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## **REPORT**

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Subject: 8th Round of Mutual Evaluations - 'The practical implementation and operation of European policies on preventing and combating Environmental Crime'  
Report on Romania

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

**REPORT ON ROMANIA**

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## 1. EXECUTIVE SUMMARY

The visit was organised by the Romanian authorities in an exemplary way and included meetings with the relevant bodies 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 Ministry of the Environment, the Public Ministry - Prosecutor's Office attached the High Court of Cassation and Justice, the Ministry of Internal Affairs, the Ministry of Health, the National Environmental Guard, the Romanian police, the General Inspectorate of the Border Police, the General Directorate of Customs).

During the on-site visit, the Romanian 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, as well as on cross-border cooperation. The presence of the Deputy Prime Minister (the Minister for the Environment) was proof of the special attention which the Romanian authorities accord to this subject. The Romanian authorities organised visits with representatives of the regional offices of the Coast Guard and Maritime Ports Administration in Constanța, the Regional Customs Directorate in Galați, the police and the Prosecutor's Office in Constanța, who offered insights into their operational work and cooperation. All the meetings were organised efficiently and provided the evaluators with the necessary materials to assess the legal and operational aspects of the Romanian system.

Romania is aiming to make the fight against environmental crime one of its top priorities, specifically targeting crimes against wildlife and waste crime, and to devote more attention to the structured approach to waste-related crime. Action plans/programmes are designed to introduce a proper waste management structure, including aspects related to information and education. They have been drawn up and implemented by different institutions/authorities within the scope of their ordinary competences. However, so far no strategic programmes on waste crime have been developed at the national level defining the roles of the most important actors involved in the protection of the environment. Therefore, in the evaluators' view, a strategic document should be drawn up setting out the priorities for protecting and fighting environmental crime more effectively and defining a multi-agency approach to enable agreement to be reached on an operational action plan to enforce the strategy.

Statistics on environmental violations and criminal offences are collected by various authorities in Romania, but there is no central authority monitoring the full sequence of actions, including reported violations, the number of decisions not to investigate certain types of cases, the number of investigations carried out, the number of prosecutions and final convictions, and the nature of the violations. While statistics on investigations/prosecutions/convictions, etc. are provided by the police and judicial authorities, they are not gathered centrally in a way that would allow a thorough examination of issues arising in Romania.



During the on-site visit all different actors involved in the field explained their legal tasks relating to environmental offences and elements of the practical approach to their specific activity. Within the National Environmental Guard (NEG), the fight against environmental crime is a high priority. Practitioners from law enforcement authorities generally try to support the authorities investigating environmental cases. However, the impression was that the work of the different public actors is not coordinated as well as it could be. It was difficult to figure out which authority is legally competent and has the capacity, in terms of staff and knowledge, to take an active leading role in initiating the investigation of an environmental offence. Although there have been examples of efficient and successful cooperation among different authorities in individual cases, the evaluators felt that greater coordination of the legal competences and existing capacities in the fight against environmental crime would lead to more efficient cooperation. Prioritisation of the fight against environmental crime through an approach involving all relevant actors in the field would be useful.

Environmental crime is handled by the prosecutor's offices and general courts. In certain circumstances, the hierarchically superior prosecutor may order the taking of the case, including up to the level of the Prosecutor's Office at the High Court of Cassation and Justice. Under Article 126 of the Romanian Constitution, justice is administered by the High Court of Cassation and Justice, and the other courts of law. There are no specialised courts or judges for the adjudication of waste offences. It seems that only a few cases have been brought to court.

The prosecution system is independent of the courts and other public authorities. Prosecutors are independent in the execution of their duties. They carry out their duties in accordance with the principle of legality, impartiality and hierarchical control, under the authority of the Minister for Justice. With a few exceptions (e.g. one specialised prosecutor at the Prosecutor's Office in Constanța), Romania does not have prosecutors specialising in the field of the environment.

In August 2018, a network of Romanian prosecutors was launched with a view to sharing statements and relevant case-law relating to environmental crime, and specifically waste crime, via an email service. Since the network of prosecutors specialising in environmental crime is a relatively new project, it was not possible to assess its capacity and efficiency during the visit. Obviously this activity is a step in the right direction, thus the evaluation team expect this will help the general prosecutor office to reach a better central coordination and create a pool of prosecutors, at local and regional level, specialising in fighting waste crime.

Several units in Romania's national police force appear to be involved, to a limited degree, in the fight against waste crime and crime relating to hazardous substances. The Directorate of Arms, Explosives and Dangerous Substances, the Economic Crime Investigation Directorate, the Transport Police and the Public Order Directorate all have the potential to fight against environmental crime, the evaluation team considers that should be a priority for the Romanian police. No specialised unit for combating waste crime has been set up within the Romanian police. Investigations in this area usually have to be carried out with substantive support from the NEG inspectors or in conjunction with other external experts. In the evaluators' view, a reassessment of the threat of illegal waste shipment is needed by police in order to better prioritize the fight against this type of crime.

The NEG plays the most important role in detecting administrative infringements and criminal offences in the field of environmental crime. The NEG is the main authority in the fight against non-compliance with Regulation (EC) No 1013/2006. There are 621 inspectors performing an impressive number of controls on industrial facilities and waste management operators (more than 38 000 in 2017). The NEG has the institutional capacity to take action at any moment (it has a 24/7 team). The NEG staff generally have a high level of education and a high degree of commitment to their tasks. However, the NEG inspectors only have administrative powers, and do not have criminal enforcement powers. In cases involving waste-related criminal activities, the NEG has to rely on the Romanian police, border police, coast guard or customs. It appears therefore that, since investigative powers are vested solely in the police, the professional skills and knowledge of NEG staff - on EU waste legislation, for example - are not being used in the best possible way in the fight against environmental crime. The evaluators therefore feel that vesting the NEG with (limited) criminal investigative powers should lead to greater efficiency in the investigation of environmental crime in Romania.

A further concern relates to the modest possibilities for human resources development in the NEG. The employment conditions of staff working for the NEG, from the inspectors right up to top management, are less attractive compared with those of other LEAs. Obviously, therefore, it is difficult to find and to keep adequate staff in a country whose economic development provides plenty of other attractive job opportunities for young academics.

Cooperation does exist between the competent authorities involved in the fight against environmental crime in Romania, particularly at regional and local level (exemplary cooperation was seen in Constanța). In order to strengthen the institutional capacity to fight against waste crime, the NEG has concluded cooperation protocols with the other authorities with responsibilities in this field, namely the General Inspectorate of the Romanian Police, the General Inspectorate of the Border Police, the National Anti-Fraud Agency, the General Directorate of Customs, etc. These protocols are the legal framework for inter-agency exchange of information and can be helpful for joint operations. Joint Action Plans (operational) and joint inspections and controls have been carried out at Romania's state border crossing points and ports, and have also focussed on waste-related business activities (e.g. Operation '30 Days of Action' organised and coordinated by Interpol in June 2017).

As regards legislation, there is no single act in Romania that regulates matters relating to the protection of the environment and waste issues. These issues are dealt with by several different acts instead. They are to be found in the Criminal Code and are scattered among more than 10 other different laws and Government Ordinances. Their complexity can lead to potential overlap, and they still sometimes differ in detail. Provisions on waste offences, for instance, can be found in different laws, and there can be even be different levels of punishment for the same offence. The inaccessibility of the legislation can not only be time-consuming for lawyers but is very likely to discourage practitioners from applying the full range of environmental provisions and lead them instead to try to prosecute other aspects of a case, such as tax evasion. The evaluators therefore believe that a review of the national legislation dedicated to the fight against environmental crime is needed in order to avoid inconsistencies and enable practitioners to apply the rules on environmental crime more easily.

Romanian law provides for the criminal liability of legal persons, which is useful in cases where an individual's guilt cannot be proved. The practitioners who were interviewed reported that all the necessary legal instruments are available to them and that, in practice, the sanctioning of companies in the field of environmental crime works well and efficiently. The Romanian legislator makes a distinction between the levels of possible sanctions which may be imposed on natural persons and legal entities. Although the level of possible sanctions against legal entities is higher than for natural persons, it is still felt to be relatively low. In particular, the relation between the possible scope of the damage caused and the revenues of the legal person should be taken into account when establishing the levels of financial penalties. For this reason, a review of national legislation seems necessary in order to establish whether binding sanctions are effective, proportionate and dissuasive.

Romania's regulations on sampling with a view to collecting evidence in the context of waste-related matters make this such a complex, time-consuming and expensive process that this may stand in the way of samples being used as evidence in cases involving waste crime. However, the investigative techniques/tools used for the purpose of investigating waste crime seem adequate and enable proper investigations to be conducted.

As regards training capacities, the training programmes do not focus sufficiently on judges and prosecutors. Moreover, limited training programmes are provided for customs staff or for police officers and the evaluation team believes that law enforcement authorities training capacity should be strengthened. NEG inspectors seem to be well trained, although they could make more use of the training opportunities offered at EU level.

Romania cooperates with Europol and Eurojust in the area of waste crime, although cooperation with the latter through Romania's National Desk at Eurojust is very limited. No JIT has yet been established. Romania is a member of the IMPEL network for environmental inspections in Europe and is a member of EnviCrimeNet for environmental investigation services. Romania has been involved in drafting the multi-annual strategic plan for EMPACT and participates in various EMPACT environmental crime OAPs.

Since Romania is an important part of the EU's eastern border, it has built up successful operational cooperation with countries around the Black Sea. The Southeast European Law Enforcement Cooperation Partnership (SELEC) with third countries from outside the EU is a good example of structural cross-border cooperation which may also benefit the fight against waste crime. Romanian's cooperation capacity is also evident from the fact that it has established contact points/liaison officers with a view to exchanging information and sharing best practices.

Taking all factors into account, the evaluation team praised the way the system is set up in Romania. The legislation that has been adopted is designed to protect the country from environmental crime and to combat this phenomenon efficiently, although it seems fragmented and hence difficult to apply in practice. The evaluators appreciated the commitment of practitioners dedicated to the fight against environmental crime, but felt that some of the government bodies need to accord greater priority to protection of the environment. Improving crime detection capacity could make that fight more effective. Given the significant efforts made by the Romanian authorities to fight environmental and waste crime and infringements, and the human and financial resources that have been allocated for that purpose, the opinion of the evaluators is promising.

## 2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997<sup>1</sup>, a mechanism was established for evaluating the application and implementation at national level of international undertakings in the fight against organised crime. In line with Article 2 of the Joint Action, the Working Party on General Matters including Evaluations (GENVAL) decided on 14 December 2016 that the eighth round of mutual evaluations should be dedicated to the practical implementation and operation of European policies on preventing and combating environmental crime.

The choice of environmental crime as the subject for the eighth mutual evaluation round was welcomed by Member States. However, due to the broad range of offences 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 this end, the eighth evaluation round covers two specific areas: illegal trafficking in waste, and illegal production or handling of dangerous materials. It should provide a comprehensive examination of the legal and operational aspects of tackling environmental crime, cross-border cooperation and cooperation with relevant EU agencies.

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives<sup>2</sup> (transposition date 12 December 2010), Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law<sup>3</sup> (transposition date 26 December 2010), and Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste<sup>4</sup> (entry into force 12 July 2007) are particularly relevant in this context.

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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.

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 and air pollution.

Furthermore, Directive 2008/98/EC requires the Member States to create waste management plans and waste prevention programmes, the latter by 12 December 2013. The objective of these programmes is to present a coordinated national approach to waste prevention, to define targets and policies, with the aim of decoupling economic growth from the environmental impacts of waste generation.

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

Moreover, in the Council Conclusions of 8 December 2016 on Countering Environmental Crime<sup>5</sup>, there is a recognition 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 2017 on setting the EU's priorities for the fight against organised and serious international crime between 2018 and 2021<sup>6</sup> also cite the fight against environmental crime as one of the EU's priorities.

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

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



Taking all of the above elements into consideration, the evaluation aims to be broad and interdisciplinary and to focus mainly on the related operational aspects in the Member States, rather than just on the implementation of various instruments related to fighting environmental crime. Therefore, it will encompass cooperation between environmental, police, customs and judicial authorities at national level, as well as with Europol, Interpol and Eurojust. The evaluation will also cover operational practices in the Member States with regard to waste treatment operations and establishments and undertakings which collect and transport waste.

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

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

The experts charged with undertaking the evaluation of Romania were Ms Anja Wüst (Germany), Mr Edwin Lakerveld (Netherlands), and Ms Katarzyna Naszczyńska (Poland). The experts were accompanied by Mr Peter Wessman from the Commission and Mr Steven Cras, Mr Mathieu Bertola and Mr Sławomir Buczma from the General Secretariat of the Council. No observers from Eurojust, or Europol were present.

This report was prepared by the expert team with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Romania between 13 and 16 November 2018, and on Romania's detailed replies to the evaluation questionnaire together with its detailed answers to the follow-up questions.

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

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

At the time of the on-site visit, the Action Plan on the prevention and combating of illegal acts in the forestry field ('SHIELD OF THE FOREST 2018') was scheduled to be signed between the Ministry of Internal Affairs, the Ministry of Water and Forestry, the Ministry of the Environment and the Ministry of Public Finance. The plan focuses on the verification of compliance with the legal provisions on the management of waste resulting from the processing of wood materials.

The Cooperation Protocol (No 45/22.10.2013) on preventing and combating illegal tree felling and the poaching of game and fish, preventing and extinguishing fires in the national forestry areas, and ensuring the protection of the environment and the health of the population against the negative action of chemical substances, waste and plant protection products was concluded between the Ministry of Internal Affairs, the Ministry of the Environment, the Ministry of Agriculture and Rural Development and the Department for Water, Forestry and Fisheries.

As an inspection and control authority, the NEG prepares an annual Activity Plan, which includes the inspection and control activities scheduled over a calendar year. The Plan provides for inspections and controls, including for economic operators dealing with waste management and/or dangerous substances and preparations, including those resulting from shipments of waste.

Article 99(2) of Government Emergency Ordinance (GEO) No 195/2005 on environmental protection, as subsequently amended and supplemented, states that where, in the exercise of the duties laid down by law, the commissioners of the National Environmental Guard discover that any of the offences stipulated in Article 98 of the GEO have been committed, such offences shall immediately be notified to the competent prosecution body according to the law of criminal procedure.

The State Sanitary Inspectorate, as the competent authority for control of waste resulting from medical activity, draws up an annual National Thematic Action Plan for Public Health Control, which includes the inspection activities scheduled for a calendar year. The thematic control action plan provides that health inspectors within County Public Health Directorates (PHDs) shall perform inspections of healthcare providers and economic operators that transport or dispose of medical waste, according to their competencies.

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

The provisions of the Waste Directive are transposed in Romania by Law No 211/2011 and subsequent legislation, in particular through the National Waste Management Strategy for 2014-2020 and the National Waste Management Plan (2018). National waste policy has the following objectives:

- prioritising waste management efforts in line with the waste hierarchy;
- developing measures to encourage waste prevention and re-use, promoting the sustainable use of resources;
- increasing the recycling rate and improving the quality of recycled materials, working closely with the business sector and with waste recycling units and enterprises;
- promoting recycling of packaging waste as well as other categories of waste;
- reducing the impact of carbon generated by waste;
- encouraging energy generation from waste for non-recyclable waste;
- organising the national database and streamlining the monitoring process;
- implementing the concept of 'lifecycle analysis' in waste management policy.

In order to achieve these objectives, a set of measures and actions have been implemented:

- environmental licensing and inspection procedures that take into account the application of best available techniques to reduce the environmental and health impact on the population, including the prevention and minimisation of waste generation (e.g. more frequent checks are carried out on economic operators generating large amounts of waste);

- reducing the quantities of waste disposed of through landfill/incineration by:
  - o extending selective household waste collection systems, treatment and recycling/recovering of recyclable waste, through the implementation of integrated waste management systems at county level (projects funded by European funds);
  - o encouraging re-use, recycling and energy recovery by setting recycling/recovery targets for specific waste streams and imposing financial penalties for not achieving these targets (RON 2/kg ~ EUR 0.5/kg for packaging waste, RON 2 /kg ~ EUR 0.5 for used tires, RON 2/litre ~ EUR 0.5/litre for waste oils), including the implementation of the extended producer responsibility principle (for WEEE and ELVs);
  - o discouraging waste disposal through landfill by:
    - establishing targets for annual reduction of the quantities of biodegradable waste sent to landfill and imposing financial penalties on local authorities in the event of non-fulfilment of these objectives (RON 50 /tonne ~ EUR 11/tonne);
    - establishing a contribution for the circular economy for household waste deposits (in the amount of RON 30/tonne ~ EUR 6.5/tonne for 2019 and RON 80/tonne ~ EUR 18/tonne from 2020);
    - establishing a surveillance system for waste shipments on Romanian territory (online records of the quantities of generated/collected/transported/recycled/recovered/eliminated wastes) in order to check waste traceability.

The NEG draws up an annual plan of activities, including the inspection and control activities to be carried out during a calendar year in respect of economic operators carrying out waste management activities. This plan is available to the public if a request is made in writing.

The NEG is in the process of implementing a project entitled 'Increasing the Capacity of the National Environmental Guard to Apply the EU Strategy and Legislation on Hazardous Waste and Chemicals', the main objective of which is to strengthen the capacity to monitor shipments of waste at national level and ensure the traceability of hazardous waste from producer to final disposal.

Furthermore, the NEG website permanently publishes information on both the inspection and control activities performed, as well as on violations of waste legislation in Romania (including contraventions and/or criminal acts). Also, in order to strengthen the institutional capacity to fight against waste crime, the NEG has concluded cooperation protocols with the other authorities with responsibilities in this field, namely the General Inspectorate of the Romanian Police, the General Inspectorate of the Border Police, the National Agency for Fiscal Administration (NAFA), the General Directorate of Customs, etc. On the basis of these protocols, Joint Action Plans (operational) can be drawn up and joint inspection and control activities can be carried out at Romania's state border crossing points and ports and can also focus on waste-related business activities. Waste-crime operations have been coordinated by Interpol ('30 Days of Action' in 2017 and Enigma III in 2015). These protocols are the legal framework for inter-agency exchange of information and can be helpful for joint operations.

As regards international cooperation, the NEG is an active member of IMPEL and EnviCrimeNet. Within IMPEL, active participation is also reflected in the 'Enforcement Actions' project through the regular organisation of inspections and joint checks at the state border crossing points, as well as by the participation of NEG commissioners in drafting guides and methodologies developed within this project in relation to the transboundary movement of waste.

Furthermore, in 2015 the NEG became a partner of the Carabinieri Corps in Italy, the Italian Ministry of the Environment, the Protection of Natural Resources and the Sea and the Spanish Civil Guard (through SEPONA - Environment and Nature Conservation Service) under the 'Tackling Environmental Crimes through Standardised Methodologies' project (TECUM). The project was carried out for a period of two years and its main objective was to strengthen cooperation between police officers and environmental inspectors responsible for investigating and combating illicit waste and environmental crime, focusing on the extent to which organised crime was involved in this phenomenon.

The State Sanitary Inspectorate carries out official inspections relating to the management of waste resulting from medical activity and publishes reports, on the Ministry of Health's website, containing the results of control activities in this field, including the sanctions applied by the health inspectors within the Public Health Directorates. From time to time, health inspectors receive training on issues regarding the management of waste management providers and checks on economic operators engaged in the transport and disposal of hazardous waste, according to their competencies.

### **3.3. Statistics**

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

According to the information presented by the Ministry of Justice for the period 2012-2016, four cases were registered involving the offences laid down in Environmental Protection Law No 137/1995, as currently repealed and replaced by GEO No 195/2005. Of those four cases, two were resolved as follows:

- one resulted in a conviction;
- the second case resulted in a measure other than conviction.

The Ministry of Justice does not have centralised statistics showing how many cases have been registered, how many have been investigated and how many have resulted in convictions or administrative sanctions; the proportion of waste-related crimes within overall crime figures cannot therefore be determined.

According to the Public Ministry, waste crime has not significantly evolved over the last five years and this category of offences represents a low percentage of overall crime.

At the level of the Prosecutor's Office attached to the Constanța Court of Appeal, the judicial bodies pay special attention to the investigation of this type of crime, given the increased interest in waste businesses shown by certain economic operators, encouraged by the substantial price difference between the different countries of the European Union. This prosecutor's office has therefore set up informal working groups led by prosecutors who, together with the police and judicial staff of the National Environmental Guard, are investigating cases dealing with massive shipments of waste.

