued by the EPA (generally large or high risk facilities) or by local authorities. In some cases the EPA requires a financial guarantee to compensate restoration of possible damage which may be caused by hazardous materials. The EPA or a regional authority may issue an authorisation depending on the size and the risk of the facility. There are no exceptions for small scale or temporary storage facilities. Examples of small scale and lower risk facilities for which local authorities issue permits are WEEE and ELV collection and storage facilities.

The National Waste Collection Permit Office (NWCPO) at Offaly County Council (designated as the National office in 2012), accepts, processes and issues all permits for waste collectors. It also carries out reviews, additions and amendments to existing Waste Collection Permits. An electronic register is publicly available. Searches made on the basis of EWC Codes makes it possible to determine the waste types that permit holders in a given area are authorised to collect.²⁹

8.4. Trends in illegal hazardous waste management

The Irish authorities did not make any observations on possible trends in illegal hazardous waste management.

²⁹ <http://www.nwcpo.ie/permitsearch.aspx>

8.5. Conclusions

- The EPA is responsible for hazardous waste management and every form of hazardous waste management requires authorisation. In addition, the NTFSO is involved in the regulation of all hazardous waste movements within the State and hazardous waste management if the waste in question is exported from or imported into Ireland.
- The EPA and NTFSO shared responsibility for hazardous waste management. This may lead to different classification practices. However, those bodies try to resolve this problem through well-established and close cooperation.
- To avoid different interpretations of hazardous waste, the EPA has produced a document entitled *"Waste Classification. List of Waste & determining if waste is hazardous or non-hazardous"*. This document provides the authority in question and the producers of waste with guidelines on identifying and categorising waste in a uniform way. The EPA uses the *HazWasteOnline* for the same purpose. The use of such measures enables a uniform and foreseeable application of the provisions for waste holders and the competent authorities.
- Ireland complies with all the classification systems adopted in the EU and has implemented these in its national legislation (Waste Management Act of 1996). The responsibility for the labelling of hazardous waste lies with the waste holder. Such labelling is determined by the composition of the waste. In some cases, the EPA also requires a financial guarantee to cover any restoration as a result of damage caused by hazardous materials. Private companies handling hazardous waste cooperate with the EPA. This was noted during the site visit to the private company *Indaver* in Dublin.
- Ireland generates hazardous waste in a way that is typical of a modern society in the EU. As is the case for many countries, clinical waste presents a particular challenge, as this contains chemical waste. Since Ireland has no facilities capable of treating or destroying such waste, this type of hazardous waste is exported to other EU countries that have the requisite facilities. Such waste appears to be exported in accordance with EU rules.

9. ILLEGAL PRODUCTION OR HANDLING OF DANGEROUS MATERIALS

9.1. The concept of dangerous materials

There is no strict definition of dangerous materials under Irish law. Dangerous materials are treated in the same way as radioactive substances, that is any substance capable of emitting ionising radiation and radiological hazards. Such dangers comprise ionising radiation, radioactive substances, nuclear devices and irradiating apparatus. The framework legislation governing the nuclear and radiation protection sectors in Ireland is the Radiological Protection Act, 1991.

The EPA as the competent authority will determine whether the substance is capable of emitting ionising radiation or whether it is a radiological hazard. The Temporary Operational Protocol (TOP) outlines the arrangements used to manage the interim safe storage of an orphan radioactive source or of a source identified for seizure, pending its ultimate disposal. There is a non-exhaustive list of organisations that the Office of Radiological Management could ask, on a case by case basis, to play an advisory and/or supporting role in the implementation of the protocol e.g. the Department of Defence, An Garda Síochána, etc.

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

The question of security of nuclear material features prominently in the work of the International Atomic Energy Agency (IAEA), and Ireland has adopted their ‘rules and regulations’ regarding the transport, storage and security of radioactive material.

The Irish authorities reported no illegal production of nuclear materials in Ireland.

9.3. Procedural aspects

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

Ireland ratified the Convention of Physical Protection of Nuclear Materials and Nuclear Facilities (CPPNMNF) which sets a framework for the protection of nuclear materials in domestic use, transport and storage and for cooperation between states for recovery of stolen or smuggled material. Ireland has not yet ratified the Convention on Suppression of Acts of Nuclear Terrorism (ICSANT) - the Department of Justice is tasked with the ratification process.

The Temporary Operational Protocol (TOP) is invoked when an orphan or seized radioactive source needs to be stored safely and securely on an interim basis so that its ultimate disposal may be managed. In cases of orphan radioactive sources or sources that are seized by the Regulatory Body where the responsible parties cannot be identified, then the Department of Communications, Climate Action and Environment will intervene to consider funding issues in the management and disposal of those sources on a case by case basis. Ireland does not currently have a national storage facility for this material but work is ongoing with the EPA regarding the establishment of this facility.