The NEG only has information on criminal complaints made following inspections and controls, including on shipments of waste. Thus, during the period in question, the NEG prepared and sent to the criminal investigation bodies the following criminal complaints regarding the legislation on the transfer of waste:

- 2015: nine criminal complaints for illegal shipments of waste (16.3 % of the total number of criminal complaints made by the NEG),
- 2016: nine criminal complaints for illegal shipments of waste (8.7 % of the total number of criminal complaints made by the NEG),
- 2017: eight criminal complaints for illegal shipments of waste (14.8 % of the total number of criminal complaints made by the NEG).

The General Inspectorate of the Romanian Police (GIRP) has the following statistical data for the offences laid down in Law No 211/2011 on waste:

Crimes detected/percentage of total offences reported:

- Year 2017: 22/0.0040 %
- Year 2016: 32/0.0055 %
- Year 2015: 17/0.0027 %

Cases solved and cases referred to other competent authorities:

- Year 2017: 4/0.0011 %
- Year 2016: 0/0 %

For the years 2013-2014, the GIRP does not have any statistics on crime in the field of waste. In the last five years, one person has finally been convicted of two offences under Law No 211/2011, and there have been statements on 14 persons against whom the criminal charges were brought.

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

The prosecutor's offices record differentiated statistics on waste crime, meaning that the Public Ministry's statistical forms contain data on offences governed by special laws, including GEO No 195/2005 on environmental protection, and the statistical data are produced on a yearly or six-monthly basis.

The following statistical data are available for offences against the environment laid down in GEO No 195/2005 and other special laws related to environmental offences. The figures were supplied by the Public Prosecution Service for the period 2012-2017 and the first semester of 2018:

| Period      | No of cases existing at the beginning of the Period | No of cases brought in the course of the period | No of cases handled, of which: | No of cases resolved, of which: | by sentencing | by non-adjudication |
|-------------|---|---|--------------------------------|---------------------------------|---------------|---------------------|
| 2012        | 56  | 99  | 155                            | 79                              | 0             | 79                  |
| 2013        | 94  | 141   | 235                            | 110                             | 3             | 107                 |
| 2014        | 208   | 362   | 570                            | 222                             | 1             | 221                 |
| 2015        | 348   | 371   | 719                            | 364                             | 1             | 363                 |
| 2016        | 343   | 435   | 778                            | 339                             | 4             | 335                 |
| 2017        | 415   | 370   | 785                            | 264                             | 2             | 262                 |
| SEM. I 2018 | 454   | 203   | 657                            | 140                             | 2             | 138                 |



According to Order No 213/2014, amended on 20 December 2017, of the Prosecutor's General Office attached to the High Court of Cassation and Justice, the prosecutor's offices communicate to the Guidance and Control Service of the Prosecutor's Office attached to the High Court of Cassation and Justice the indictments and agreements on the recognition of guilt with regard to offences against the environment and the regime for the protection of national forestry areas and the cultural heritage.

Statistical data on defendants charged with environmental offences is indicated in the annual activity reports of the Prosecutor's Office attached to the High Court of Cassation and Justice, available at <http://www.mpublic.ro/ro/content/raport-de-activitate>.

Superior Council of Magistracy - Statistical data provided by the Prosecutor's Office attached to the High Court of Cassation and Justice and the Directorate for Organised Crime Investigation and Terrorism (DIOCT), for cases recorded and resolved by the Directorate in the period 2012 - March 2018 in relation to offences laid down in GEO No 195/2005 and Law No 101/2011:

| Cases recorded between 2012 and March 2018 involving offences under GEO 195/2005 |      |      |      |      |      |            |
|--|------|------|------|------|------|------------|
| 2012   | 2013 | 2014 | 2015 | 2016 | 2017 | March 2018 |
| 1  | 0    | 1    | 1    | 3    | 5    | 0          |
| Cases recorded between 2012 and March 2018 involving offences under Law 101/2011 |      |      |      |      |      |            |
| 2012   | 2013 | 2014 | 2015 | 2016 | 2017 | March 2018 |
| 0  | 0    | 0    | 0    | 0    | 1    | 0          |

| Cases resolved in 2012-2012 March 2018 involving offences under Law 101/2011 |      |      |      |      |      |      |            |
|--|------|------|------|------|------|------|------------|
| Non-adjudication   | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | March 2018 |
|  | 1    | 0    | 1    | 1    | 1    | 1    | 0          |
| Indictments  | 0    | 0    | 0    | 0    | 0    | 0    | 0          |
| Final convictions  | 0    | 0    | 0    | 0    | 0    | 0    | 0          |
| Cases resolved in 2012-2012 March 2018 involving offences under GEO 195/2005 |      |      |      |      |      |      |            |
| Non-adjudication   | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | March 2018 |
|  | 0    | 0    | 0    | 0    | 0    | 0    | 0          |
| Indictments  | 0    | 0    | 0    | 0    | 0    | 0    | 0          |
| Final convictions  | 0    | 0    | 0    | 0    | 0    | 0    | 0          |

*DIOCT note: The files that have not been included among the figures for resolved cases (non-court solutions, indictments, final convictions) are still at the criminal prosecution stage in the prosecutor's office.*

At present, the official statistics of the Romanian police include statistical data on the offences stipulated in Law No 211/2011 on waste.

The statistics are structured according to the stages of the criminal prosecution process, namely:

- for the referral phase, only the main offence in the referral document is quantified;
- for the phases of the prosecution of the offender, all the offences and all persons are quantified.

The statistical system of the Romanian police is separate from that of the other law enforcement agencies. Statistical data are not published, but may be transmitted on request.

The NEG keeps records of criminal complaints forwarded to the criminal investigation bodies responsible for investigating environmental crimes ascertained in the inspections and controls currently carried out. These records also cover offences related to waste.

The NEG only has information on cases that have been reported to the criminal investigation bodies as environmental offences, including under the legislation on waste shipment. Thus, during the abovementioned period, the NEG prepared and sent to the criminal investigation bodies the following criminal complaints regarding the legislation on the transfer of waste:

- 2015: nine criminal complaints for illegal shipments of waste
- 2016: nine criminal complaints for illegal shipments of waste
- 2017: eight criminal complaints for illegal shipments of waste.

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

At national level there is no specific national budget allocation to prevent and combat waste crime. As regards EU funding, 90 % of the TECUM project was financed through the European Commission's Internal Market and Migration Financial Instrument (IPSFund). In this project (totalling EUR 867 210.41, of which EUR 780 487.37 came from EU funds), the National Environmental Guard is part of the implementation consortium, being a partner of the Carabinieri Corps in Italy, the Italian Ministry of the Environment and Protection of Natural Resources and the Sea and the Civil Guard in Spain (through SEPONA - the Environmental and Nature Conservation Service). The project was carried out for a period of two years and was aimed at strengthening cooperation between the agencies responsible for investigating and combating illicit waste and environmental crime, focusing on the organised crime dimension of this phenomenon.

### 3.5. Prevention of waste crime

The Romanian authorities, through national legislation and policies, centralised measures for the prevention of waste crime.

The legal basis is Law No 101 of 15 June 2011 (\* republished \*) on the prevention and sanctioning of deeds related to environmental degradation, Law No 211 of 15 November 2011 (\*republished \*) on waste, GEO 195/2005 on environmental protection, and Law No 111/1996 on the safe conduct, regulation, authorisation and control of nuclear activities.

The NEG considers that crime in this field is gradually increasing. This situation is somewhat facilitated by the lifting on 31 December 2015 of the ban on the introduction of waste on the territory of Romania for recovery/recycling without prior notification and the preliminary written agreement of the environmental authorities responsible for the implementation of Regulation (EC) No 1013/2006 on shipments of waste (Article 63(5)).

As from 1 January 2016, the waste listed in Annex III of the Regulation (known as the 'green list') may be introduced into the national territory using only the procedure provided for in Article 3(2) and Article 3(4) of the Regulation and on the basis of the information set out in Annex VII to the Regulation.

The new legislative context makes it challenging for the NEG to identify illegal shipments of waste to Romania, with the institution having to plan and carry out inspections and controls on waste taking into account information received from other authorities as well as the risk assessment of economic operators engaged in waste-related activities.

### 3.6. Conclusions

- In Romania, action plans and/or similar central-level documents against environmental crimes are drawn up and implemented by different institutions/authorities within the scope of their ordinary competences. However, there are no strategic programmes focussed on waste crime at the national level. As a consequence, no common or specific guidelines have been developed to define the roles of the principal actors involved in the protection of the environment. Therefore, a strategic document should be drawn up setting out the priorities for protecting and fighting environmental crime, encompassing all aspects of a multi-agency approach, to enable agreement to be reached on an operational action plan to enforce the strategy.
- Practitioners from law enforcement authorities generally try to support the authorities investigating environmental cases. However, the impression was that the work of the different public actors is not coordinated as well as it could be. It was not clear which authority is legally competent and has the capacity, in terms of staff and knowledge, to take an active leading role in initiating the investigation of an environmental offence. Although there have been examples of efficient and successful cooperation among different authorities in individual cases, the experts believe that greater coordination of the legal competences and existing capacities in the fight against environmental crime is necessary and would lead to more efficient cooperation.
- The lack of a central strategy in the fight against environmental crime, competence fragmentation and the lack of a national comprehensive approach are weakening the efficiency of actions taken by the Romanian authorities in this field. Environmental and waste crime matters need to be anchored within the remit, or be the responsibility, of one central department. Therefore, in the evaluators' view, a cooperation platform established at central level for combating environmental crime could strengthen the resilience of the system (such as the Interpol concept for a National Environmental Security Taskforce).

- At present, it is not possible to cite trends on environmental crime in Romania on a statistically approved basis. The NEG presented an overview of their controls and inspections in 2017, showing the total number of checks carried out as well as the number of inspections concerning waste, the sum of administrative penalties issued by the NEG and the number of cases forwarded to the criminal investigation authorities. They did not have information on the results of the (few) environmental cases reported to the public prosecutor. The police did not provide statistical data on environmental crime. Their statistics are generally kept separate from those of other authorities. The statistical data on offences from the Public Ministry did include environmental cases, but did not cover all legislation on environmental offences and did not give specific details of different categories of environmental crime (e.g. waste shipment, waste dumping, handling of dangerous substances, water pollution, operation of facilities without permission, etc.) or of administrative offences and their development over the years.
- Consequently, the data submitted by the Romanian authorities do not allow the overall environmental crime figures, specifically in the area of waste crime, to be checked. It is not possible, therefore, to build up an overall picture of the effectiveness of the legal system in protecting the environment. Integrated statistics should accordingly be collected in order to obtain an overall picture of the environmental crime rate, which would also help to prioritise the resources allocated to address these issues.
- As regards daily duties, the NEG plays a crucial role in Romania in the fight against waste-related crime. It carries out the inspections and collects the necessary information to determine risks and bring criminal cases to the police. The NEG has the expertise needed to be able to assess the full extent of the complex EU regulations in the field of waste. The nuclear authority and the health inspectorate have detailed knowledge in their specific areas for assessing waste issues concerning nuclear and medical waste. In the experts' view, as far as the police and customs are concerned, they have a general knowledge of environmental legislation but only a basic knowledge of specific waste-related regulations, which is not enough to enable them to assess matters independently with a view to carrying out investigations.

- Although Romania draws attention to threats related to environmental crime, there is no special budget allocated to the fight against this phenomenon. Although the NEG plays an important role in the fight against waste-related crime, its conditions of employment are considerably less attractive than those of the police services and other inspectorates, which makes it difficult for the NEG to maintain the necessary staffing levels. The recruitment, training and longer-term retention of relatively highly qualified personnel seems to be a major challenge for the NEG.
- Romania considers that having a set of legislative acts is the main way to prevent actors from committing environmental crimes. The evaluation team has not seen any educational programmes or awareness-raising projects aimed at the general public. In the evaluators' view, the positive legislative approach should be accompanied by concrete actions of that kind addressing individuals and businesses.
- Romania has regulations in place to encourage recycling or make it compulsory. However, over 54 % of Romania's waste is still deposited in landfills (legal and illegal). Landfills are generally difficult to control and often a source for illegal activities involving waste. Romania therefore faces an important challenge when it comes to preventing waste crime.
- In order to discourage the removal of waste to landfills and to stimulate the building of more responsible and sustainable waste processing infrastructure, Romania has been working on the introduction of a landfill tax for several years. Romania has indicated that this tax will be in effect as of January 2019. The evaluators applaud these efforts and encourage the Romanian authorities to introduce landfill taxes discouraging the illegal import of household waste.

## **4. NATIONAL STRUCTURES**

### **4.1. Judiciary (prosecution and courts)**

#### *4.1.1. Internal structure*

There are no specialised courts or judges. Environmental crimes are handled by the general courts. The structure and organisation of the Romanian judicial system are enshrined in the Romanian Constitution and Law No 304/2004 (the law on judicial organisation).

Under Article 126 of the Romanian Constitution, justice is administered by the High Court of Cassation and Justice and the other courts of law. The jurisdiction of the courts of law and the judging procedure are stipulated by law.

Each court of appeal, tribunal, family/juvenile court and general court has a prosecutor's office attached to it, with headquarters in the district in which the court operates.

There are several tribunals and specialised courts in the jurisdiction of the courts of appeal, and the courts are organised at the level of each county and in Bucharest, and usually have their headquarters in the main County town. The district of each court of appeal includes all courts in the county or, as the case may be, in Bucharest.

In addition to each military court, there is a military prosecutor's office. In Bucharest, the Military Prosecutor's Office is attached to the Military Court of Appeal. As well as the military tribunals, the military prosecutor's offices operate alongside the military courts.



Internal rules of procedure for the prosecution system were established by Order No 2632/C/2014 of 30 July 2014 issued by the Minister for Justice. It describes the functional competences of each level of the prosecution system. The organisation and functioning of the Public Ministry is stipulated in Title III of Law No 304/2004 on judicial organisation. The Public Ministry exercises its powers under the law, being headed by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice. In Romania there is a single Supreme Court, in the form of the High Court of Cassation and Justice, with legal personality and with its headquarters in the country's capital. Prosecution offices are independent in relations with courts, as well as with other public authorities.

The Prosecutor's Office attached to the High Court of Cassation and Justice coordinates the activity of the subordinated prosecutor's offices and fulfils the duties provided for by law. Within the Prosecutor's Office attached to the High Court of Cassation and Justice, the DIOCT and the National Anti-corruption Directorate function as specialised structures. Prosecutors and the criminal investigation bodies of the judicial police, examine, *ex officio*, according to their legal competences, the offences described in Article 98 of GEO No 195/2005, Article 63 of Law No 211/2011 and Article 3(12) of Law No 101/2011.

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

In August 2018, Order No 186/03.08.2018 of the Prosecutor's General Office attached to the High Court of Cassation and Justice established a national network of prosecutors in order to specialise a number of Romanian prosecutors for the investigation of crimes against the environment and national forestry and hunting areas, as well as crimes against the cultural and natural patrimony. The network is organised by appointing at least one prosecutor at the level of the prosecutor's offices attached to the local court, one or two prosecutors at the level of the prosecutor's offices attached to tribunals and courts of appeal, being coordinated by prosecutors within the prosecutor's office attached to the High Court of Cassation and Justice. Those prosecutors will deal with environmental cases with priority.

In addition, a central mailbox has been set up to facilitate communication between members of the network, and there is also an email address which anyone can use to lodge complaints about acts affecting national forestry and hunting areas, the cultural patrimony and the environment. Furthermore, this e-mail group will facilitate sharing statements and relevant case-law relating to environmental crime, and specifically waste crime.

The national network aiming to specialise prosecutors in the investigation of crimes against the environment and national forestry and hunting areas, as well as crimes against the cultural and natural patrimony is, starting with October 2018, fully affiliated to the European Network of Prosecutors on the Environment.

The coordinating national network prosecutor is also the point of contact with the European Network of Prosecutors on the Environment.

In the Prosecutor's Office attached to the Constanța Court of Appeal, one prosecutor is a member of the ENPE (European Network of Prosecutors for the Environment).

The lack of specialised field experts and the late receipt of data related to criminal investigations requested by letters rogatory were mentioned by the Romanian authorities as the main challenges relating specifically to successful prosecution of waste crime.

## **4.2.Law enforcement authorities**

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

The detection of environmental crimes is the responsibility of the Commissioners and Inspectors of the National Environmental Guard, but also of the police (the GIRP, through the Public Order Directorate, the Directorate of Transport and the Directorate of Arms, Explosives and Dangerous Substances, and the General Inspectorate of the Border Police, through the coast guard and the Territorial Structures). The investigation and prosecution of such crimes is the responsibility of the police together with the judicial authorities (prosecutors, courts, when authorise supervisory and precautionary measures).

## The police

Police officers have general competences to gather information in order to prevent and investigate crimes. The following four directorates have competences for environmental crime:

- Directorate of Arms, Explosives and Dangerous Substances: 45 policemen within the central and territorial structures;
- Public Order Directorate: within the Service for the Protection of Forestry and Fishery Areas, Offices for Fighting Forestry Crimes were established with the Police Inspectorates in Alba, Arad, Arges, Bistrita Nasaud, Buzau, Brasov, Cluj, Covasna, Harghita, Hunedoara, Maramures, Mures, Neamt, Prahova, Suceava, Sibiu, Vrancea. The work of these offices focuses on preventing and combating illegal activities in the forestry and fishery sectors. There are 108 posts in total. The Danube Delta Police Service was established within the GIRP, with 34 posts dedicated to preventing and combating poaching in the fishing and hunting areas of the Danube Delta Biosphere Reservation;
- Directorate for the Investigation of Economic Crime: 85 police officers carry out specific activities under the heading of 'environmental protection, recyclable materials and forestry';
- Transport Police Directorate: within the Directorate and the territorial transport police structures, 50 police officers are involved in combating and investigating environmental crimes.

In the General Inspectorate of the Romanian Police, the specialised structure for investigating the offences in this category is the Directorate of Arms, Explosives and Dangerous Substances. The Romanian police, through the specialised structures, are responsible for investigations into the offences stipulated in the following legislative acts:

- Law No 211/2011 (republished) on waste;
- Law No 101/2011 for the prevention and punishment of acts related to the degradation of the environment;
- GEO No 195/2005 on environmental protection;
- Law No 107/1996 - Water Law.

As regards the investigation of waste crime, the GIRP only has the power to detect and investigate offences relating to hazardous substances and wastes. Responsibility for supervising the criminal prosecution of these crimes lies with the prosecutors belonging to the network of prosecutors specialised in the investigation of environmental offences and crimes against national forestry areas and the natural and cultural heritage, set up by order of the Prosecutor General of the Prosecutor's Office.

### **The National Environmental Guard (NEG)**

The NEG is a public institution and functions as a specialised body, subordinated to the central public authority for environmental protection. The NEG consists of a central apparatus called the General Commissariat, which has 41 county commissariats, the Bucharest Commissariat and the Danube Delta Biosphere Reserve Commissariat. The 41 county commissariats, the Bucharest Commissariat and the Danube Delta Biosphere Reserve Commissariat cover the entire territory of the country.

The NEG Organisation Plan provides for a dedicated service for the control of waste-related activities (Waste Management and Dangerous Chemicals Service) within the General Commissariat, including a specialised waste transfer control bureau (Waste Transfer Control Office). The NEG is a specialised body for inspection and control of activities with an impact on the environment, applying penalties in the event of contraventions by either natural or legal persons. It participates directly, together with other competent bodies and on the basis of cooperation protocols, in actions to prevent and combat offences of a criminal nature, and has the following specific tasks in the field of waste management control:

- it checks whether the activities of economic operators comply with environmental legislation in the field of waste management of any kind;
- it notes the non-conformities in the regulatory acts issued for waste management activities, applies legal measures and establishes procedures for controlling sources of pollution originating from waste disposal activities (incinerators, landfills);

- it carries out controls on the waste transport activities of economic operators;
- it monitors compliance with legal provisions in relation to the management, storage and recovery of waste resulting from livestock and poultry farming and the processing and industrialisation of livestock and cereal products, as well as the neutralisation of waste of animal origin;
- it monitors compliance with legal provisions relating to the management, storage and recovery of waste from wood processing.

The NEG has the power to identify and penalise acts that constitute contraventions under national law (Article 13(1)(b.1) of Government Decision (GD) No 1005/2012, corroborated by Article 97(1)(a) of GEO No 195/2005 on environmental protection, as amended and supplemented). According to Article 99(2) of GEO No 195/2005 on environmental protection, as amended and supplemented, where the NEG commissioners, in the exercise of the duties laid down by law, discover that any of the offences stipulated in Article 98 have been committed, such offences shall immediately be notified to the competent prosecution body according to the law of criminal procedure.

Cooperation between the authorities involved in combating environmental crime is based on protocols, Joint Action Plans or other cooperation documents, within the limits of the powers provided for by law for each of the signatories. The administrative authorities must notify the criminal investigation bodies if they discover, in the exercise of the duties provided for by law, that offences have been committed. The criminal investigation bodies conduct joint actions with the administrative authorities on the basis of action plans aimed at preventing and combating crime in this field.

On 26 February 2018, a protocol of cooperation was concluded between the Prosecutor's Office attached to the High Court of Cassation and Justice and the Ministry of the Environment. It was aimed at ensuring the proper administration of the justice, in order to increase the efficiency of measures to prevent, detect and combat any acts that are damaging to the environment, by ensuring the efficient use of information in these specific areas. Thus, the prosecutor's offices may request, in criminal prosecution documents, that a specialist fact-finding report be drawn up, pursuant to Article 181<sup>1</sup> of the Criminal Procedure Code and that joint working groups are set up to perform the operative exchange of information and data, in compliance with the legal provisions, for the exploitation of information, data, documents and materials in the criminal files.

The Romanian authorities involved in preventing and fighting environmental crime, in particular waste crime, are actively exchanging information and organising and conducting joint actions in order to be more efficient and effective in detecting, investigating and prosecuting criminal cases.

The main responsibilities and competences of each of the authorities concerned are established by law but the law itself does not provide many details on how cooperation and information exchange between different law enforcement bodies should take place. The protocols were meant to fill that gap and provide a framework for cooperation and information exchange. The conditions for cooperation and information exchange are laid down on a case-by-case basis by the signatory parties of each protocol. However, some common ground can be identified as follows:

- usually these protocols for cooperation and information exchange are signed at national level, between the higher representatives of each signatory party. The protocols provide the general framework for cooperation and information exchange between signatory parties;
- in order to facilitate the exchange of information and smooth cooperation, including the conduct of joint actions, representatives from each signatory party are designated (including contact details);

- provision is made for annual meetings for assessing outcomes and the effectiveness of protocols. These meetings are attended by higher representatives and experts from each signatory party; ad hoc meetings may occasionally be organised if important joint enforcement actions need to be conducted at national level (e.g. Interpol Operation '30 Days of Action');
- the protocols are translated at operational level into Joint Action Plans/Programmes, which may be anything between one month and one year in length. These plans/programmes are developed at expert level taking into consideration the threats/needs that generated the need for cooperation (e.g. the need for surveillance of waste shipments in a particular border point/port/road from Romanian territory);
- the Joint Action Plans/Programmes provide more detailed information on the objectives/expected outcomes of the planned actions, on how the cooperation and information exchange should take place, on who is in charge of what, etc.;
- the joint enforcement actions carried out on the basis of such Joint Action Plans/Programmes culminate in an 'Activity report' that summarises the number of actions carried out, the number of experts/inspectors/police officers involved, the main findings/outcomes, further actions (investigation/prosecution of offenders), and any improvements needed. The activity report is usually assessed by the higher level of the authorities involved in the joint actions, usually within one month of the report being drafted;
- outside the action days set up by the Joint Action Plans/Programmes, the law enforcement authorities are entitled to exchange information and/or organise and conduct joint actions if they consider that these would be beneficial for the purposes of effectiveness and efficiency. The decision on exchanging information and/or organising and conducting joint actions may be taken by the heads of internal/local structures of the authorities concerned (within the limits set by the abovementioned protocols).

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

The following evidence is gathered in line with Article 97 of the Code of Criminal Procedure (CCP):

- statements by suspects/defendants/injured persons/civil parties/witnesses;
- documents/expert reports/reports on the findings/minutes/material evidence, in compliance with the requirements of the European Court of Human Rights, including special methods of supervision or research, as stipulated by Article 138 of the CCP.

Furthermore, the Ministry of Internal Affairs uses special methods of supervision or research pursuant to Article 138 of the CCP, such as:

- intercepting communications or any kind of remote communication;
- access to a computer system;
- audio or video surveillance;
- location or tracking by technical means;
- obtaining data on an individual's financial transactions;
- using undercover investigators and collaborators;
- supervised delivery;
- obtaining data generated or processed by providers of public electronic communications networks.

These capabilities and equipment are frequently used, including equipment for measuring radioactivity, in particular in the evaluation of waste where there are grounds for suspicion that such waste might contain radioactive particles.

Pursuant to Article 2(1) and (2) of Ordinance 1/2000 (republished) on the organisation of the activity and functioning of legal medicine institutions, such institutions provide scientific evidence to the criminal investigation bodies and the courts, including at the request of the interested parties, in solving criminal, civil or other cases, by contributing, by specific means provided by the law, to establishing the truth. In carrying out the activity of legal medicine, these institutions cooperate with the criminal investigation bodies and with the courts, in order to establish the preparatory work and other measures needed to ensure that the expert opinions, findings or other forensic work are carried out under the proper condition.



Depending on the specifics of the case, the forensic units may be asked to conduct a specialised examination, the financial units may be asked to obtain financial data and the officers within the Directorate for Organised Crime Investigation who specialise in the investigation of cybercrime may be asked to conduct computer searches. The resources of the Romanian Criminal Investigation Institute can also be used for drawing up physicochemical reports.

#### 4.2.3. *Capacity of and obstacles to successful investigation of waste crime*

The Romanian authorities said that carrying out specialised analyses to determine and classify waste (hazardous or other) was the main challenge in the successful investigation of waste crime. Furthermore, the lack of specialised and licensed experts means that conducting specialist examinations in this field can prove to be an obstacle to the criminal investigation.

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

In accordance with the provisions of Law No 95/2006 (republished) on health reform, the Ministry of Health, as the central authority in the field of public health, is responsible for state sanitary inspection activity, which is organised in specific fields of activity at national and regional level, according to skills. This activity is coordinated by the specialised structure (State Sanitary Inspectorate - SSI) within the Ministry of Health and carried out by the 41 County Public Health Directorates (PHDs and the Bucharest Municipality which report to the Ministry of Health. Ministerial Order No 824/2006, as subsequently amended and supplemented, lays down rules for the organisation and functioning of the State Sanitary Inspectorate. The specific health inspection activities mainly involve:

- a) verifying compliance with the provisions of national legislation in the field of public health;
- b) verifying compliance with the legal provisions in force on sanitary regulations governing sites, activities (including nuclear activity), services, documents, products (including products of human origin intended for therapeutic use), environmental factors, habitat, food;
- c) verifying compliance with the regulations regarding the health status of employees and their knowledge, skills and practices in relation to sanitary regulations;
- d) identifying the risk factors for public health, assessing and analysing health risks, establishing and/or imposing elimination measures or, where appropriate, mitigating the risks.

Law No 211/2011 (republished) on waste stipulates that the Ministry of Health has the task of controlling waste management activities in accordance with the attributions and competencies established by the law. Health inspectors are responsible for checking compliance with:

- the technical rules on the management of waste resulting from medical activities and the methodology of data collection for the national database on waste resulting from medical activities as set out in Order No 1226/2012;
- the conditions of operation and monitoring of hazardous thermal decontamination equipment for hazardous medical waste as specified in Order No 1279/2012.

Responsibility for detecting and punishing infringements of public health rules lies with the staff (health inspectors) authorised by the Ministry of Health - the central authority in the public health field - in the units throughout the country (Public Health Directorates - PHDs), in accordance with the provisions of GD No 857/2011.

In the SSI and the 41 PHDs, there are health inspectors with expertise in the field of waste management control of medical activity, including collection, packaging, temporary storage, transport, treatment and disposal of waste, checking records of the quantities of waste generated by health units, and staff training.

In addition, the local public administration authorities are responsible for supervising licensed economic operators with a view to preventing the accidental elimination of pollutants or the uncontrolled disposal of waste (GEO No 195/2005).

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

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

In 2018 a protocol of cooperation between the Public Prosecutor's Office attached to the High Court of Cassation and Justice and the Ministry of the Environment was concluded, which involved the effective exchange of information and the elaboration of strategies, study notes and the improvement of legislation.

In order to strengthen the institutional capacity to fight against waste crime, the NEG concluded cooperation protocols with the other authorities with responsibilities in the field, namely the General Inspectorate of the Romanian Police, the General Inspectorate of the Border Police, the National Agency for Fiscal Administration, the General Directorate of Customs, etc. On the basis of these protocols, Joint Action Plans (operational) and joint inspections and controls are carried out at Romania's state border crossing points and ports, and also focus on waste-related business activities (e.g. Operation '30 Days of Action'). The GIRP cooperates with other competent authorities in this field, namely:

- other structures within the Ministry of Internal Affairs (General Inspectorate of the Border Police, General Inspectorate for Emergency Situations);
- Ministry of the Environment - National Environmental Guard and National Agency for Environmental Protection;
- Ministry of Health - Public Health Directorates;
- Ministry of Agriculture and Rural Development - National Phytosanitary Authority;
- National Commission for Nuclear Activities Control;
- General Directorate of Customs.

Cooperation is organised at inter-institutional and intra-institutional level, and is aimed at providing mutual operational information for the efficient management of the operational situation and at combining efforts to prevent and fight crime.

At inter-institutional level, the ministries cooperate on the basis of existing documents for the permanent exchange and enhancement of the mutual exchange of information, the provision of support at the request of one of the parties, and the public communication of the activities and results of the actions undertaken by the police forces or jointly with the other participating institutions. As an example of this, the Constanța Port Operational Group (GLOPC) was cited, which includes representatives of the Ministry of Internal Affairs, the Romanian Intelligence Service, the Public Ministry, and the Ministry of Public Finance.

An example of cooperation at intra-institutional level is the Action Plan on the Prevention and Combating of Illegal Acts in the Field of Forestry, known as 'THE SHIELD OF THE FOREST 2018', scheduled to be signed between the Ministry of Internal Affairs, the Ministry of Water and Forestry, the Ministry of the Environment and the Ministry of Public Finance. An inter-ministerial coordination working group, consisting of the representatives appointed at the level of the signatory institutions of this Action Plan, has been set up as part of the implementation of the Plan. The working group is meant to meet in regular quarterly sessions, or whenever the situation so requires, at the request of any of its signatory institutions. The national working group will decide on the joint action plan to be deployed in the three-month period in question, the human resources involved, and the topics for inspection. It will analyse the activities carried out and the results obtained, and will put forward proposals for the preparation of future actions.

At territorial level, the signatories of the Action Plan will delegate competences and attributions to a number of county working groups that will operate according to the model of the national working group. The county police inspectorates will ensure the logistics of the county working groups. County working groups will meet in regular monthly meetings, or whenever the situation so requires, at the request of either party. Appointed representatives from the co-signatory institutions of the Plan, at central or territorial level, as the case may be, will also be invited to attend the meetings of the working group.

The following will be responsible for monitoring compliance with environmental protection measures: commissioners and persons empowered by the National Environmental Guard; local public administration authorities, through empowered personnel; the National Commission for Nuclear Activities Control; and the Ministry of National Defence and the Ministry of Internal Affairs, through authorised personnel in their respective fields of activity, according to the attributions established by law. The police, gendarmerie and Emergency Situations Inspectorates are required to provide support, upon request, to the representatives of the competent authorities for the protection of the environment in the exercise of their duties.

The criminal prosecution bodies, depending on their legal competences, are responsible for the detection and investigation of offences. The representatives of the National Commission for Nuclear Activities Control, the gendarmes and the authorised personnel of the Ministry of National Defence, in the exercise of the powers stipulated by the law, by the commissioners of the National Environmental Guard, notify immediately the commission of the offence to the monitoring body competent for criminal law according to the criminal procedure law. The case prosecutor is responsible for coordination between all authorities that have a role in preventing and combating waste crime.

The Ministry of Internal Affairs considers inter-institutional cooperation to be effective and functional, while acknowledging that it needs to be constantly maintained and deepened.

The cooperation protocols concluded by the NEG with the other authorities with responsibilities in the field to strengthen the institutional capacity to fight against waste crime provide the organisational framework needed for the proper conduct of inspection and control activities in this field. In general, cooperation has taken place under appropriate conditions, but there have been cases where the allocation of resources was insufficient or delayed and the time to intervene was lost.

The Ministry of Justice, as the central authority with regard to international judicial cooperation in criminal matters, enjoys very good inter-institutional cooperation with the Ministry of Internal Affairs, the International Police Cooperation Centre (SIRENE Bureau and Interpol National Bureau), Eurojust, the judicial authorities (courts, prosecutor's offices), the Ministry of Foreign Affairs and the liaison magistrate's institution, who are the main partners in this field. Evidently, good practices in inter-institutional cooperation are achieved regardless of the type of crime involved, including environmental crime.

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

The Ministry of Internal Affairs (MIA) does not have direct access to the NEG's databases. Access can be granted only in order to deal with criminal files and requests must be addressed to the NEG.

Law enforcement authorities also use the cooperation channels of the International Police Cooperation Centre, namely, the Interpol Bucharest National Bureau, the Europol National Unit and the National Focal Point. Thus, the MIA has access to the European Expert Platform (EPE) where it can track, monitor, exploit, exchange or collect information on environmental crime.

In addition, over the past five years, the concept of risk analysis has become increasingly important, with the aim of identifying legal entities whose economic activity gives grounds for suspicion, on the basis of risk indicators. In this respect, there is close cooperation on the issue of environmental crime (illegal felling of trees in forests, illegal logging, etc.); analysts and GIRP specialists work together to identify and investigate suspicious activities which may have an impact on the environment, especially forestry and carbon issues and 'green certificates'.

To accomplish this goal, they use data and information from the Romanian police's operational criminal files, information at the national level, open sources, the Trade Register, applications used by the National Anti-Fraud Agency, the General Directorate of Customs (Ministry of Public Finance) and the General Inspectorate of the Border Police, and other applications used by the General Inspectorate of the Romanian Police, using both specific geospatial analysis techniques (hotspots, thematic maps, routes, etc.) as well as techniques that are specific to operational analysis (link analysis, authors, comparative case).

In order to strengthen the institutional capacity to fight against crime in the field of waste, the NEG has concluded cooperation protocols with the other authorities with responsibilities in the field, namely the General Inspectorate of the Romanian Police, the General Inspectorate of the Border Police, the National Anti-Fraud Agency, etc. Under these protocols, the other public authorities responsible for implementing waste legislation have access to NEG database information. The national judicial authorities have the same rights. The judicial authorities have the right to request data or documents relating to criminal files and the national institutions with duties in the field have the obligation to communicate them.

The National Focal Point, which is one of the cooperation platforms used for the exchange of information on crime in general, operates within the Centre for International Police Cooperation in the General Police Inspectorate.

The National Focal Point, together with the other international police cooperation channels, processes operational data and information to prevent and combat cross-border crime.

There is no specialised national focal point for collecting operational data on waste crime.

#### **4.5. Training**

The National Institute of Magistracy (members of the judiciary, both judges and prosecutors) are obliged to participate at least once every three years in continuous training programmes organised by the Institute or national higher education institutions or programmes organised abroad, or in any other form of vocational training. During the last five years the Institute has organised four training courses on environmental crimes.

Vocational training programmes in different fields are organised periodically for the prosecutor's offices attached to the courts of appeal. 14 prosecutors participated in training courses on environmental crimes in the period 2015-2018.

Judges and prosecutors can receive training in environmental crime organised at national and EU level through the European Judicial Training Network (EJTN). For example, Romanian judges and prosecutors were offered two places on the seminar on EU Environmental Law held on 9-10 July 2018 in Trier, Germany, which was organised by the EJTN.

The NEG prepares an annual training plan that identifies training needs and allocates the financial resources needed to implement it. This plan is ongoing. Training in the inspection and control of waste activities, in particular monitoring shipments of waste across the border, has been identified as a priority in the professional development plans of recent years.

Through the responsible structure at the central level of the Romanian police, namely the Directorate of Arms, Explosives and Dangerous Substances (DAEDS), the MIA takes steps to train specialists working in the area of dangerous substances at territorial level. Thus, in May and June 2018, the GIRP/DAEDS organised a two-part course in the field of hazardous substances and waste, attended by police officers from territorial units dealing with weapons, explosives and dangerous substances and hazardous work activities. The officers in question are specialised in hazardous waste issues and environmental crime related to hazardous waste.

There is no specifically designated body to provide training on environmental crime, and specifically waste crime, in Romania. The National Institute of Administration (NIA) is the body that, by law, provides professional training and retraining for civil servants (as mentioned before, NEG commissioners are civil servants with special status). The NIA's training programmes do not include programmes on environmental protection, and more particularly environmental crimes.

NEG inspectors have not participated so far in CEPOL training courses, but it is worth mentioning the participation of NEG inspectors in the International Law Enforcement Academy (ILEA) in Budapest, Hungary. Customs officers may attend training sessions provided by CEPOL or other bodies/agencies on environmental crime, waste crime, etc., and the customs authority therefore receives invitations to participate in such activities. Moreover, the 'Guidelines for Customs Controls on Transboundary Waste Shipment' are used in professional training activities and (in the form of factsheets) in the current activity (using information sheets on F-gases, ODS and REACH) developed by the Member States and revised and validated by the European Commission.



GIRP officers also take part in the training sessions provided by CEPOL in relation to activities specific to the prevention and combating of environmental crime.

## I. Initial training

In the MIA there are two types of training courses for police officers, namely: *initial training*, which mainly takes place in police schools, and *continuous training* courses that take place within the Police Academy and the Institute for Public Order Studies (ISOP).

The *initial* training curriculum contains topics related to the sanctioning and investigation of misdemeanours/crimes involving forestry, fishing and hunting. There is no specific training on waste crime. A total of 16 hours is allocated for this course during an educational year and it involves approximately 1 300 students.

## II. Specialised training courses

The Romanian police also organised special training courses in 2016, 2017 and 2018 for police officers involved in preventing and investigating *crimes in the field of recyclable materials*. The trainers were representatives of all actors dealing with this type of crime at national level (the National Environmental Guard, the National Authority for Consumer Protection and the Romanian police).

The three-day courses trained 45 police officers each year. The training topics were as follows:

### ***Crimes in the field of recyclable materials***

*a. Competences of the course/training activity:* how to apply the rules and provisions for combating crimes in the field of recyclable materials;

- Presentation of legislation on recyclable materials - comparative analysis on the competence of law enforcement bodies
- Collection-management-recycling of recyclable materials in Romania
- Combating crime in the collection and recycling of metallic waste

- Presenting legislation on the marketing of new and second-hand tyres and the specific approach to crime in this area
- Ways of committing crimes in the collection, management and recycling of waste oils and batteries
- Forms of cooperation between environmental guards and specialised police officers
- Combating crime in the collection and recycling of packaging
- Case studies with national impact
- Significant cases during the years 2016/2017.

*b. Organisational and methodological specifications:*

Training activities usually take place over six hours each day, in the form of presentations, debates, mixed lessons and other forms of organisation, and are supported by specialist officers within the Economic Crime Investigation Directorate, as well as by other experts in specific training fields.

The training activities can also be supplemented by individual study or sessions for trainees provided by tutors, trainers or specialists each day outside the 8.00-13.40 time-slot.

### **III. International training**

At the international level, police officers attended courses such as:

- the Environmental Crimes courses organised in 2017 at the *Centre for Training in the Field of Combating Organised Crime in Caserta*, Italy;
- training through *Tackling Environmental Crimes through Standardised Methodologies* - TECUM project (Romanian actors involved: border police, National Environmental Guard);
- five-day professional training course on combating illegal forest crimes organised at the *ILEA* in Budapest;
- Investigating crimes involving trafficking in wild species, *ILEA* in Budapest.