9.3.2. The cooperation with European and international partners

There is no specific kind of cooperation between Ireland and European and international partners relating to handling dangerous materials.

9.3.3. Techniques of investigation

An Garda Síochána has the tools available to combat all facets of environmental crime. These include the services of Financial Investigation Unit (FIU), Garda National Computer Crime Investigative Bureau (GNCCIU) and the Garda National Economic Crime Bureau (GNECB).

9.3.4. Main obstacles to successful investigation and prosecution

The licensing system in Ireland for sealed and unsealed sources has been in operation since 1977. Inspectors from the EPA carry out inspections to assess compliance with the licence conditions. Licence conditions include requirements for the management of radioactive waste which include take-back arrangements with the original overseas supplier of the sources.

9.3.5. Training

An Garda Síochána provides in-house training relating to dangerous materials, such as chemical, biological, radiological and nuclear materials.

A specialised training course for those involved in the transport of relevant radioactive consignments was first approved by the EPA in 2007. Ireland is satisfied with the notification arrangements in place with the UK when shipping nuclear waste.

9.4. Conclusions

- The EPA is the competent authority responsible for determining whether a substance is dangerous, namely whether a substance is capable of emitting ionising radiation or causing a radiological hazard. The Temporary Operational Protocol (TOP) outlines the arrangements to manage the safe interim storage of an orphan radioactive source or of a source identified for seizure, pending its ultimate disposal.
- Ireland has adopted the relevant rules and regulations on the transport, storage and security of radioactive material developed by the International Atomic Energy Agency (IAEA). Ireland has not detected domestically any illegal production of nuclear materials.

- The Temporary Operational Protocol (TOP) is invoked when an orphan or seized radioactive source needs to be stored safely and securely on an interim basis so that its ultimate disposal may be managed. In cases of orphan radioactive sources or sources that are seized by the Regulatory Body where the responsible parties cannot be identified, then the Department of Communications, Climate Action and Environment will intervene.
- The licensing system in Ireland for sealed and unsealed sources has been in operation since 1977. Inspectors from the EPA carry out inspections to assess compliance with the license conditions. License conditions comprise requirements for the management of radioactive waste which include take-back arrangements with the original overseas supplier of the sources.

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10. FINAL REMARKS AND RECOMMENDATIONS

10.1. Recommendations

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

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

The evaluation team thought it fit to make a number of suggestions for the attention of the Irish authorities. Furthermore, based on various good practice, related recommendations are also forwarded to the EU, its institutions and agencies, and to Europol in particular.

10.1.1. Recommendations to Ireland

Ireland:

1. should work out a method to collect systematic, reliable and updated statistics relating to the number of investigations, prosecutions and convictions recorded to enable an assessment of the efficiency of the actions taken by bodies involved in the protection of environment; (cf. 3.3.2 and 3.6)
2. should consider evaluating the benefits of specialised judges in waste crimes or providing judges with structured and continued training in waste crime; (cf. 4.1.1, 4.5 and 4.6)
3. should keep under review the capacity of the EPA and the NTFSO with regard to the human resources to allow them to continue to fulfil more effectively their tasks regarding the detection and the handling of environmental crime cases; (cf. 4.3, 4.6 and 7.3)
4. should continue to involve Revenue's Customs Service in the national and European cooperation in combatting illegal waste shipment more effectively; (cf. 4.4.1, 4.6, 7.1.2 and 7.3)

5. should enhance the capacity of the DPP prosecutors to handle environmental crime cases more effectively by providing them with formal and continuous training in waste crime-related issues, by strengthening cooperation with the Law Enforcement Authorities and by involving DPP prosecutors in the activities performed by the European Network of Prosecutors for the Environment (ENPE); (cf. 4.5, 4.6 and 6.2.2 and 6.5)
6. should improve the specialisation of Garda's officers in handling environmental crime cases, e.g. by providing them with sufficient training; (cf. 4.5 and 4.6)
7. should review the definition of *serious crime* in the context of environmental crime so that all the authorities empowered to carry out investigations adopt a uniform approach and involve the DDP in determination of it, as the body responsible for prosecuting serious criminal cases; (cf. 4.11, 4.6, 5.1.3 and 5.5)
8. should be frequently involved in the activities carried out at EU level to improve the effectiveness of the fight against environmental crime, in particular against the illegal shipment of waste, e.g. by playing a more active role in EnviCrimeNet, strengthening its cooperation with Europol and Eurojust, raising awareness of the Council Conclusions on Countering Environmental Crime of 8 December 2016 and participating in EMPACT on environmental crime; (cf. 6.1.4, 6.2.1, 6.2.2, 6.5, 7.1.2 and 7.3)
9. should improve cross-border cooperation, in particular with countries that are the final destination for the illegal shipment of waste; (cf. 7.1.4 and 7.3)