In 2018 the Romanian police organised a series of international professional training courses on the topic of 'Combating CBRN Terrorism' and the 'International Reaction to Bioterrorism', in partnership with the USA Embassy in Romania. Representatives of Romania, Bulgaria and Georgia took part in the training, as well as the Republic of Moldova and Ukraine as observers.

#### 4.6. Conclusions

- There is no specialisation in environmental crime among prosecutors and judges in Romania. At the time of the on-site visit, no specialised prosecutors or units had been designated to handle environmental crime within the Public Prosecution Service apart from one prosecutor in the Prosecutor's Office in Constanța.
- The Romanian authorities recently established a national forum within the prosecutor's offices by identifying prosecutors who have already dealt with environmental cases. This effort was the result of a conference on the protection of the environment through criminal law held in 2016, involving different authorities. A network of about 100 practitioners was accordingly set up in 2018. A central mailbox was installed as a contact point and the prosecutors were asked to process useful information on environmental cases and invited to refer questions and problems on environmental issues.
- The usefulness of this network has not yet been demonstrated by practitioners. In the evaluators' view the creation of this network might be considered as a first step towards raising awareness of the issue of environmental crime within the judiciary. But an informal network alone will not bring the necessary capability for prosecuting environmental crime in the prosecutor's offices throughout the country. In the evaluators' view, a clear definition of competences and tasks in the course of everyday work is necessary for more efficient prosecution of environmental crime. Specialised prosecutors should get the necessary in-depth training on environmental law issues and acquire experience through the concentration of environmental cases on their desk. It is also important for the NEG inspectors, police and customs to have a formally designated prosecutor as a contact point when reporting cases or addressing possible questions.
- The public prosecutor plays a central role in the Romanian system, as every case has to be registered in the public prosecutor's office before the police can initiate an investigation. He or she also decides whether it is an administrative offence or a criminal case to be investigated by the police.

- There have been a number of successful prosecutions of 'big polluters' in the region of Constanța, thereby proving that Romania possesses the necessary legal and procedural instruments. This also shows – somewhat in contrast to the threat assessment of the national police – that waste crime and environmental crime involving elements of organised crime does take place and is actually a threat in Romania.
- Investigating environmental crime is a complex task, both in legal/procedural terms and because of the factual/scientific aspects involved. In the evaluators' view, public prosecutors specialising in environmental crime are essential for successful investigations and court proceedings in that field because of their prominent role in the Romanian system of criminal investigation. Their judgment on the facts at the very start of a case can be decisive. They also have to know how to construct the case, as they have to guide the police and coordinate the action of other authorities in the preliminary investigation and supervise the collection of evidence.
- Environmental crimes not only involve a potential economic dimension but also present specific challenges when it comes to the scientific approach in the matter of evidence. Without a specific knowledge of environmental crime, judges are likely to underestimate the possible complexity of the evidence and the time needed for the court hearings compared to ordinary crime cases. The defence lawyers of the offenders – at least in environmental cases involving serious damages – are usually specialised in that field, which may lead to an imbalance in terms of experience and professional skill. In the evaluators' view, the specialisation of judges would strengthen the resilience of the Romanian system in handling environmental crime cases. This could be achieved by implementing various measures, e.g. by providing more training on environmental crime or by setting up a dedicated structure. Romania should consider either of these options, at least for cases involving big polluters.

- The NEG plays the most important role in detecting administrative infringements and criminal offences in the field of environmental crime. There are 621 inspectors performing an impressive number of controls on industrial facilities and waste management operators (more than 38 000 checks were carried out in 2017). The NEG has the institutional capacity to take action at any moment (it has a 24/7 team). For administrative offences, it has the competence to issue penalties immediately. In the evaluators' view, the NEG's staff has a generally high level of education and show a high degree of commitment to their tasks.
- The NEG inspectors have made use of EU funding to participate in EU projects as well as EU training opportunities in order to improve their capacity in the environmental field. They have been active in searching professional exchanges of experience via the IMPEL and EnviCrimeNet and described this as very helpful. They are following approaches that are widely seen as best practices, for instance, planning waste inspections on the basis of risk analysis, and taking into account the cross-border dimension of environmental crime (e.g. Operation '30 Days of Action' in November 2017 - TECUM).
- It seems that the required cooperation with other national actors (police bodies in general, especially border police and transport police, and the customs authorities) needs to be improved to cope with the different challenges they will face in the field of environmental crime in the future. The NEG's management seems to be aware of this need. Although cooperation protocols have already been concluded with, for instance, the General Inspectorate of the Romanian Police, the General Inspectorate of the Border Police and the General Directorate of Customs, the content and the benefits of these protocols and the concrete results of 'intra-institutional and inter-institutional cooperation' have yet to be proven.

- One specific challenge in the work of the NEG results from the limited competences of the NEG commissioners when an alleged criminal offence is detected. Under Romanian law, NEG commissioners have no investigative powers. They are not allowed to collect evidence for a criminal investigation, take witness statements or collect any other information for the preliminary investigation. If, in the course of an inspection, they suspect that a crime has been committed, they have to call the police to carry out the investigative tasks. It was reported that this can be time-consuming and, for various reasons, appears to be an obstacle to successful investigations.
- The evaluators see a discrepancy between the NEG's legal tasks of detecting environmental offences and its strictly limited competences when it comes to investigations. The fact that investigative powers are vested solely in the police means that the professional skills and knowledge of NEG staff - on EU waste legislation, for example - are not being used in the best possible way in the fight against environmental crime. Given the nature of their daily work, the NEG commissioners are best placed to detect possible cases in the field. The evaluators therefore feel that vesting the NEG with (limited) criminal investigative powers should lead to greater efficiency in the investigation of environmental crime in Romania.
- A further concern relates to the limited opportunities for human resources development in the NEG. The employment conditions of NEG staff, from the commissioner right up to their heads of department, are less attractive than those of other public servants in LEAs. Obviously, therefore, it is difficult to find and to keep adequate staff in a country whose economic development provides plenty of other attractive job opportunities for young academics. Romania is therefore encouraged to develop measures/methods to maintain specialised staff within the NEG as required to fight effectively against waste and environmental crime.

- As regards the collection of evidence, it is crucial to have admissible evidence if environmental crime is to be prosecuted successfully. The existing state standards for sampling, however, require in every case the mixing of samples from the entire cartload of a truck, container or vessel. It was reported that, in cases where a large amount of waste/material is suspected of being waste, sampling is very difficult due to a lack of resources (personnel, time) and storage facilities. In the evaluators' view, the legal requirements in both Romanian and European law should be verified and the sampling standards reviewed in order to facilitate the work of the investigation authorities.
- The national police in Romania appears to be the mainstay among the different state authorities and has a great deal of manpower and technical equipment. International police cooperation with Member States and third countries is well established at central level and also at regional level (e.g. SELEC-Cooperation). However, during the on-site visit, the prevailing impression was that the police administration does not view the fight against environmental crime as a priority; as only small and medium cases being reported.
- Getting a clear intelligence picture on environmental crime is widely known to be a challenge in the world of LEAs, for a number of reasons. Environmental crime is not a (high) priority in the work of law enforcement agencies, lack of training of the complex legislation and lack of resources (time and personal) dedicated to that specific task is preventing law enforcement agents from detecting possible cases of environmental crime. The evaluators acknowledged this challenge within the national police in Romania.<sup>7</sup>
- There are no specialised units at local or regional level within the police. They only exist at the central level, in the Romanian General Police Inspectorate, where the Directorate of Arms, Explosives and Dangerous Substances is responsible, inter alia, for cases involving dangerous substances or waste crime; however, only limited capacity is invested in that field.

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<sup>7</sup> After the evaluation, the Romanian authorities have informed the experts, that an internal regulation has been issued at the beginning of 2019 that states the priorities of the economic criminal investigation unit for the year. One of these priorities is 'investigating all forms of economic criminality, encountered in the environmental protection area'.

- In the police and prosecutor's offices, the focus in environmental cases seems to be on traditional 'green' issues in Romania - for instance, poaching, illegal fishing, illegal felling of forest trees and the like. Hence it would appear crucial to raise awareness of environmental crime as a whole, in particular waste crime, to ensure, for example, that the economic dimension and the cross-border aspects are fully understood. Therefore, in the evaluators' view, the police should set up specialised structures tackling the whole range of environmental crime, in particular waste crime, and offer frequent training opportunities.
- There is a framework for inter-institutional cooperation between all relevant services within which cooperation and exchange of information is made possible. To support this framework, collaboration with these institutions is facilitated by the existence of an Operational Working Group in which these institutions are represented and are supposed to meet at least once a year.
- During the on-site visit, the evaluators observed that the Romanian authorities had identified the need for training for practitioners involved in the fight against environmental crime as a priority, but a training programme has not yet been realised. The National Institute of Administration does not yet offer special programmes for public servants on environmental crime. There have been only a few training opportunities in Romania for prosecutors and judges, apart from the training sessions offered by the European Judicial Training Network.
- An application for EU funding to establish a training course on environmental crime for police officers and prosecutors in February 2018 failed. Environmental crime needs to be integrated as a topic within the EU-funded training for police and prosecutors in the fight against organised crime.
- Since the power to investigate environmental crimes is vested in the police alone, a basic training course for police officers on environmental crime should be organised soon and should be made available for a sufficiently large number of participants, bearing in mind the number of officers in the Romanian police force. That is why Romania should provide more training opportunities to practitioners involved in detecting and/or fighting environmental crime.



## 5. LEGAL ASPECTS

### 5.1. Substantive criminal law

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

There are extensive provisions in place in Romanian legislation, both penal and administrative in nature, in relation to the handling of waste. All the definitions and criminal sanctions of waste crimes are stipulated in the provisions of the Criminal Code (CC) and in specific legislation<sup>8</sup>.

The most relevant definitions of waste are defined in GEO No 195 of 22 December 2005 on the protection of the environment as follows:

19. waste – any substance, preparation or any object of the categories established by the specific waste legislation that the holder discards or intends to discard;
20. recyclable waste – waste which may be a raw material in a production process for the purpose of obtaining the originating product or for other purposes;
21. hazardous waste - wastes generically classified, under the specific waste regime, in these types or categories of waste and having at least one constituent or property that renders them hazardous.

#### Chapter IV Waste regime

**Article 29.** - Waste management is carried out in such a way as to protect the health of the population and the environment and is subject to the provisions of this Government Emergency Ordinance and to the specific legislation in force.

**Article 30.** - The control of waste management is the responsibility of the competent public authorities for environmental protection and other authorities with the competencies established by the legislation in force.

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<sup>8</sup> Due to the large number of pages involved, a description has not been included in the report. For more information, see Annex D.

**Article 31.** - The local public administration authorities as well as the natural and legal persons carrying out waste management activities have duties and obligations in accordance with the provisions of the present Government Emergency Ordinance and the specific provisions in the field of waste management.

**Article 32.** -

(1) The introduction of waste of any nature on the territory of Romania for the purpose of its disposal is forbidden.

(2) The introduction of waste on Romanian territory, for the purpose of recovery, is performed on the basis of the specific regulations in the field, with the approval of the Government, according to the provisions of the Treaty on Romania's accession to the EU, ratified by Law No 157/2005.

(3) Waste recovery is carried out only in installations, through processes or activities authorised by the competent public authorities.

(4) The transit and export of waste of any kind is carried out in accordance with the agreements and conventions to which Romania is a party and with the specific national legislation in the field.

**Article 33.** -

(1) The internal transport of dangerous waste is carried out in accordance with the specific legal provisions.

(2) The international transport and transit of hazardous wastes is carried out in accordance with the provisions of the international agreements and conventions to which Romania is a party.

#### Chapter XV Penalties

**Article 96.** -

(1) Violation of the following legal provisions constitutes a contravention and is sanctioned by a fine of between RON 3 000 and RON 6 000 for individuals and between RON 25 000 and RON 50 000 for legal persons:

1. the obligations of legal entities to carry out self-monitoring systems and to report to the public environmental protection authority the results of the self-monitoring and/or other required data, as well as accidents and incidents that may lead to accidents;

2. the obligation of legal persons to keep a strict record of dangerous substances and preparations and to provide the information and data required by the competent authority for the protection of the environment;
3. the obligation of legal persons to identify and prevent the risks that dangerous substances and preparations may have on the health of the population and the environment and to announce the imminence of unforeseen or accidental discharges to the competent authority for environmental protection and civil defence;
4. the obligation of authorised natural and legal persons to apply radioactivity surveillance programmes through their own systems to ensure compliance with the conditions for the disposal of the radioactive substances provided in the authorisation and to maintain the radioactive doses within the permissible limits;
5. the obligation of authorised natural and legal persons to maintain local environmental monitoring capability in order to detect any significant radioactive contamination that would result from an accidental disposal of radioactive substances;
6. the obligation of landowners and landlords with or without title to maintain the forest area and protected areas, green spaces, parks and hedges in order to improve the atmosphere's regeneration capacity and sound and wind protection;
7. the obligation of owners and landowners with or without title to prevent, on the basis of regulations in the field, the deterioration of the quality of the geological environment;
8. the obligation of landowners and landlords, with or without title, to ensure that the placement, design, construction and commissioning of any kind of land and change of land use is in accordance with the conditions set out in the agreement and the integrated environmental permit;
9. the obligation of landlords and owners of land with or without title to burn stubble, reeds, hedges or grass vegetation without the consent of the competent authority for environmental protection and without prior notification of community public services for emergencies;

10. the obligation of landlords and landowners to take sanitation measures for productively or functionally unoccupied land, in particular those located along roads, railways and shipping;
11. the obligation of owners of any land title to protect the wild flora and fauna existing therein in the sense of maintaining the ecological balance and preservation of biodiversity as well as the sustainable exploitation of resources on the basis of the legal provisions in force so as not to harm the environment and human health;
12. the obligation of the local public administration authorities and of natural and legal persons, as the case may be, to adopt and/or enforce mandatory measures for the maintenance and embellishment of buildings, their courtyards and their surroundings, green areas in yards and between buildings, trees and decorative shrubs in accordance with urban planning plans;
13. the obligation of the local public administration authorities and of legal persons, as the case may be, to provide for the elaboration of urbanism and spatial planning plans, measures for maintaining and improving the natural and anthropic landscaping of each zone and localities, ecological and landscape restoration conditions of damaged areas and measures to develop green areas, sanitary protection of drinking water abstraction and flood defence works;
14. the obligation of the local public administration authorities, as well as of natural and legal persons, as the case may be, not to change the destination of the lands designated as green spaces in the urban plans;
15. the obligation of the local public administration authorities, as well as natural and legal persons, as the case may be, not to degrade the environment through uncontrolled waste disposal of any kind;
16. the obligation to carry out on the surface of the protected natural areas and in their neighbourhood only those activities that comply with the provisions of the management plans and the regulations of the protected natural areas;
17. the obligation not to enter protected natural areas and not to practice sports outside the roads allowed for public access by motorised means based on the use of fossil fuels;

18. the obligation to comply with the provisions of the management plans and regulations of the protected natural areas approved according to the legal provisions; the obligation to present identity documents at the express request of the inspection and control personnel provided for in this Government Emergency Ordinance;

19. the obligation to grant access to the protected area of the administrators or custodians as well as their representatives on the land owned by any title; the obligation of individuals not to discharge wastewater or domestic faeces into surface water or groundwater;

20. the obligation for natural and legal persons to individually mark the specimens belonging to the wild flora and fauna species for which such provisions exist in the European Commission Regulations on the conservation of wild fauna and flora by regulating trade with them or in specific national legislation according to the methods approved or recommended by the Conference of the Parties to the Convention on international trade in endangered species of wild fauna and flora and, in particular, labelling caviar for both domestic and international trade.

(2) Violation of the following legal provisions constitutes a contravention and is sanctioned by a fine of between RON 5 000 and RON 10 000 for individuals and between RON 30 000 and RON 60 000 for legal persons:

8. the obligation of the local public administration authorities to supervise licensed economic operators with a view to preventing the accidental elimination of pollutants or the uncontrolled disposal of waste, and to develop waste collection systems;

11. the obligation of the local public administration authorities to comply with urban planning provisions regarding the location of industrial sites, roads and means of transport, sewerage networks, sewage treatment plants, streets and individual deposits of domestic waste (landfill), and other sites, without prejudice to the environment and spaces for resting, treatment and recreation, and the health and comfort of the population;

29. the obligation of legal persons to apply waste disposal measures resulting from activities involving genetically modified organisms;

30. the obligation of natural and legal persons owning ships, floating platforms or marine drills to ensure the provision of waste storage or waste treatments, sewage treatment plants for waste water and discharge joints in shore or floating installations;

31. the obligation of legal persons to arrange harbours with facilities for the collection, processing, recycling or neutralisation of petroleum, domestic or other waste stored on river and sea vessels, and to provide intervention teams in the event of accidental pollution of waters and coastal areas;

34. the obligation of natural and legal persons not to throw or deposit waste of any kind on riverbanks or in rivers, surface waters and wetlands;

(3) Violation of the following legal provisions constitutes a contravention and is sanctioned by a fine of between RON 7 500 and RON 15 000 for natural persons and between RON 50 000 and RON 100 000 for legal persons:

1. the obligation of natural persons to operate in compliance with the provisions of the environmental permit and of legal entities to operate in compliance with the provisions of the environmental/integrated environmental permit for the activities subject to regulatory procedures in relation to environmental protection;

4. the obligation of natural and legal persons to reduce, modify or cease pollution-generating activities at the duly substantiated request of environmental authorities;

5. the obligation of natural and legal persons to assist the persons empowered to carry out verification, inspection and control activities, by providing them with records of their own measurements and all other relevant documents;

6. the obligation of natural and legal persons to submit to the competent environmental protection authorities, within 60 days of the date of signing or issuing the document attesting to the completion of one of the procedures provided for in Article 10(2), a certified copy for compliance with the original containing the environmental protection obligations;

7. the obligation of natural and legal persons to facilitate the verification, inspection and control of the activities which are also the subject of sampling;

8. the obligation of natural and legal persons to ensure access for authorised persons to technological installations generating environmental impacts, to equipment and installations for the decontamination of the environment, as well as to the spaces or areas potentially generating environmental impact;

9. the obligation of natural and legal persons to carry out, in full and on time, the measures imposed, in accordance with the regulatory acts and the legal provisions, by the persons empowered to verify, inspect and control in the field of environmental protection;

**Article 98. -**

(2) The following acts are considered offences and are punished by imprisonment from 6 months to 3 years or by fines, if they are likely to have endangered the health of humans, animals or plants:(a) pollution by the discharge into the atmosphere or on the ground of hazardous waste or substances;

(3) The following acts are considered offences and are punished by imprisonment from 6 months to 3 years if they are likely to have endangered human, animal or plant life or health:

(a) unsupervised and non-assured deposit of waste and hazardous substances, as well as non-compliance with the obligation to store chemical fertilisers and plant protection products in packaged form only and in protected places;

(4) The following acts are punishable by imprisonment for a period of 1 - 5 years, if they are likely to have endangered human, animal or plant life or health:

(b) discharging waste water and waste from ships or floating platforms directly into natural waters or knowingly causing pollution by discharging or immersing in dangerous waters, directly or from floating ships or platforms, dangerous substances or wastes.

(5) The following deeds are punishable by imprisonment from 2 to 7 years:

b) failure to take measures for the complete disposal of hazardous substances and preparations which have become waste;

(6) The attempt is punished.

Law No 101 of 15 June 2011 for the prevention and punishment of acts related to environmental degradation

**Article 2.** - For the purposes of this law, the terms and expressions below have the following meanings:

(g) materials within the meaning of Article 8(1) - any chemical, biological, radioactive or nuclear material, provided by the normative acts mentioned in Annexes 1 and 2, which may have a significant impact on the environment;

**Article 3.** - The collection, transport, recovery or disposal of waste, including the oversight of such operations and the subsequent maintenance of disposal sites, as well as any action taken by brokers in the waste management process in breach of the legal provisions in the field, that may cause death or serious injury to a person or significant damage to the environment, constitutes an offence and is punishable by imprisonment from 6 months to 3 years.

**Article 4.** - Export or import of waste in violation of legal provisions in the field, if this activity falls within the scope of point 35 of Article 2 of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (published in the Official Journal of the European Union - L 190, 12.7.2006), as amended, regardless of whether the carriage is performed by one or more operations, is punished by imprisonment from 2 to 7 years.

**Article 5.** - Operation, in breach of the legal provisions in the field, of an installation in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used, such as to cause the death or serious injury of a person or significant damage to the environment, constitutes a crime and is punished by imprisonment from 6 months to 5 years.



**Article 8.** - (1) Discharging, issuing or introducing, in violation of the legal provisions in the field, a quantity of materials in the air or soil that may cause death or serious injury to a person or significant damage to the environment constitutes a crime and is punishable with imprisonment for a period of **1 - 5 years**.

**Article 9.** -

(1) The offences referred to in Articles 3, 7 and 8, committed unintentionally, are punished by the penalty provided for in those articles, the limit of which is reduced by half.

(2) The acts referred to in Articles 4, 5 and 6, committed unintentionally, are punished by the penalty provided for in those articles, the special limit of which is reduced by half, or by a fine.

**Article 10.** - The acts stipulated in Article 271 of Law No 86/2006 on the Customs Code of Romania, as subsequently amended and supplemented, committed unintentionally, are punished by the penalty provided for in that article, the limit of which is reduced by half.

**Article 12.** - The acts stipulated in Articles 2 - 8 are punished according to the present law if they do not constitute more serious offences under the legislation in force.

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

Other rules applicable to the area of waste are Law No 211/2011 of 15 November 2011 on waste and Law No 101/2011 of 15 June 2011 for the prevention and punishment of acts related to environmental degradation.

The Annex to Law No 101/2011 of 15 June 2011 on the prevention and punishment of acts related to the degradation of the environment contains a comprehensive list of administrative acts with an incidence in this field.

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

There are no special criteria to determine the seriousness of waste crimes. The Criminal Code provides for the general criteria applicable to all offences.

Article 74 (1) The determination of the duration or the amount of the punishment shall be made in relation to the seriousness of the offence committed and the perilousness of the offender, which shall be assessed according to the following criteria:

- a) the circumstances and manner of committing the offence, as well as the means used;
- b) the state of danger created for the value protected;
- c) the nature and severity of the resulting product or other consequences of the offence;
- d) the reason for committing the offence and the purpose intended;
- e) the nature and frequency of the criminal offences on the criminal record of the offender;
- f) conduct after committing the offence and during criminal proceedings;
- g) level of education, age, health, family and social situation.

Under Article 75 of the CC, circumstances relating to the offence committed which diminish the seriousness of the offence may also, depending on the concrete circumstances, constitute aggravating circumstances. On the other hand, according to Article 76 of the CC, the relevant factor, in the matter of offences concerning waste, is whether or not the offence was committed by methods or means capable of endangering other persons or goods.

If extenuating circumstances are established, the penalty limits are reduced by one-third, whereas the establishment of aggravating circumstances means that a penalty at the special maximum rate may be imposed, and if that is not enough, an increase of up to two years may be applied.

The term 'significant damage', as stipulated in Article 3 of Directive 2008/99/EU, is transposed via Article 2 (i) of Law No 101/2011 on the prevention and punishment of acts related to environmental degradation under the term 'significant damage to the environment' and is defined as 'irreversible or long-term damage, quantifiable or not in money, produced in any way on the environment, or which has caused or is likely to cause death or injury'.

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

The Public Ministry identified cases where waste crime was linked with economic crimes, such as tax evasion and money laundering.

The IGPR did not record significant cases of crime in the area of hazardous waste, but they gave examples of two criminal cases illustrating links with commercial crimes:

##### Example 1

In March 2017, following investigations into another criminal case, officers from the Directorate of Arms, Explosives and Dangerous Substances, with the help of police officers from the Department of Investigation of Economic Crime, carried out checks at the work premises of a company to see if they complied with the legal provisions on the hazardous substances regime. They discovered that the company's administrators were illegally importing rat killer products from China under the trade name RATOUT, in various forms (waxed blocks, wafers, pellets, processed cereals and poison paste), all containing the active substance bromadiolone. This substance is classified as very toxic, acute category I, according to European Regulation 1272/2008 CLP and 1907/2008 REACH, and has the following risk warnings:

- deadly in contact with skin;
- deadly if swallowed;
- deadly in case of inhalation.

For these products, the importing company did not hold approvals from the National Commission for Biocidal Product Approval within the Ministry of Health or from the Ministry of Agriculture's National Commission for Approval of Plant Protection Products; such documents are required for the import and marketing of such of products. During the checks at the work premises and warehouses leased by the two companies, approximately 25 000 kg of RATOUT products were identified, in different forms of counterfeit packaging. The two companies were not licensed to sell chemical products, nor did they have environmental permits for carrying out activities with a major impact on the environment or sanitary authorisations for operation. Following verification of the documents, it was established that, in total, the company's administrators had illegally imported from China around 28 000 kg of rat killer products, which became hazardous waste.

## Example 2

In May 2017, anti-fraud inspectors from the National Anti-Fraud Agency in Oradea stopped a van belonging to a commercial company in Odorheiu Secuiesc. The van had arrived at the Bors border crossing entry-point into Romania, transporting a significant quantity of semi-finished tyres of different sizes shipped by an Italian company. The anti-fraud inspectors, who were suspicious about the cargo being transported, requested the presence of officers from the GIRP's DAEDS. When the checks were carried out, semi-used tyres of different types and sizes and a large number of used accumulators were identified inside the semi-trailer, with the tyres placed as a screen over the batteries. The driver was not in possession of any supporting documents in relation to the shipping of spent waste batteries. In view of the findings, the DAEDS officers made an ex officio notification of the following offences:

- 'Qualified contraband' action as stipulated in Article 271 of Law No 86/2006 on the Customs Code;
- 'Import and Export of Prohibited or Restricted Dangerous Substances and Preparations', an act proscribed and punished by Article 98(2) (d) of GEO No 195/2005;
- 'Production or import for the purpose of placing on the market and use of dangerous substances and preparations without complying with the provisions of the normative acts in force and the introduction on the territory of Romania of wastes of any nature for the purpose of their disposal, transport and transit of dangerous substances and preparations, in violation of the legal provisions in force', an act proscribed and punished by Article 98(3) (b) and (c) of GEO No 195/2005;
- 'Production or import for the purpose of placing on the market and use of dangerous substances and preparations without complying with the provisions of the normative acts in force and the introduction on the territory of Romania of wastes of any nature for the purpose of their disposal, transport and transit of dangerous substances and preparations, in violation of the legal provisions in force', an act proscribed and punished by Article 98(3)(b) and (c) of GEO No 195/2005;
- 'Import of appliances, installations, equipment, machinery, substances and products used and utilised, of the category of wastes forbidden on importation', an act proscribed in Article 63(1)(a) of Act No 211/2011 on waste;

- 'Export or import of waste in violation of legal provisions in the field, if this activity falls within the scope of point 35 of Article 2 of Regulation (EC) No 1013/2006, irrespective of whether the transport is carried out by one or more operations, and of Article 4 of Law No 101/2011 on the prevention and sanctioning of acts related to the degradation of the environment'. Article 38 of the Code of Criminal Procedure applies to all such acts. The prosecution for the abovementioned offences was initiated, and the driver of the utility vehicle was placed in detention. The manager of the commercial company that was acting as an intermediary in the transport of hazardous waste was accused of complicity in these offences.

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

A Non-Governmental Organisation (NGO) may notify criminal prosecution bodies of the fact that a crime has been committed. It may also be a civil party in the criminal proceedings.

The SCM (Superior Council of Magistracy) stated that NGOs can make complaints to the bodies responsible for the prevention and punishment of acts against the environment. They may be civil parties only under civil law insofar as they can prove that they have suffered direct harm; in principle, natural/legal persons and injured institutions/authorities are the civil parties in criminal proceedings.

Under the CCP, if an NGO is the injured party (for example, the landowner) and others deposit hazardous waste illegally without its consent, it may form a civil party. If an NGO makes a complaint, the result of the investigation, if it leads to criminal proceedings, is also communicated to the applicant.

The cooperation agreement between the PICCJ (the Prosecutor's General Office attached to the High Court of Cassation and Justice) and Greenpeace and the protocol with the Ministry of the Environment were concluded to enhance cooperation – in the public interest - between state institutions and NGOs dealing with the issue of environment protection.

## 5.2. Procedural, jurisdictional and administrative issues

### 5.2.1. Difficulties encountered with regard to evidence

National legislation provides for goods to be seized if they are used or intended to be used for committing offences or if they result from such offences being committed. These goods may constitute important evidence in court or administrative proceedings following inspections, but so far the NEG has not used this instrument due to the lack of a confiscation procedure and the failure to take conservation or recovery measures provided for by law.

The NEG believes that it is generally recognised that fraudulent recording of waste, declassification of hazardous waste into non-hazardous waste or the concealment of waste in other materials are the main modes of operation encountered in shipments across the border. In order to prove that a shipment of waste is illegal, it is necessary to collect waste samples and have them analysed by a specialised laboratory. In order to constitute evidence in the judicial or administrative proceedings subsequent to the inspection, waste samples must be taken and analysed by accredited bodies. The NEG staff are not accredited to carry out such operations (sampling and analysis of waste samples), so the NEG is required to use external bodies that are not always available in time, given the shortage of bodies accredited for sampling and analysis of samples of existing waste at national level. Moreover, sampling and analysing waste samples are costly processes, and the NEG has insufficient funds to cover the costs of sampling and analysing waste samples.

The Public Ministry considers that state sampling standards require the mixing of all material to show that the entire quantity transported or transferred is waste. In the case of massive shipments, such as sea-going vessels or large-scale trucks, sampling is almost impossible due to the lack of resources.

The Ministry of Justice, as the central authority in the field of international judicial cooperation in criminal matters, stated that no difficulty had been noted in relation to evidence received or transmitted in foreign jurisdictional proceedings (requests for international judicial assistance in criminal matters).

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

According to Law No 286/2009 on the Criminal Code, confiscation is a safety measure (Article 107 of the CC) but may also be applied as a special confiscation measure. The Criminal Code regulates two categories of confiscation: special confiscation (Article 112 of the CC) and extensive confiscation (Article 112<sup>1</sup> of the CC).

In the course of the criminal proceedings, at the preliminary stage or during the trial, the prosecutor, the judge of the preliminary chamber or the court, ex officio or at the request of the prosecutor, may take precautionary measures, by order or, as the case may be, by reasoned determination, in order to avoid the concealment, destruction, alienation or loss of goods which may be the subject of special confiscation or extended confiscation or which may serve to guarantee the execution of the penalty, the fine or the judicial expenses to repair the damage caused by the offence. The precautionary measures consist of making movable or immovable property unavailable, by the seizure thereof (Article 249 of the CCP).

Objects/waste are left in the custody of owners or specialised firms until they are disposed of in accordance with the law, and the costs are borne by the persons under investigation.

### *5.2.3. Treatment of seized objects*

The precautionary measures consist of making movable or immovable assets unavailable, by the seizure thereof.

Article 252 of the CCP regulates the seizure procedure as follows:

- (1) The body executing the seizure shall be obliged to identify and evaluate the seized assets and may, where appropriate, use assessors or experts.
- (2) Perishable goods, objects of precious metal or precious stones, foreign payment means, internal securities, art objects and museums, collections of value, and sums of money subject to seizure shall be compulsorily seized.

- (3) Perishable goods shall be surrendered to the competent authorities, according to the activity profile, who are obliged to receive them and to use them immediately.
- (4) The precious metals or stones or the objects made with them and the foreign payment means shall be deposited with the nearest banking institution.
- (5) Internal securities, art or museum items and valuable collections shall be handed over to specialised institutions.
- (6) The objects referred to in paragraphs (4) and (5) shall be handed in within 48 hours of being seized. If the objects are strictly necessary for the prosecution, the preliminary proceedings or the trial, the filing shall be made later, but not later than 48 hours after the pronouncement of the final decision.
- (7) Seized objects shall be kept until the seizure is lifted.
- (8) The amounts of money resulting from capitalisation of goods in accordance with paragraph (3), as well as the amounts of money raised in accordance with paragraph (2), shall be deposited in the account established in accordance with the special law no later than 3 days following the raising of the money or the capitalisation of the goods.
- (9) Other movable property seized shall be sealed or seized, and a custodian may be appointed.

The CCP provides for the possibility of early capitalisation of seized assets, as follows:

**Article 252<sup>1</sup>.**

- (1) During the criminal proceedings, before the final decision is pronounced, the prosecutor or the court that instituted the seizure may immediately dispose of the seized movable assets at the request of the owner of the property or when there is the agreement of the property.
- (2) In the course of the criminal proceedings, before a final judgment is pronounced, in the absence of the consent of the owner, the movable assets upon which the seizure has been established may exceptionally be capitalised in the following situations:
  - a) when, within one year from the date when the seizure was instituted, the value of the seized assets diminished significantly or by at least 40 % compared to the time when the precautionary measure was ordered. The provisions of Article 252(1) shall also apply accordingly;



b) when there is a risk of expiry of the warranty period or when the insurance seizure has been applied to live animals or birds;

c) when the seizure has been applied to flammable or petroleum products;

d) when the insurance seizure has been applied to goods whose storage or maintenance requires disproportionate expenditure in relation to the value of the good.

(3) During the criminal proceedings, before a final judgment is given, when the following conditions are met cumulatively: the owner could not be identified and the capitalisation cannot take place in accordance with paragraph (2), the motor vehicles on which the seizure has been established may be capitalised in the following situations:

a) when they have been used, in any way, to commit an offence;

b) if, from the date of the imposition of the measure, a period of one year has passed since the insurance was taken out.

(4) The amounts of money resulting from the capitalisation of movable goods in accordance with paragraphs (1), (2) and (3) shall be deposited in the account referred to in Article 252(8).

Romania has adopted special legislation on the administration of seized property. Thus, in December 2015, Law No 318/2015 for the establishment, organisation and functioning of the National Agency for Managing Indispensable Goods and for amending and supplementing certain normative acts stipulated in Article 28 that:

(1) At the request of the prosecutor or the court, the Agency temporarily deposits and manages the indispensable movable assets whose individual value exceeds the equivalent in RON of the sum of EUR 15 000 at the time of the provisioning of the insurer; for this purpose, the Agency is appointed custodian, within the meaning of Article 252(9) of Law No 135/2010.

(2) The goods referred to in paragraph (1) shall be handed over to the Agency on the basis of a surrender-takeover report concluded between the Agency and the bodies carrying out the precautionary measures, pursuant to Article 251 of Law No 135/2010, as subsequently amended and supplemented, and the provisions of Article 7(e) of Law No 188/2000 (republished) on bailiffs, as subsequently amended and supplemented. The model of the minutes shall be established by the protocol on cooperation procedures regarding the administration and valorisation of the seized and confiscated goods, as stipulated in Article 4(2).

(3) In the fulfilment of the tasks attributed to it in paragraph (1), the Agency may conclude public procurement contracts in compliance with the legal provisions in the field. Expenses incurred for the storage and management of seized movable property shall be borne by the Agency's budget.

(4) For movable goods under the custodian arrangement referred to in paragraph (1), the Agency is authorised, with the prior approval of the prosecutor or, as the case may be, of the court, to obtain the consent of the owner of the property for valorisation in accordance with paragraphs (1) to (4) of Article 252 of Law No 135/2010, as subsequently amended and supplemented, and with the provisions of this law.

Objects/waste are left in the custody of owners or specialised firms until they are disposed of in accordance with the law, and the costs are borne by the persons under investigation.

### **5.3. Environmental restoration**

Both natural persons and legal persons may appear as a defendant if the act was committed in the interests of the legal person, and may be required to remedy the situation, which involves effectively repairing the environmental damage caused (to the extent that this reversible effect is objectively possible).

The court may, during the trial, take measures to restore the condition to what it was prior to the offence being committed, if the change of situation resulted from the crime being committed and if such restoration is possible (Article 256 of the CCP).

From the NEG's perspective, with regard to repairing environmental damage, in Romania the 'polluter pays' principle applies, i.e. the natural or legal person who caused the damage must bear the cost of repairing the damage and removing the consequences produced by it, restoring the previous conditions (Article 94(1)(i) of GEO No 195/2005 on environmental protection, as subsequently amended and supplemented). The procedure for establishing and taking preventive and reparatory measures, as well as assessing the significant nature of environmental damage, is regulated by GEO No 68/2007 on environmental liability with regard to the prevention and remedying of environmental damage, which transposed Directive 2004/35/EC into national legislation.

The National Authority for Environmental Protection (NAEP) is the national authority responsible for establishing and taking preventive and reparatory measures and assessing significant environmental damage. Throughout this process, the NAEP consults with the NEG.

Taking measures to repair damage is the responsibility of the person who caused the damage to the environment, but if the person who caused the damage did not comply with the obligations under the legal provisions in force or cannot be identified, this will be done by the State.

## **5.4. Jurisdiction**

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

If part of the criminal activity has been carried out on national territory, or the result has occurred on national territory, Romanian criminal law is applicable according to the principle of ubiquity. If all the criminal activity has taken place outside national territory and the result has occurred outside the country, Romanian penal law applies if the perpetrator of the act is a Romanian citizen or a Romanian legal person, provided that the penalty for the offence under Romanian law is life imprisonment or imprisonment of more than 10 years. In other cases, Romanian penal law applies to offences committed outside Romanian territory by a Romanian citizen or a Romanian legal person if the act counts as a criminal offence in the criminal law of the country where it was committed or if it was committed in a place not subject to the jurisdiction of any state.

Romanian criminal law applies to crimes committed on the territory of Romania. The territory of Romania means the land, territorial sea and waters, together with the soil, subsoil and airspace situated between Romania's state borders. The offence is considered to have taken place on the territory of Romania when an act of execution, instigation or complicity has been carried out on that territory or on a vessel flying a Romanian flag or on an aircraft registered in Romania, or even in part (Article 8 of the CC).

#### *5.4.2. Rules in the event of conflicts of jurisdiction*

Romania has not concluded any bilateral agreements with other Member States to resolve conflicts of jurisdiction in this area.

Council Framework Decision 2009/948/JAI of 30 November 2009 on conflict prevention and resolution in relation to the exercise of jurisdiction in criminal proceedings was transposed through the provisions of Law No 302/2004 (republished) on International Judicial Cooperation in Criminal Matters, as subsequently amended and supplemented.

As regards the work of the Ministry of Justice, in its role as central authority, there are no other mechanisms specifically addressing cases of cross-border crime in the field of waste. However, there are other instruments in the form of conventions applicable in the field (international conventions adopted under the aegis of the Council of Europe or the United Nations) regarding the transfer of proceedings. This can be a solution in the event of positive conflicts of jurisdiction, but these instruments have not been enacted very strictly in respect of waste crime.

#### **5.5. Conclusions**

- Romania has the necessary legal provisions to prosecute environmental crime successfully. However, the provisions relevant to environmental crime and administrative offences in the field of the environment are not clearly laid out. They are to be found in the Criminal Code and are scattered among more than 10 other different laws and Government Ordinances.
- There is therefore partial overlapping of legal provisions, and there may still be differences in the details. Provisions on waste offences, for instance, can be found in different laws, and there may even be different levels of punishment for the same offence. The inaccessibility of the legislation can not only be time-consuming for lawyers but is very likely to discourage practitioners from applying the full range of environmental provisions and lead them instead to try to prosecute other aspects of a case, such as tax evasion. The evaluators therefore believe that a review of the national legislation dedicated to the fight against environmental crime is needed in order to avoid inconsistencies and enable practitioners to apply the rules on environmental crime more easily.

- Romanian law provides for criminal liability of legal persons, which is useful in cases where an individual's guilt cannot be proved. The practitioners who were interviewed reported that they have all the necessary legal instruments and that, in practice, the sanctioning of companies in the field of environmental crime works well and efficiently. The law provides not only for fines but also for the possibility of closing down a company. In criminal proceedings against an individual, the legal person may also be required to repair the damage, if the act was committed in the interests of the legal person.
- The evaluators feel that the level of the penalties for companies seems rather low, given that sanctions should be effective, proportionate and dissuasive. Compared with the level of sanctions in other categories of economic crime in Romania, e.g. tax evasion, the sanctions for environmental crime are nevertheless still relatively high. The Romanian authorities pointed out that it should also be borne in mind that, where economic profits can be traced by the investigation, confiscation of the gains is an additional way of penalising the company.
- However, cases involving substantial confiscation measures were not actually reported during the on-site visit, and it is clear that successful confiscation also needs to be prepared through close cooperation with the police and long-term financial investigations. For the great majority of cases this is not likely to happen soon. The level of financial penalties applied in ordinary cases of infringement/criminal offences therefore remains an important point to be reviewed. This is especially true of the level of financial penalties applicable to waste infringements committed by corporate bodies, and it is questionable whether the current level of sanctions can be considered effective, proportionate and dissuasive.
- Romania's regulations on sampling for the collection of evidence in the context of waste matters makes this such a complex, time-consuming and expensive process that this may stand in the way of samples being used as evidence in cases involving waste crime. Therefore, in the evaluators' view, consideration should be given as to how to develop effective ways of collecting and sampling evidence so that it is more likely to be admissible in court.