10.1.2. Recommendations to the European Union, its institutions, and to other Member States

10. The Member States are encouraged to make use of a wide range of programmes to prevent environmental crime, including those programmes developed by administrative authorities, and to adopt methodology designed to achieve compliance with legislation and cooperation with licence and non -licence holders developed by the EPA; (3.5 and 3.6)
11. The Member States are encouraged to establish at central level a multi-disciplinary platform to promote cooperation and the exchange of experience and knowledge with a view to developing a coordinated approach to waste crime, such as the National Waste Enforcement Steering Committee in Ireland; (cf. 3.2, 4.4.1, and 4.6)
12. The Member States are encouraged to promote more effective cooperation with private sector companies handling waste and hazardous waste through dialogue and the compliance procedure, as performed in Ireland through the Industry Contact Group (as well as cooperation with *Indavor*, or *Thorntons*); (cf. 6.4.1, 6.5, 8.3 and 8.5)
13. The Member States are encouraged to develop closer cooperation with the neighbouring countries so as to combat the illegal shipment of waste, such as the one built up between Ireland and the UK in respect of the application of Regulation No 1013/2006; (cf. 7.2.1, 7.2.4 and 7.3)
14. The Member States are encouraged to designate specialised authorities to check and monitor the cross-border shipment of waste and conduct on-site inspections and adopt an authorisation procedure in respect of local waste-handling companies, as performed by the EPA and NTFSO in Ireland; (cf. 7.1.2, 7.1.4, 7.2.1, 7.2.2 and 7.3)

Annex A: programme for the on-site visit and persons interviewed/met

Tuesday 24 October

18:30: Arrive in Dublin - Pre evaluation meeting (Evaluators only)

Wednesday 25 October

08:45 – 09:00 Pick-up at Hotel

09:15- 13:00 Offices of the Department of Justice & Equality,
51 St. Stephen's Green

Welcome and overview of Environmental Crime

Introduction: Peter Mullan, Department of Justice & Equality

Department of Communications, Climate Action & Environment:

Presentation by Kevin O'Donoghue

Environmental Protection Agency:

Presentation by Jim Moriarty

Waste Enforcement Regional Lead Authorities:

Presentation by Sean Scott, Connacht Ulster WERLA

National Trans Frontier Shipment Office:

Presentation by Brian White

Lunch 13.00 – 13.45

14:00-16:00 Site Visit - National Trans Frontier Shipment Office, Thorntons' MRF Park West

16:00 Transfer to Hotel

19:00 Dinner hosted by the Department of Justice & Equality

Thursday 26 October

09:00 -09:15 Pick-up at Hotel

9:30 – 12:30 Site Visit - Environmental Protection Agency, Indaver Ireland, Dublin Port

12:30 Return to Department of Justice Offices, 94 St. Stephen's Green

13:00 -14:00 Lunch - Department of Justice Offices

14:00 Transfer to An Garda Síochána Offices, Harcourt Square

14:15 – 17:00 An Garda Síochána/Director of Public Prosecutions

17:00 Return to Hotel

Friday 27 October

09:00 – 09:15 Pick-up at Hotel

09:30- 13:00 Department of Justice & Equality/Department of Communications, Climate Action & Environment, Agencies, An Garda Síochána

Wrap up meeting

Annex B: Persons interviewed/met**Meeting on 25 October 2017***Venue:* Offices of the Department of Justice & Equality

Person interviewed/met	Organisation represented
Peter Mullan	Department of Justice & Equality
Kim Deegan	Department of Justice & Equality
Ursula Stapleton	Department of Justice & Equality
Cronan Goodman	Department of Justice & Equality
Sorcha Byrne	Department of Communications, Climate Action & Environment
Niall McLoughlin	Department of Communications, Climate Action & Environment
Kevin O'Donoghue	Department of Communications, Climate Action & Environment
Brian White	National Trans Frontier Shipment Office
Pat McCartney	National Trans Frontier Shipment Office
Brian Heffernan	National Trans Frontier Shipment Office
Eoin McCaffrey	National Trans Frontier Shipment Office
Celine Reilly	Dublin City Council
Jim Moriarty	Environmental Protection Agency
Seán Scott	Connacht Ulster WERLA
Colman Kelly	Cork Co. Council, Southern WERLA
George Kyne	An Garda Síochána

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Venue: Site Visit - National Trans Frontier Shipment Office, Thorntons' MRF Park