- NGOs have a role regarding environmental/waste crime matters in Romania. The relevant provisions of the CCP allow persons having an interest to present evidence subject to the usual requirements relating to evidence. NGOs may also be a civil party in criminal proceedings.
- The Cooperation Agreement between the Prosecutor's Office attached to the High Court of Cassation and Justice and the Greenpeace Foundation is a good example of possible forms of cooperation – in the public interest - between state institutions and NGOs dealing with the issue of environmental protection. Exchanges of information, joint actions or any other activities promoting a pro-environmental approach can become a very efficient tool in raising citizens' awareness of nature protection issues in general. Such cooperation also strengthens the transparency of actions by public institutions.
- Romanian legislation provides for a very broad general jurisdiction over crimes committed abroad. Council Framework Decision 2009/948/JHA has been incorporated into Romanian law, but there are no special rules governing the handling of cross-border waste crime.

## **6. COOPERATION**

### **6.1. International cooperation**

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

From the LEAs' perspective, cooperation in cross-border cases of waste crime is mainly achieved through international police assistance requests by the International Police Cooperation Centre.

No specific channels have been used for the exchange of information in cross-border cases of waste crime, but the legislation in force allows the exchange of information about crimes in any area, including through the use of the Eurojust network.

The Network of Liaison Officers within the Ministry of Internal Affairs was established with a view to developing external cooperation relations capable of both responding to operative requests and providing tactical and strategic support for decisions taken at ministerial level. In 2018, the Ministry had 25 internal affairs attachés/liaison officers, most of them accredited bilaterally (in one country) and five accredited multilaterally (in several neighbouring countries). Romania is represented in EU countries, as well as in European and non-European third countries.

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

Romania is very involved in cross-border police cooperation. More and more data and information are transmitted to Europol and through Europol to partners across the EU and beyond.

The Ministry of Internal Affairs uses the cooperation channels of the International Police Cooperation Centre, which is designated as the national contact point for international police assistance requests through the SIENA secure liaison channel. The International Police Cooperation Centre includes several cooperation channels through which data and information related to environmental crime can be exchanged, namely the Interpol Bucharest National Bureau, the Europol National Unit and the National Focal Point, using dedicated channels (SIENA, SIS/SIRENE, etc.) and making full use of the internal affairs attachés network.

Law No 318/2015 established the National Agency for the Disposal of Goods, which works in the field of tracing and identification of proceeds from crime or other property related to offences. This law transposes Council Decision 2007/845/JHA on Asset Recovery Offices. At the same time, through this law, the National Agency for the Disposal of Goods is designated a contact point for the exchange of data and information for all cross-border offences, regardless of their subject matter.

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

No practical problems have been reported as regards judicial cooperation relating to waste crime.

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

In the opinion of the Romanian authorities, JITs are beneficial in all cases of cross-border crime, including in combating crime in the field of waste. However, no cases have been recorded in this field.

Police officers within the economic crime investigation structures are in the process of initiating a JIT with the French authorities to investigate the transfer of waste from France, tax evasion and avoidance, and money laundering. In this regard, the officers aim to destroy a criminal network and bring to court those responsible for committing crimes on Romanian territory.

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

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

The Romanian law enforcement authorities appreciated the support and services provided by Europol. Dialogue with Europol is spurred on by the presence of the Romanian liaison officers in The Hague, specialists who are constantly contributing to joint efforts to combat serious organised crime.



Romania supports the work of Europol by constantly providing expertise. The Romanian police community currently working in the agency is among the most numerous. Under environmental crime as an EMPACT priority, Romania actively participated in the implementation of operational action plans, assuming its role as a participating state in the course of 2018.

In line with the EU policy cycle for 2018-2021, the Ministry of Internal Affairs/GIRP has been actively involved and in 2017 specifically supported the drafting of the Multi-annual Strategic Plan for the Environmental Crime Priority, proving that the protection of the environment by all means is highly relevant to the state authorities in the fight against micro- and macro-criminality.

The customs authority is familiar with the Europol services and, where appropriate, uses its products and tools, according to the legal framework and the competences conferred by it (e.g. EPE users). The customs authority, in accordance with its competences, responds to any alert or information received by any means, from any competent entity, for which it may take preventive/mitigating measures.

The Ministry of Justice carries out cooperation activities with Interpol and Eurojust, namely the Interpol National Bureau and the National Desk of Romania at Eurojust. The Ministry of Justice has not requested any support of the Romanian National Desk at Eurojust for cases of waste crime and has not received such requests from the National Desk of Romania at Eurojust. As regards requests received through the Interpol National Bureau, this form of inter-institutional cooperation is considered by the Romanian authorities to be very effective.

According to the information provided by Eurojust, Romania has been involved in ten operational environmental crime cases in total as from 1 January 2004. Eight cases are currently ongoing, the other two are already closed. Most of the cases (seven out of ten) are multilateral, i.e. Romania is one of several requested countries; the other three are bilateral. With regard to the type of environmental crime involved, half of the cases concerned air pollution (five out of ten), three cases involved trafficking in protected plant and/or animal species, and two cases concerned illegal trafficking of waste. The cases were referred to Eurojust for facilitation of cooperation, coordination and exchange of information between the concerned Member States, with the involved third states and, in one case, with OLAF, in relation to ongoing investigations and prosecutions, including facilitation of execution of European Investigation Orders and requests for mutual legal assistance.

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

The Ministry of Internal Affairs, through the General Inspectorate of the Romanian Police and the Directorate of Arms, Explosives and Dangerous Substances, has access to the EPE where it can track, monitor, exploit, exchange or collect information on EnviCrimeNet, EMPACT (environmental crime), and Operation Silver Axe (intellectual property).

The NEG has been a member of the IMPEL network since 2006 and EnviCrimeNet since its inception in 2011. Within IMPEL, the NEG representatives have actively participated in 'Waste and TFS' Expert Team projects, namely enforcement actions and landfill. Under the enforcement actions project, the NEG participated in joint inspection actions with representatives of the competent authorities of Switzerland, Germany, Hungary and Austria. The experience gained in this project has been used in the development of internal guides and procedures for the control and supervision of shipments of waste. Within the landfill project, the NEG commissioners participated in the joint inspection of several landfill sites, including in Romania, as well as in the drafting of guidelines on the inspection of landfills.

At the same time, IMPEL's National Coordinators (NC Coordinators) and National Contact Points (NCPs) have been used to exchange information on other illegal shipments of waste.

The EnviCrimeNet network facilitated the exchange of information on modus operandi used in illegal shipment of waste, of good practices for the control and supervision of waste shipments, and of information on the physical/legal persons involved in trafficking (Italy, the Netherlands) and the organisation of simultaneous control actions in particular of waste shipments (the TECUM project).

Regarding the EMPACT environmental crime priority (driver: France, co-drivers: Spain, Italy and Slovakia), Romania participated in seven operational actions in the course of 2018 aiming at:

- conducting an intelligence-led operation to tackle organised crime groups (OCG) involved in illegal fishery;
- evaluating and promoting the use of advanced tools such as tracking devices, remotely piloted aircraft systems (RPAS), forensic analysis devices and other surveillance or simulation tools to increase reaction capability and support investigations in the field of environmental crimes;
- performing the Operational Analysis Project to support law enforcement agencies in their criminal investigations, following a multidisciplinary/multi-agency approach and complementing respective EMPACT activities;
- carrying out and implementing multidisciplinary training activities related to environmental crime;
- supporting the informal network for countering environmental crime (EnviCrimeNet) by organising strategic meetings;

- organising two kinds of event:

A) a conference between the relevant MS working on the priority, the Southeast European Law Enforcement Centre (SELEC) and its Task Force on environmental and nature-related crime, to identify the possibilities for cooperation between the relevant EU and non-EU agencies, the common focal points, and to evaluate the basis for future joint action days and training;

B) training for the law enforcement community and judiciary on environmental crime;

- carrying out a feasibility study and testing for fighting online trade in protected species by organising cyber patrols.

In 2018, Romania participated in meetings for the preparation and implementation of several operational action plans (kick-off meeting for the 2018 Operational Action Plan (OAP), Silver Axe III) and, an operational meeting on the cooperation with EU MS, as well as third countries, on the subject of illegal trafficking and counterfeiting of plant protection products on the Poland-Ukraine-Moldova-Romania route.

For the 2019 OAP Romania assumed the co-leader position in two operational actions:

- Conduct an intelligence-led investigation to tackle OCG involved in traffic and illegal commerce of timber logged in the origin countries and within the EU

- Identify and tackle illegal waste shipment activities in the Danube region and associated regions.

Romania will participate in nine other operational actions.

Regarding international cooperation, police officers exchange information and data through the International Police Cooperation Centre and the SIENA secure liaison channel, both with the representatives of law enforcement agencies of the MS and operational officers from Europol.

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

LEAs use all available resources at national and international level to combat waste crime.

Thus, the cooperation channels of the International Police Cooperation Centre are used, through which data and information regarding the environmental crime can be exchanged, e.g. through the Interpol Bucharest National Bureau. There is a constant dialogue with Interpol via the National Bureau in Bucharest, which makes the most of all the tools (based in Lyon) at its disposal. One of these tools is provided by the Directorate for Combating Organised Crime, which functions at the level of the General Secretariat of the organisation and constantly supports the approaches of the competent authorities of the Member States.

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

#### *6.4.1. The involvement of the private sector/public-private partnership (PPP)*

Economic operators engaged in waste activities have the obligation to comply with the provisions of the applicable legislation, as well as with the provisions of the environmental soundness regulations. Such an obligation concerns, for example, the notification to the competent authorities of the refusal to accept a shipment of waste which does not correspond to those declared in the accompanying documents and to make available to the competent authorities all the data available in order to facilitate the judicial procedures or administrative proceedings.

At the same time, these economic operators have the obligation to regularly train their staff on environmental responsibilities and obligations, as well as to keep records of their activities. Inspection and control bodies have access to these records whenever needed.

The NEG has not yet concluded any public-private partnerships with the economic operators it controls or inspects.

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

Economic operators engaged in waste activities have, inter alia, the following obligations:

- to report to the competent authority for environmental protection the results of the self-monitoring of pollutant emissions, according to the provisions of the regulatory acts (Article 94(1)(k) of GEO No 195/2005 on environmental protection, as subsequently amended and supplemented);
- inform the competent authorities in the event of accidental disposal of environmental pollutants or major accident (Article 94(1)(1) of GEO No 195/2005).

Failure to comply with these obligations constitutes a contravention and is sanctioned by a fine of between RON 3 000 and RON 6 000 for natural persons and between RON 25 000 and RON 50 000, in accordance with Article 96(1)(1) of GEO No 195/2005. At the same time, non-compliance with the abovementioned obligations may also lead to the suspension/cancellation of the integrated environmental permit/authorisation if the responsible economic operator does not transmit the environmental data and information in accordance with the provisions of these regulatory acts.

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

The NEG has not yet concluded any public-private partnerships with the economic operators it controls or inspects.

## 6.5. Conclusions

- In general, Romania praised the cooperation with Eurojust and Europol in various areas. As regards the cooperation with Eurojust, Romania has made use of its National Desk at Eurojust to a limited extent in waste crime cases and has not yet established cooperation based on a JIT in that regard.
- Romania is a member of the IMPEL network for environmental inspections in Europe and is a member of EnviCrimeNet for environmental investigation services. Romania is represented in these networks by the NEG.
- Romania has participated in several internationally coordinated actions in recent years. With regard to IMPEL's project on cross-border shipments of waste, joint inspection periods are organised three times a year and carried out throughout Europe, and Romania contribute to this. In the EU-funded TECUM project, Romania played a leading role together with the Italian Carabinieri and the Spanish Guardia Civil, and participated in the Interpol operations, Enigma III, 30 days of action and 30 days at sea.
- Romania is not an active participant in the Interpol pollution crime working group where waste-related topics are on the agenda, but has participated in the worldwide operations that are prepared by this working group and are distributed to the Interpol member states via the NCBs.
- Romania has been involved in drafting the multi-annual strategic plan for EMPACT and participates in various EMPACT environmental crime OAPs.
- Due to the fact that a large part of the EU's eastern border is in the country, Romania has built up successful operational cooperation with countries around the Black Sea. SELEC, which works with third countries, is a good example of structural cross-border cooperation which could be used in the field of waste crime.
- Romania cooperates with Europol in the environmental field but it is not clear how intensive this cooperation is or whether SIENA is used structurally as a possible source of information for matters related to waste crime that usually have a European/international component.

## 7. ILLEGAL TRAFFICKIN OF WASTE

### 7.1. NATIONAL STRUCTURE

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

The institutions authorised to control cross-border shipments of waste in Romania are:

- the National Environmental Guard (NEG),
- the Ministry of Health,
- the Ministry of Agriculture and Rural Development,
- the Ministry of Labour and Social Justice,
- the Ministry of the Economy,
- the Ministry of Regional Development and Public Administration,
- the Ministry of National Defence,
- national security and local public administration authorities.

The authorities responsible for preventing and combating illegal shipments of waste between Member States as well as between Member States and third countries are the NEG, the Romanian police, the border police and the Ministry of Public Finance. The controls are carried out in particular by the representatives of the NEG. Prosecutions are carried out by prosecutors and judicial police investigation bodies.

#### *The NEG*

The NEG, being the main authority responsible for supervision and control of the waste, has the following specific tasks in this field:

- controlling the activities of economic operators in the transport of waste;
- ensuring that the activities of economic operators comply with all environmental legislation in the field of waste management;
- noting any non-conformities with the regulatory acts issued for waste management activities, applying legal measures and establishing procedures for controlling sources of pollution from waste disposal activities (incinerators, landfill);



- finding evidence of contraventions and applying sanctions in the field of environmental protection, notifying the competent criminal investigation bodies and collaborating with them in establishing the facts which, according to the environmental legislation, constitute crimes.

In carrying out these tasks, the NEG has concluded cooperation protocols with the other authorities with responsibilities in the field, namely the General Inspectorate of the Romanian Police, the General Inspectorate of the Border Police, the National Anti-Fraud Agency, the General Directorate of Customs, etc. On the basis of these protocols, joint (operational) action plans and joint inspections and controls are carried out both at the crossing points on Romania's state border and at ports, and at the premises of economic operators whose activities relate to waste management (e.g. Operation Enigma III in 2015 or Operation '30 days of action' in 2017, operations coordinated by Interpol). The NEG commissioners who carry out waste shipment monitoring and supervision activities improve their specialist skills in the workplace by facilitating the transfer of knowledge from experienced commissioners, as well as by participating in jointly organised control exercises with other authorities.

Each local structure of the NEG has one commissioner specialised in the control and supervision of waste transfer, and complex cases are taken over by the specialised office of the General Commissariat (Waste Transfer Office), which also provides specialised support to the local commissioners.

#### *The Ministry of Public Finance*

The Ministry of Public Finance, through the General Anti-Fraud Directorate, has competences tangential to the field covered by the provisions of GEO No 31/2011 on the prohibition of the purchase of natural and non-ferrous metals and their alloys from natural persons, which establishes contraventions that can be ascertained and sanctioned by the National Anti-Fraud Agency, such as:

a) non-observance of the prohibition on the purchase by natural persons of ferrous and non-ferrous metals and their alloys used in railway, road, air, sea and inland waterway transport, metro transport, public and electrical surface transport, irrigation and drainage, in the infrastructure for the supply of utilities for electricity, water, gas and heating, in the infrastructure related to the extraction, processing, distribution, transport and marketing of natural gas, oil and petroleum products, as well as in signalling and directing the circulation on public roads, such as tracks, track-side parts, track-side materials, locks, switches, components of traffic safety installations, signalling and telecommunication cables, components of electrification installations, rolling stock components, traffic signs, traffic lights, hatches or parts thereof and the like, parasols or parts of metallic structures intended for protection against blizzards, avalanches, floods or other calamities, the absence of which may occur or may produces events or accidents with human victims.

b) non-observance of the legal provisions according to which 'ferrous and non-ferrous metals and their alloys, other than those stipulated in paragraph (1), classified as waste according to the provisions of GD No 856/2002 on waste management records and the approval of the list of wastes, including hazardous wastes, with subsequent additions may be subject to trade operations only if they come from their own households'.

c) non-observance by the economic operators with environmental protection authorisation for the collection/recovery of waste of the obligation to pay the value of the assets purchased under the terms of the law by bank transfer into the account specified by the seller or in cash, in compliance with the legal provisions in tax matters.

d) non-observance by the environmentally-authorized economic operators to collect/recover waste of the legislation on the protection of individuals with regard to the processing of personal data and the free movement of such data, or on an acquisition boundary for ferrous and non-ferrous metal waste and their alloys, according to a model established by GEO No 31/2011.

### *The Customs Authority*

The customs authority (the General Directorate of Customs), under the legal framework in which it operates, exercises surveillance and customs control in the field of prohibitions and restrictions aiming to ensure safety and protect health, cultural heritage and the environment. The customs authority stops and inspects vehicles loaded with goods for import or export, carries out fiscal surveillance and checks the legality and the customs or tax regime of these goods, according to the customs or tax regulations in force.

In case of the detection of violation of the customs legislation, it cooperates with the other institutions of the state. For example, in case of uncovered goods discovered during border crossing control, the goods are confiscated and handed over to the competent authorities. In the case of existing suspicions regarding the tariff classification of potentially dangerous substances, the competent authority, i.e. the NEG is notified. At the same time, in the context of various breaches of customs legislation, they cooperate on a reciprocal basis with the customs authorities of other countries as well as with international specialised bodies for the prevention, investigation and combating of customs fraud.

Customs controls other than random checks are mainly based on risk profile (risk analysis) using electronic data processing techniques to identify and assess risks and to develop surveillance and control measures based on the criteria of risk analysis tools established at national, EU and, as far as possible, at international level.

For the purpose of uniform application of the legislative provisions regarding the import/export of waste, measures have been taken to introduce into the Integrated Customs Information System (ICIS), through the use of Union and national applications (the Integrated Tariff of the European Union (TARIC) and TARIC\_RO, respectively), the measures established by Regulation (EC) No 1013/2006 and GD 788/2007. The measures relating to 'import - waste control' and 'export - waste control', based on Regulation (EC) No 1013/2006, have been integrated into the TARIC database of the European Commission. These measures are binding on all Member States. These measures shall be accompanied by footnotes with the following information:

- The waste referred to in Article 3(1) of Regulation (EC) No 1013/2006 is subject to the prior written notification and consent procedure.
- The waste explicitly destined for laboratory analysis to assess its physical or chemical characteristics or to establish its suitability for recovery or disposal is not subject to the prior written notification and consent procedure (see Article 3(4) of the Regulation (EC) No 1013/2006). Instead, the procedural provisions laid down in Article 18 of the same Regulation shall apply. The quantity of waste exempted from this exception which is explicitly intended for laboratory analysis shall be determined on the basis of the minimum quantity reasonably required to carry out the analysis in each individual case and shall not exceed 25 kg.
- The waste listed in Annex III (green list) presenting certain hazardous characteristics shall be subject to the same provisions as if they were listed in Annex IV (orange list).
- The waste referred to in Article 3(2) of Regulation (EC) No 1013/2006 is subject to the general information requirements laid down in Article 18 of the Regulation if the amount of waste shipped exceeds 20 kg.
- For the purpose of performing import/export operations, the following documents are created and attached to the measures, as appropriate:
  - (C672) Accompanying document for the transport of waste pursuant to Article 18 of Regulation (EC) No 1013/2006 and its Annex VII,
  - (C669) Notification document in accordance with the provisions of Article 4 of Regulation (EC) No 1013/2006 and its Annex IA,
  - (C670) Movement document according to the provisions of Article 4 of Regulation (EC) No 1013/2006 and its Annex IB.

The above mentioned “import and export restriction” measures have been introduced in the TARIC database by D.G. TAXUD of the European Commission.

The legal basis for these measures is Regulation (EC) No 1013/2006 on the transfer of waste, as subsequently amended and supplemented.

According to GD No 788/2007 laying down measures for the implementation of Regulation (EC) No 1013/2006 on the transfer of waste, in the TARIC\_RO database was integrated measure “Restriction of waste”.

This measure shall be accompanied by footnotes with the following information:

- the document on the basis of which the waste is transported, as follow:
- the notification document and the movement document, or
- the transit approval decision issued by the National Environmental Protection Agency (NEPA), or
- the document provided for in Annex VII to Regulation (EC) No 1013/2006.

In support of the steps taken to reduce the quantities of landfill waste, the efforts of the Romanian environmental authorities to update and correlate the national legislation with the European regulations should be mentioned. In this respect, it is important to specify the publication in the Official Gazette of Romania, Part I no. 630/19 July 2018 of GEO No 74/2018 for amending and completing Law No 211/2011 on the waste regime, Law No 249/2015 on the management of packaging and packaging waste and GEO No 196/2005 on the Environmental Fund. Within this legal act are detailed the economic mechanisms, as well as the conditions and the aspects that create the legal premises necessary to achieve the proposed targets (according to the commitments of the National Waste Management Plan) in 2020: reducing the quantities of waste deposited by 50%, and the application of the hierarchy of waste.

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

The General Anti-Fraud Directorate, when monitoring the road transport of goods, monitors shipments of waste that are subject to intra-Community acquisitions, but do not constitute a separate category of goods, especially from the perspective of relatively low fiscal risk.

Illegal shipments of waste can be identified both in the customs clearance process and as a result of complaints or exchanges of information between the customs authority and other LEAs or other customs authorities in the Member States. Customs controls other than random checks are mainly based on risk profile (risk analysis) using electronic data processing techniques to identify and assess risks and to develop surveillance and control measures based on the criteria of risk analysis tools established at national, EU and, as far as possible, at international level. The electronic risk analysis system operates by directing customs declarations to different levels of customs control (green, orange, red). The electronic selection of customs declarations is done through a mechanism based on the risk profiles implemented at the level of the ICIS. At the same time, another computer system is used at the General Directorate of Customs, which operates with other risk analysis products that are issued (alerts, info risks, study topics, etc.), but this does not involve automatic selection. The procedures to be followed are indicated in these risk analysis products, depending on the likelihood of occurrence of the risk. Also, border crossing points are equipped with non-destructive detection and control equipment which is not intended solely for detecting a particular type of substances (e.g. ozone-depleting substances).

The NEG prepares an annual Waste Shipment Inspection Scheme to ensure that inspections and controls are carried out inter alia on businesses and brokers involved in the organisation and delivery of waste shipments, as well as the organisation of inspections and controls at state border crossing points and in ports. Inspection and control activities organised and conducted by the NEG can be divided into two categories:

- planned inspections, which usually take place on targets (economic operators) that carry out activities with an impact on the environment (for which implementation of a non-integrated/integrated permit/authorisation is mandatory); for example: installations for the temporary storage of hazardous/non-hazardous waste, installations for treatment/recovery, including co-incineration of hazardous/non-hazardous waste, installations for the disposal of hazardous/non-hazardous waste, etc.;

- unplanned (unannounced) controls that can be performed following NEG self-certification, petitioning or the investigation of incidents/accidents with a significant impact on the environment.

In general, illegal shipments of waste are detected through controls at border crossing points and in ports, but also through controls on economic operators in certain sectors of activity considered to be at high risk of involvement in illicit waste (e.g. cement production). In this case, the risk is assessed both on NEG compliance data and by taking into account information from other sources (e.g. police, customs, etc.).

At the same time, the following are also considered for the detection of illegal shipments of waste:

- information provided by police/border police/customs or intelligence agencies;
- information received from the competent authorities of other Member States through official communication channels (Europol or EnviCrimeNet), informal channels (IMPEL) or direct bilateral communication;
- petitions formulated by the population, NEG staff or even by the private sector;
- media articles.

The main obstacles to detecting illegal shipments from the NEG's point of view are:

- indirect access to Europol's database/communication channels;
- insufficient personnel to ensure permanent surveillance at the main border crossing points and ports;
- limited access to data on investigations conducted by criminal investigation bodies and/or customs authorities;
- insufficient information provided by intelligence services, but also NEG's limited ability to interpret and use this information.

Taking into account the case of the Romanian police, illegal shipments of waste are often detected as a result of the informative/operative activities carried out, the unannounced inspections carried out on vehicles or at the headquarters of the economic agents, as well as referrals to criminal investigation bodies. A good example of this is the achievements of the police officers of the Dolj Economic Crime Investigation Service, who between 2015 and 2018 detected seven illegal shipments of used accumulators, for which the contravention sanction was given to the economic agents involved, as well as the confiscation of the products.

### *7.1.3. Specificity of illegal shipment of waste*

The Romanian authorities reported that the most commonly-used method of illegal shipment of waste was the concealment of waste inside other types of materials, with accompanying documents indicating the transport of harmless materials. No concrete cases with the involvement of organised crime groups have been detected in that regard.

From the statistics registered up to now by the police, environmental macro-criminality has not reached alarming levels, with only small and medium-scale cases being reported regarding the specific consequences that could arise due to the committal of environmental crimes.

Furthermore, the Romanian authorities reported insufficient case-law to assess the trend of illegal shipment of waste.

The main *modus operandi* discovered by the NEG in the case of illegal shipments of waste relates to the incorrect classification of waste, the declassification of hazardous waste into non-hazardous waste or the concealment of waste inside other materials. These have been identified in different waste streams and transport routes (e.g. spent waste and municipal waste on the Italy-Romania route, plastic waste on the Germany-Romania-Turkey route, waste electrical and electronic equipment on the Austria/Hungary-Romania route, and metallic slag on the Romania-China and in particular Romania-Malaysia/Korea routes).



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

The NEG takes the following steps to ensure that shipments of waste are organised and carried out in accordance with the legal provisions in force:

- the drafting and implementation of the annual inspection and control plan, including in the field of waste shipment;
- organising and conducting planned inspections of targets (economic operators) carrying out activities with an impact on the environment, for which implementation of an integrated environmental permit/authorisation is mandatory (e.g. installations for temporary storage of hazardous/non-hazardous waste, treatment/recovery including co-incineration of hazardous/non-hazardous waste, installations for the disposal (storage/incineration) of hazardous/non-hazardous waste, etc.), to ensure compliance with the regulatory requirements or to prohibit the carrying out of activities without authorisation/integrated environmental permit, as appropriate;
- organising and conducting unannounced (unexpected) controls at border crossing points and ports to ensure compliance with the prior notification and written preliminary agreement requirements in case of shipments of waste falling under Article (3) of Regulation (EC) No 1013/2006 or in order to ensure the return to the country of dispatch of the illegal shipment;
- ascertaining the non-conformities with the regulatory acts issued for the waste management activities, applying the legal measures and establishing procedures for controlling the sources of pollution from waste disposal activities (incinerators, landfill);
- finding evidence of contraventions and applying sanctions in the field of environmental protection, notifying the competent criminal investigation bodies and collaborating with them in establishing the facts which, according to the environmental legislation, constitute crimes.

As a rule, these controls and inspections are organised in collaboration with the other responsible authorities (e.g. in collaboration with border police and border authorities at border crossings, etc.).

## 7.2. Inspections

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

Waste transfer control is carried out in a uniform manner across the country, based on a specific inspection and control procedure. The inspection teams are equipped with means of transport, means of communication (which also provide access to the NEG database and the internet), laptop and portable printer, photographic and video recording equipment. Sampling is carried out by certified bodies at the request of NEG commissioners. The NEG has established mutual agreements with several such bodies from several regions of Romania.

The technical norms regarding the organisation and implementation of the control and inspection activities in environmental protection, approved by Order of the Ministry of Environment and Climate Change No 256/2014, are the following:

- in the event of non-conformities, in addition to applying the appropriate coercive measures (offender sanctions, criminal complaint, suspension of work, suspension of the regulatory act, etc.), the NEG commissioners shall establish, by the detection record, compliance measures with precise deadlines for achievement;
- the controlled economic operator has the obligation to carry out, in full and on time, the measures imposed by the detection record concluded by the NEG commissioners (Article 94(1)(g) of GEO No 195/2005, with the subsequent amendments and additions);
- the controlled economic operator has the obligation to notify the NEG about the accomplishment of the measures established by the detection record, upon the expiry of the deadline set for compliance;
- the NEG carries out controls and inspections on the implementation of compliance measures.

The non-observance of the obligation to carry out, in full and in due time, the measures imposed by the detection record concluded by the NEG commissioners is a contravention and is sanctioned by a fine of between RON 7 500 and RON 15 000 for individuals and between RON 50 000 and RON 100 000 for legal entities.

National legislation provides for the possibility of seizure of goods intended for, used in or resulting from the committal of contraventions. These assets may constitute important evidence in judicial or administrative proceedings following controls, but to date the NEG has not used this instrument due to a lack of a confiscation procedure and the use of other conservation or recovery measures provided for by law.

The General Anti-Fraud Directorate has tasks in the field of preventing and combating tax evasion and cooperates with other institutions to the extent that the transactions under review have tax consequences. Waste monitoring is not the responsibility of the General Anti-Fraud Directorate. In the contravention field, the General Anti-Fraud Directorate applies sanctions exclusively within the restricted scope provided by GEO No 31/2011, namely primary contravention sanctions without confiscation measures.

When identifying irregularities, the customs authority acts on the basis of the legal framework in which it operates. At the same time, collaboration protocols have been concluded between the customs authority and other institutions of the state, including inter alia on the permanent exchange of data and information about legal/physical persons suspected of breaching environmental regulations.

The State Sanitary Inspectorate carries out specific controls at the sanitary units/economic operators, according to the competencies for checking the management of waste resulting from medical activities. If the sanitary inspection identified hazards that constitute a public health risk, the following sanctions shall be applied, according to the provisions of Order No 824/2006 for the approval of the norms regarding the organisation and functioning of the State Sanitary Inspectorate:

- a) contravention sanctions, according to the provisions of GD No 857/2011 on the establishment and sanctioning of contraventions of public health norms;
- b) temporarily suspending the operation of the units/operators;
- c) notifying non-conformities to institutions with competence in the field;
- d) notification of competent authorities;
- e) filing criminal complaints with the competent bodies.

Checks are also carried out to verify that the measures are implemented to remedy the non-compliance. Sanitary inspectors may not apply confiscation measures.

Sanitary inspectors use the inspection methods and procedures set out in Order No 824/2006. To carry out controls in the field of waste management resulting from medical activity, inspection grids and reporting models are established according to the legislation specific to waste resulting from medical activities.

The Romanian police cooperate permanently with all the public institutions with responsibilities in this field, especially with the commissioners of the NEG, in the following ways:

- Pursuant to Article 291 of the CCP 'any person with a management position within a public authority, public institution or other legal entity governed by public law, as well as any person with control duties who, in the exercise of his/her professional duties, has become aware of a crime is obliged to immediately notify the criminal investigation bodies and to ensure that the traces of the crime, corpus delicti and any other means of proof do not disappear'. This leads to the obligation of inter-institutional cooperation in the field of environmental crime;
- In relation to the legal aspects mentioned above, the legal path of inter-institutional cooperation is started with the other authorities responsible for combating environmental crime, in particular, cooperation between criminal law enforcement bodies and the NEG specialists in this field;
- Inter-institutional cooperation is also carried out in the context of common action plans aimed at combating crime in the field of environmental protection initiated by both the Romanian police structures and the other structures with competences in the field. This also involves setting up joint action teams;
- With regard to the exchange of data and information between institutions, this is done through formal meetings, on a case-by-case basis;
- As specialists in the field of environmental protection, the NEG commissioners offer specialised support and expertise for solving the criminal cases handled by the criminal investigation bodies of the judicial police.

Through the specialised structures, the police has responsibilities in the management of high-risk materials for confiscation during court proceedings. Confiscation of dangerous materials is laid down by Government Ordinance No 14 (republished) of 31 January 2007 and regulates the manner and conditions for the capitalisation of the assets entered, according to the law, into the private property of the state.

#### *7.2.2. Specific inspections with regard to Waste Electrical and Electronic Equipment (WEEE) and End-of-Life Vehicles (ELVs)*

The NEG periodically conducts inspections and controls on economic operators active in WEEE (collection, temporary storage, treatment, recovery and/or disposal), including the transport of such waste. These inspections and controls are organised and carried out in order to verify the conformity of the activities carried out by operators with the legal provisions in force, but also with the particular conditions laid down in the regulatory acts (according to the national legislation, the economic operators dealing with waste, in particular WEEE, have the obligation to obtain an integrated environmental permit/authorisation, as the case may be).

One of the conditions set out in the integrated environmental permits/authorisations issued for WEEE activities relates to the reporting of the amount of such waste collected, temporarily stored, treated, recovered and/or disposed of.

In order to prevent illegal shipments of WEEE, the NEG organises regular checks at border crossing points in collaboration with other authorities (border police, customs authorities). These inspections also include Corresponding Guide No 1 on the transfer of WEEE developed by the European Commission (a guide that provides support for the implementation of European legislation on the transfer of WEEE, in particular with regard to the prevention of illegal export of WEEE outside the EU, fraudulent declassification of WEEE as non-waste/second-hand equipment).

The NEG also organises periodic inspections and audits of economic operators operating ELV collection, temporary storage, treatment, recovery and/or disposal - including the transport/transfer of such waste. Such inspections and controls are organised and carried out to verify the compliance of these operators' activities with legal provisions but also with the particular conditions laid down in regulatory acts, including meeting minimum requirements for the ELV collection/treatment sites (according to national legislation economic operators operating waste, in particular ELVs, are required to obtain an integrated environmental permit/authorisation, as appropriate).

These inspections also aim to identify sites that are performing illegal dismantling/treatment of ELVs without prior authorisation/integrated environmental authorisation.

In most cases, ELVs are transferred to Romania from other EU Member States having been concealed in second-hand goods. These inspections check the functionality of second-hand vehicles.

#### *7.2.3. First inspection plan*

According to Article 50 of Regulation (EC) No 1013/2006, the NEG has complied with this requirement by adopting control plans for the years 2017 and 2018.

#### *7.2.4. Challenges with regard to the taking back of illegal waste shipments*

The Romanian authorities set out the following main challenges encountered in returning illegal shipments of waste to the country of origin: poor cooperation of the competent authorities in the country of origin, problems caused by the inappropriate completion of the documents, lack of information on the location and name of the shipper, inability or express refusal of the driver or owner to provide all the necessary information, the extremely long time taken to provide the indescribable test, etc.

### 7.3. Conclusions

- There is wide participation of the different authorities involved in preventing and combating the illegal shipment of waste. The main role is played by the administrative bodies at national, regional and local level. These include the NEG, the Romanian police, the border police and the structures of the Ministry of Public Finance.
- The NEG is the main authority in the fight against non-compliance with Regulation (EC) No 1013/2006. NEG inspectors have the expert knowledge, capacity and equipment to perform inspections on waste management companies, transport companies and landfill owners. NEG inspectors only have administrative powers, no criminal enforcement powers. In case of criminal activities in relation to waste, the NEG has to rely on law enforcement partners within Romania such as the national police, border police, coast guard or customs.
- The inspections of waste shipments are carried out by NEG commissioners, partly in coordination with the transport police or border police. The total number of controls on waste shipments seems inadequate given the high risk of illegal shipments resulting from Romania's geographical situation at the external border of the EU and from multiple economic incentives. Since 1 January 2016, the import of waste for recovery/recycling has no longer to be notified to the environmental authorities prior to the shipment. The number of facilities for recovery/recycling in Romania is limited. Obviously, this situation requires more focussed controls on the roads and at the borders in order to prevent waste crime and protect the environment. NEG staff are aware that this new legislative context is a big challenge. In the evaluators' view, it is to be considered whether a sufficient number of inspections and controls can be carried out in the future without additional budget allocations.
- The NEG has been making the inspection plan required by EU legislation for a period of two years. The plan describes the risk-based work of the NEG to combat waste crime.
- The investigative techniques and tools used for the purpose of investigating pollution seem sufficient and allow proper investigations to be conducted.

- Customs has a good risk-based system and also includes risks related to illegal waste imports and exports in its risk analyses. The most important task and priority for customs lies in the collection of taxes.
- In practice, the customs control for shipments leaving the EU focusses on the documentation and proceeds to a physical control only when there are irregular aspects in the documentation. But it is known from the criminal investigations in the past that when there are perpetrators shipping waste illegally on a larger scale, they usually take care to provide correct documentation accompanying the waste. These (fraudulent) documents will not give rise any suspicion in a customs control. In order to detect illegal waste shipments, physical controls need to be carried out. The customs administration's physical controls are especially needed in the fields of import and export of waste. These controls could be planned by a structure within the customs administration collecting information on import/export companies and intelligence from other agencies, like the NEG and police.
- As far as the shipment of ELVs is concerned, the custom controls seem to focus rather on the incoming shipments of 'crashed cars' than on the shipments of used vehicles leaving the EU via Romania. The collection of ELVs in many cases takes place in disregard of the EU legislation and without proper dismantling of the hazardous substances contained. Therefore, in the evaluators' view, physical inspections are necessary, focussed on that special risk in the port of Constanța and carried out either by customs officers prepared to assess the condition of these cars or in cooperation with the NEG. The customs administration should be encouraged to review their system of risk analysis concerning this particular issue and plan controls accordingly.
- Waste cases are investigated by the port police, the border police, the coast guard and the customs authorities with regard to waste crime. These authorities are in particular involved if there are clear indications of criminal activities, and mostly with the necessary substantive support from the NEG.



- There is no specialised intelligence and investigation service for environmental crime related to waste within the NEG organisation. Furthermore, there is no specialised unit for fighting environmental crime related to waste within any of the LEAs. Therefore, in the evaluators' view, consideration should be given to how Romania could enhance its detection capacity, including through physical controls of illegal waste shipments and inspections of company premises.

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

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

Article 3 of Law No 101/2011 on the Prevention and Punishment of Environmental Degradation Actions prohibits the collection, transport, recovery or disposal of waste, including the oversight of such operations and the subsequent maintenance of disposal sites, as well as actions taken by brokers in the waste management process, in breach of the legal provisions in the field which may cause death or serious harm to a person or significant damage to the environment. Those acts are punishable by imprisonment from six months to three years.

Most cases of illegal waste shipment detected by the NEG refer to incorrect recording of waste, declassification of hazardous waste into non-hazardous waste or the concealment of waste inside other materials. The main obstacle identified by the NEG is to establish that certain forms of waste that have been the subject of illegal operations are hazardous waste. For this purpose it is necessary to collect waste samples and analyse them in a specialised laboratory. In order to constitute evidence in judicial or administrative proceedings subsequent to control, waste samples must be taken and analysed by accredited bodies. The NEG staff are not accredited to carry out such operations (sampling and analysis of waste samples), so the NEG is required to use external bodies that are not always available in time due to the low number of bodies accredited for sampling and analysis of samples of existing waste at national level.

At the same time, sampling and analysing waste samples are costly and the NEG has insufficient funds to cover the costs. National legislative provisions provide for the possibility of seizure of goods intended for, used in or resulting from the committal of contraventions. These assets may constitute important evidence in judicial or administrative proceedings following controls, but to date the NEG has not used this instrument due to a lack of a confiscation procedure and the use of conservation or recovery measures provided for by law. Prosecutors have encountered difficulties in establishing unequivocally possible damage to the environment as well as to human and animal health.

The NEG is a specialised inspection and control body that can apply sanctions or orders to suspend/cease activities as a result of pollution and environmental damage, or non-compliance with regulatory requirements issued by the authority competent for environmental protection and the measures set out in the notes and inspection and control reports. Inspection and control activities organised and conducted by the NEG aim to analyse, prevent risks and limit ecological threats and are divided into two categories:

1. Planned inspections, which usually take place on targets (economic operators) that carry out activities with an impact on the environment (for which the environmental permit/authorisation is mandatory); for example: installations for the temporary storage of hazardous/non-hazardous waste, installations for treatment/recovery, including co-incineration of hazardous/non-hazardous waste, installations for the disposal/incineration of hazardous/non-hazardous waste, etc.