Person interviewed/met	Organisation represented
Cronan Goodman	Department of Justice & Equality
David Duff	Operations Manager, Thorntons Recycling
Paul Hennessy	Business Development Manager, Thorntons Recycling
Sandra Kiely	Environmental Health & Safety for the Facility, Thorntons Recycling
Brian White	National Trans Frontier Shipment Office
Pat McCartney	National Trans Frontier Shipment Office
Brian Heffernan	National Trans Frontier Shipment Office
Eoin McCaffrey	National Trans Frontier Shipment Office
Seán Scott	Connacht Ulster WERLA
Colman Kelly	Cork Co. Council, Southern WERLA

Meetings on 26 October 2017

Venue: Site Visit - Environmental Protection Agency, Indaver Ireland, Dublin Port

Person interviewed/met	Organisation represented
Jim Moriarty	Environmental Protection Agency
Sandra Gleeson	EPA inspector, Dublin Regional Inspectorate
Emma Tyrrell	Facility Manager, Indaver
Ruth Russell	Environmental Manager, Indaver
Conor Jones	Regional Manager , Indaver
Cronan Goodman	Department of Justice & Equality

Venue: An Garda Síochána Offices, Harcourt Square

Person interviewed/met	Organisation represented
George Kyne	Detective Superintendent , An Garda Síochána
Mo Fitzgerald	Detective Garda
Eithne Muldoon	Office of the Director of Public Prosecution
Domhnall Murray	Office of the Director of Public Prosecution
Cronan Goodman	Department of Justice & Equality
Jim Moriarty	Environmental Protection Agency
Sean Scott	Connacht Ulster WERLA

Meeting on 27 October 2017*Venue:* Department of Justice & Equality

Person interviewed/met	Organisation represented
Ursula Stapleton	Department of Justice & Equality
Cronan Goodman	Department of Justice & Equality
George Kyne	Detective Superintendent , An Garda Síochána
Sorcha Byrne	Department of Communications, Climate Action and Environment
Jim Moriarty	EPA
Brian White	National Trans Frontier Shipment Office
Pat McCartney	National Trans Frontier Shipment Office
Brian Heffernan	National Trans Frontier Shipment Office
Eoin McCaffrey	National Trans Frontier Shipment Office

Annex C: List of abbreviations/glossary of terms

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	IRISH OR ACRONYM IN ORIGINAL LANGUAGE	IRISH OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
CAB	<i>CAB</i>		The Criminal Assets Bureau
DCCAE	<i>DCCAE</i>		The Department of Communications, Climate Action and Environment
DDP	<i>DDP</i>		The Office of the Director of Public Prosecutions
EAOs	<i>EAOs</i>		Environmental Awareness Officers
EPA	<i>EPA</i>		Environmental Protection Agency
ESTG	<i>ESTG</i>		The Environment Services Training Group
FIU	<i>FIU</i>		Financial Investigation Unit
GNBCI	<i>GNBCI</i>		The Garda National Bureau of Criminal Investigation
GNCCIB	<i>GNCCIB</i>		The Garda National Computer Crime Investigative Bureau

RESTREINT UE/EU RESTRICTED

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	IRISH OR ACRONYM IN ORIGINAL LANGUAGE	IRISH OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
GNCIU	<i>GNCIU</i>		The Garda National Criminal Intelligence Unit
GNECB	<i>GNECB</i>		The Garda National Economic Crime Bureau
HSA	<i>HSA</i>		The Health and Safety Authority
ILOR	<i>ILOR</i>		International Letters of Rogatory
LGMA	LGMA		Local Government Management Agency
NIEA	<i>NIEA</i>		The Northern Ireland Environment Agency
NIECE	<i>NIECE</i>		Network for Ireland's Environmental Compliance and Enforcement
NTFSO	<i>NTFSO</i>		The National Transfrontier Shipment Office
NWCPO	<i>NWCPO</i>		The National Waste Collection Permit Office
NWESC	<i>NWESC</i>		The National Waste Enforcement Steering Committee

RESTREINT UE/EU RESTRICTED

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	IRISH OR ACRONYM IN ORIGINAL LANGUAGE	IRISH OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
NWPP	<i>NWPP</i>		National Waste Prevention Programme
OCLRR	<i>OCLRR</i>		The Office of Climate, Licensing, Resource and Research
OEE	<i>OEE</i>		The EPA's Office of Environmental Enforcement
PARCS	<i>PARCS</i>		Customs Action to protect Health, Culture Heritage, the Environment and Nature
PRIs	<i>PRIs</i>		Producer Responsibility Initiatives
RMCEI	<i>RMCEI</i>		Recommended Minimum Criteria for Environmental Inspections
WCEL	<i>WCEL</i>		The World Commission on Environmental Law
WERLA	<i>WERLA</i>		Waste Enforcement Regional Lead Authorities
WEU	<i>WEU</i>		Waste Enforcement Unit
WRMS	<i>WRMS</i>		The Waste Regulation Management System