The planning of those inspections is based on the risk assessment of the targets (economic operators). The following frequency categories are used in the planning of environmental inspections:

- Class A operators: two inspections per year;
- Class B operators: one inspection per year;
- Class C operators: one inspection every two years;
- Class D operators: one inspection every three years.

The following criteria are considered in the risk assessment of controlled targets:

- impact criteria: complexity of the installation (applicable European directives), type and level of air/water/soil emissions, accidents and incidents, generated/stored waste;
- performance criteria: BAT (best available techniques), EMAS/ISO 14001 participation, compliance (number and type of sanctions), accidents and incidents.

On average, the NEG carries out 15 644 planned inspections per year as follows:

- 736 inspections of class A operators;
- 9214 inspections of class B operators;
- 862 inspections of class C operators;
- 1958 inspections of class D operators.

According to Article 50 of Regulation (EC) No 1013/2006, the NEG prepares an annual Waste Shipment Inspection Scheme to ensure that inspections and controls are carried out by units, businesses and brokers involved in the organisation and delivery of waste shipments, as well as at border crossing points and in ports.

In general, illegal shipments of waste are detected through controls at border crossing points and in ports, but also through controls on economic operators in certain sectors of activity considered to be at high risk of involvement in illicit waste (e.g. cement production). In this case, the risk is assessed on the basis of NEG compliance data and by taking into account information from other sources (e.g. police, customs, etc.). At the same time, the following are also considered for the detection of illegal shipments of waste :

- information provided by police/border police/customs or intelligence agencies;
- information received from the competent authorities of other Member States through official communication channels (Europol or EnviCrimeNet), informal channels (IMPEL) or direct bilateral communication;
- petitions formulated by the population, NEG staff or even by the private sector;
- media articles.

2. Unplanned (unannounced) controls that can be performed following NEG self-certification, petitioning or the investigation of incidents/accidents with a significant environmental impact, etc.

Annually, the NEG performs 25,047 unplanned checks as follows:

- 972 NEG own-initiative inspections;
- 5 408 checks in response to petitions;
- 174 controls to investigate incidents/accidents with a significant environmental impact;
- 1 569 checks to verify the timely implementation of the measures established during the previous inspections;
- 16 924 other controls.

In accordance with the provisions of Law No 95/2006 on health reform (republished), the Ministry of Health, as the central authority in the field of public health, has the task and responsibility to ensure sanitary inspection activities, which are organised in specific fields at national and regional level.

This activity is coordinated by the specialised structure (SSI) within the Ministry of Health and carried out by the 41 County Public Health Departments and the Bucharest Municipality, which are subordinate to the Ministry of Health.

In Order No 824/2006 for the approval of the norms regarding the organisation and functioning of the State Sanitary Inspectorate, the types of control carried out by the personnel responsible for state sanitary inspection are as follows:

- a) thematic, when one field of activity or one type of operator, product or service is inspected;
- b) planned, when a single previous planned target is periodically inspected at a frequency proportional to the degree of risk;
- c) if necessary, in the event of natural or artificially-caused phenomena involving major emergencies in the field of hygiene, epidemiology and occupational medicine;
- d) in response to requests/notifications: inspections requested by citizens (after their identification), by central and local public administration institutions and authorities, by other bodies and organisations, by the media, following self-examination, and at the request of the competent authority of another Member State of the European Union;
- e) re-inspections, upon expiry of the deadline for remedying the previously established non-conformities.

The targets that are checked in the thematic actions of sanitary inspectors relevant to the field of waste management are prioritised as follows:

- a) new ventures;
- b) units that systematically register non-conformities;
- c) establishments which have recorded health incidents (epidemic, food poisoning, occupational disease, intoxication, nosocomial infection).

Every year, health inspectors carry out at least one check at the sanitary facilities, one of the objectives being to check the management of waste resulting from medical activities.

Once a year or at least every two years, health inspectors perform specific thematic actions to control waste management. In 2017 and 2018, joint inspections by the NHI (National Health Inspectorate) and NEG were carried out to verify compliance with legislation on the management of waste resulting from medical activities and its traceability, by category and quantity, from the sanitary facility to the disposal facility.

The activity of transporting hazardous and non-hazardous waste on the territory of Romania is regulated by GD No 1061/2008. The generators (holders), the transporters and the recipients (hazardous waste treatment/recovery/disposal facilities) have an obligation to keep records of waste operations on the basis of the Dangerous Waste Shipment Approval Form and the Waste Formation/Discharge Form.

The regular inspections and inspections carried out by the NEG verify the correctness of completing the forms for approval of hazardous waste shipments and hazardous waste loading/unloading forms as well as ensuring traceability of hazardous waste operations from generators to final recipients. In order to strengthen the NEG's ability to verify the traceability of hazardous waste and chemical operations and from generators to final recipients, the institution is in the process of implementing the project entitled 'Reducing Dangerous Substances - Supporting Instruments for Decision Making', funded by the Financial Mechanism of the European Economic Area. The sanitary inspectors check that the sanitary units keep records of waste management from medical activities, according to the provisions of Order No 1226/2012 for the approval of the technical norms on the management of waste from medical activities and the data collection methodology for the national databank on waste from medical activities.

If the sanitary units do not have these records, the sanitary inspectors may impose a fine of between RON 600 and RON 1 200 for natural persons, and between RON 3 000 and RON 7 500 for legal persons, according to the provisions of GD No 857/2011 on the establishment and sanctioning of contraventions to the public health norms. Sanitary inspectors also check whether the labelling of hazardous waste complies with Order No 1226/2012 and the non-observance of these provisions may be sanctioned as described above.

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

The NEG organises periodic inspections and controls on operators handling hazardous waste (collection, temporary storage, treatment, recovery and/or disposal), including the transport/transfer of such waste.

These inspections and controls are organised and carried out in order to verify the conformity of the activities carried out by these economic operators with the legal provisions in force, but also with the particular conditions laid down in the regulatory acts (according to the national legislation, the economic operators dealing with waste, in particular hazardous waste, have the obligation to obtain an integrated environmental permit/authorisation, as appropriate). The measures applied by the NEG based on the inspection actions regarding the verification of compliance of economic operators carrying out activities related to hazardous waste are:

- temporarily suspending the activity of the economic operator until the integrated environmental permit/authorisation is obtained;
- establishing the facts constituting contraventions and applying the sanctions provided by the law;
- notifying the competent criminal investigation bodies and collaborating with them to establish the facts which, according to the environmental legislation, constitute crimes.

The health inspectors check that the sanitary units comply with the provisions of Order No 1226/2012 for the approval of the technical norms on the management of waste from medical activities and the data collection methodology for the national databank on waste from medical activities. If these standards are not observed, sanitary inspectors may impose a fine of between RON 600 and RON 1 200 for natural persons, or between RON 3 000 and RON 7 500 for legal persons, according to the provisions of GD No 857/2011 on the establishment and sanctioning of contraventions to the public health norms for the following acts:

- a) non-observance of the requirement for collection, storage, transport and treatment of medical waste, in accordance with the legal regulations in force;
- b) non-existence of or, as the case may be, non-compliance with the internal plan for the management of waste from medical activities;
- c) non-observance of the conditions for temporary storage of waste from medical activities, in accordance with the legal regulations in force;
- d) the transport of dangerous waste resulting from medical activities with means of transport other than those approved for this purpose by the structures of the Ministry of Health or which do not meet the conditions established by the norms in force;



- e) failure to ensure functional circuits, as well as the proper management of waste resulting from medical activity, in accordance with the legal regulations in force;
- f) use of packaging not complying with the requirements imposed by the rules for the collection of hazardous waste;
- g) depositing of medical waste in common containers of residential buildings or other unauthorised places.

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

The main *modi operandi* identified by the NEG in the non-compliant management of hazardous waste are the following:

- temporary storage of hazardous waste in unsuitable receptacles/spaces or for longer periods than allowed by law (over one year);
- inappropriate treatment of hazardous waste, including illegal mixing of hazardous waste with non-hazardous waste/other materials;
- illegal disposal of hazardous waste either by landfilling hazardous waste in non-hazardous waste landfills or by using certain categories of hazardous waste as fuel.

## 8.5. Conclusions

- Romania does not have a national strategy for tackling environmental criminality in its full extent. It is clear, however, that a national strategy exists for the specific and priority topic of forestry crime. This does not exist specifically for hazardous and dangerous substances.
- The classification of hazardous waste is applied under the relevant European agreements. Given the problems relating to the analysis and identification of waste streams in general, deriving from the difficulty of the NEG involved in distinguishing waste from non-waste on the whole, the collection of evidence must not be carried out by the NEG commissioners. It is carried out by an accredited laboratory (possibly via the judicial police officers). There are only few bodies accredited for sampling and analysing waste and they are not always available, so there can be an additional loss of time in the preliminary investigation.
- Furthermore, there is no national intelligence image about environmental crime, nor for the subject of waste and hazardous substances specifically. As a result, there is no overview of the most important trends with regard to waste crime. An overview is kept of the number of inspections and the administrative and criminal offences observed.

## **9. ILLEGAL PRODUCTION OR HANDLING OF DANGEROUS MATERIALS**

### **9.1. The concept of dangerous materials**

The term 'hazardous waste' means waste under the specific waste regime in these types or categories of waste and having at least one constituent or property that makes it hazardous. No general term of hazardous materials is used. There are definitions stipulated in GEO No 195/2005 on environmental protection instead, clarifying that this term covers:

- dangerous waste;
- dangerous substances;
- dangerous chemicals and preparations (Law No 360/2003);
- dangerous chemical agents (GD No 1218/2006).

For the purpose of good management of medical waste, the codes in Annex 2 to GD No 856/2002 on the waste management record and on the approval of the list of waste types, including hazardous waste, with subsequent additions, as stipulated in Order No 1226/2012 for the approval of the technical norms for the management of waste from medical activities and the methodology of data collection for the national databank on waste from medical activities.

In the case of litigation or inconsistencies in the classification of a mixture, the documents on the nature and source of the materials are checked and the opinion of the ECHA (European Chemicals Agency) Technical Secretariat is sought, based on all the information collected. A decision is made by the National Agency for Environmental Protection, as a national regulatory authority, and the parties are informed. When requested, representatives of the Ministry of Health may formulate opinions on the negative effect on the health of the population.

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

The Criminal Code penalises the failure to comply with requirements related to nuclear material or other radioactive materials (Article 345).

Specific provisions on sanctions are contained in Chapter VI (Penalties) of Law No 111/1996 (republished) on the safe conduct, regulation, authorisation and control of nuclear activities, as subsequently amended and supplemented (Articles 44-48).

According to the Romanian legislation, the activities of generating or handling dangerous products are inspected and controlled by the NEG and the Labour Inspectorate, an institution subordinate to the Ministry of Labour and Social Justice.

The Romanian legislation on health surveillance and environmental protection includes prohibitions/restrictions on the handling of hazardous materials:

- Decision No 1218 of 6 September 2006 laying down minimum safety and health requirements at work to ensure the protection of workers from the risks related to the presence of chemical agents;
- Law No 360 of 2 September 2003 on the control of dangerous chemical substances and preparations;
- Emergency Ordinance No 195 of 22 December 2005 on the protection of the environment;
- Law No 101 of 15 June 2011 for the prevention and sanctioning of acts related to environmental degradation.

Some of the prohibitions or restrictions imposed by the abovementioned legislation are as follows:

- Operation without environmental authorisation or without an integrated environmental permit is forbidden for the activities that are subject to the authorisation procedure;
- The import and export of dangerous substances and preparations restricted or forbidden to use by certain states or by Romania shall be carried out in accordance with the provisions of the international agreements and conventions to which Romania is a party;

- The introduction of dangerous waste of any nature into the territory of Romania for the purpose of its disposal is prohibited;
- The provision by manufacturers, importers, distributors and users of false or incomplete data on dangerous chemical substances and preparations is prohibited;
- It is forbidden for anyone under 18 or for young women to do painting work involving the use of basic lead carbonate, lead sulphate or lead miniature or any product containing these pigments;
- It is forbidden to spray using lead oxide;
- It is forbidden to handle hazardous materials without adequate protective equipment;
- It is prohibited to produce, manufacture or use in the workplace the chemical agents listed below, or to carry out activities that involve them. The prohibitions do not apply if the chemical agent is present in another chemical agent or is waste, if its concentration value is less than the 0.1% limit value as a percentage by weight.

| <b>Name of the Chemical Agent</b>   | <b>Number of Social Security Contribution</b> | <b>Number of European Inventory of Existing Commercial Chemical Substances</b> |
|-------------------------------------|---|--|
| 2-naphthylamine and its derivatives | 91-59-8                                       | 202-080-4  |
| 4-aminodiphenyl and its derivatives | 92-67-1                                       | 202-177-1  |
| Benzidine and its derivatives       | 92-87-5                                       | 202-199-1  |
| 4-nitrodiphenyl                     | 92-93-3                                       | 202-204-7  |

As a result of the measures taken at local level, through permanent collaboration with other authorities involved in market surveillance, especially the Directorate of Exploitation and Dangerous Substances within the General Inspectorate of the Romanian Police, as well as unplanned (unannounced) inspections, the NEG has identified a decrease in cases of illegal generation or handling of hazardous materials and chemicals.

### 9.3. Procedural aspects

#### *9.3.1. Means of collecting evidence and of handling dangerous materials*

The NEG verifies documents of provenance of dangerous products, exchanges information and participates in joint actions with other authorities having similar competences, such as the Directorate of Arms, Explosives and Dangerous Substances within the General Inspectorate of the Romanian Police (e.g. Illegal FREON E-Commerce - 2018).

Where there is a suspicion of inconsistency between the documents and the goods carried, only the authorised laboratories are required to take samples, provided that this does not jeopardise traffic safety or the premises of undertakings (Article 33 of Decision No 1175 of 26 September 2007, approving the norms for carrying out road transport of dangerous goods in Romania).

With respect to LEAs, an investigation is underway into cases of illegal generation or handling of hazardous materials, based on the data and information the case officer has, where all leverage can be used, including collaboration with other institutions working in the field, namely the NEG, the Phytosanitary Authority, the Public Health Directorates etc. Use is also made of qualified research and investigations, including the use of special surveillance and research methods as provided for by Article 130 of the CCP, these being performed under the supervision of the prosecutor within the competent Public Prosecutor's Office. Subsequently, samples of the structure and content of materials, products, liquids, etc., which are part of the hazardous waste category, will be submitted for expert analysis to specialised laboratories, depending on the hazardous waste profile.

Seized hazardous materials are managed by authorised companies, depending on the nature of the substances they contain (toxic, explosive, radioactive, etc.), in compliance with the relevant legislation. The substances to be confiscated/disposed of are left in the custody of specialised companies authorised to store/destroy such materials, with the exception of narcotic substances that are managed at the level of evidence room organised by the GIRP.

The treatment applicable to these categories of material is governed by special legislation (Law No 360/2003, GD No 1408/2008, GD No 92/2003, Law No 211/2011, Law No 143/2000). The costs of manipulation and temporary storage during investigations are borne by the persons from whom they were seized, or by including them in the court fees or by institutions providing custody (e.g. police, public prosecutor's office, court). Subsequently, at the end of the process, there is the possibility of recovering the expenses from the persons from whom they were seized.

Dangerous substance analysis is carried out by experts from authorised laboratories (National Criminal Investigation Institute, Central Analytical Laboratory and Drug Profile Laboratory, etc.).

Standard operating procedures are not developed at GIRP level, but are managed by authorised companies, the NEG, and the expert laboratories.

The Romanian police, through the specialised structures, is responsible for the management of high-risk materials during court proceedings. Dangerous materials subject to confiscation are handled by the Romanian police, who use the services of specialised operators. Costs are borne by the state budget and are included in court costs. The analysis of hazardous materials is carried out by the National Criminal Investigation Institute and the General Inspectorate for Emergency Situations.

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

Exchange of information and joint actions are carried out under the coordination of Interpol and Europol to control the transport of hazardous materials requiring specific treatment (e.g. Interpol - Operation 30 Days of Action (2017)).

According to the Romanian authorities, it has not yet been necessary to exchange information with the European and international partners in the files handled, but in practice the exchange of information is done through the Interpol/General Inspectorate of the Romanian Police/National Environmental Guard channels.

There have been no cases of cooperation with the National Atomic Energy Agency.

### *9.3.3. Techniques of investigation*

At the level of the General Anti-Fraud Directorate, the financial flows for operations related to tax evasion are checked. Financial or cyber investigative techniques and generally all special investigative methods provided for by the CCP are used. Data used in investigation include:

- data on the financial situation of a natural or legal person;
- data on the financial transactions of a natural or legal person;
- the bank accounts identified for the surveyed period;
- the supporting documents submitted to the credit institution for performing transactions and withdrawals of cash;
- opening accounts;
- folders with signature specimens;
- the accounting documents submitted by the legal entity when requesting a credit line or a loan;
- the identification data of the people to whom tokens/digipasses have been issued, i.e. the cards, passwords and related series;
- IP addresses from which online transactions were made;
- declarations on the source of funds and the real beneficiary of the funds;
- declarations on persons authorised to order payments and make withdrawals from bank accounts;
- suspicious transaction reports;
- money transfers made by individuals and businesses;
- the identity of the beneficiaries of these transfers as well as the way in which they used those amounts of money (other cash transfers or withdrawals, with the identification of the recipients of the funds, etc.).

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

The Romanian authorities have not noticed any special obstacles while tackling cases relating to dangerous materials.



Nonetheless, the Public Ministry considers problematic the lack of experts in the field and the late receipt of data related to the criminal investigation requested by the letters rogatory. From the statistics recorded by the Romanian police so far, environmental macro-criminality has not reached alarming levels, with only small and medium-scale cases being reported, due to the special consequences that could be caused by the committal of environmental crimes.

#### *9.3.5. Training*

Training sessions and risk assessment guidelines for hazardous substances as well as exposure scenarios were organised within the project entitled 'Increasing the Capacity of the NEG to Apply EU Strategy and Legislation on Hazardous Waste and Chemicals - Reducing Dangerous Substances - Supporting Instruments for Decision Making', funded through the Financial Mechanism of the European Economic Area.

Treatment of chemical, biological, radiological and nuclear materials can be covered by training sessions, insofar as they are included in the training curriculum by the organisational structure responsible for training. On the basis of those curricula, the annual training plan is drawn up for customs staff, and it is carried out by other training providers co-opted by the structure responsible for staff training.

In May and June 2018, the GIRP-DAEDS organised a course in the field of hazardous substances and waste, attended by police officers from the local structures responsible for weapons, explosives and dangerous substances, who carry out hazardous work in the field. The course dealt with professional issues related to hazardous waste and environmental crime related to hazardous waste.

Seminars, exercises and training courses on topics involving the response to incidents with radiological and nuclear materials are attended by representatives of all competent authorities and include input from experts from the National Commission for Nuclear Activities Control (CNCAN). The following events related to hazardous waste were organised in recent years:

- 'Preparation and medical response in case of a radiological emergency', held on 4-8 September 2017, in Craiova, Dolj County, with the participation of five representatives of the CNCAN and 45 representatives of other institutions in the field;

- 'Nuclear safety measures at major public events', held on 10-13 July 2017 in Bucharest, with eight representatives of the CNCAN and 39 representatives of other institutions;

- Within the framework of the Regional Excellence Project for Strengthening the Regulatory Capacity in the Field of Nuclear and Radiological Safety and Emergency Preparedness and Response in Romania, carried out through the Norwegian Financial Mechanism 2009-2014, this theme was addressed within:

- o a sub-project entitled: 'Improving CNCAN capabilities in the field of safety and security of transport and transit of radioactive and nuclear materials on the territory of Romania'. Eight people from the CNCAN and seven people from other institutions involved in the transport of radioactive sources were trained in the implementation of a pilot system tracking of the transport of radiation sources and nuclear materials in real-time.

- o a sub-project entitled: 'Improving CNCAN capabilities in the field of emergency preparedness and response'. Approximately 83 people (from the CNCAN and other organisations involved in emergency response) were trained in the response to a radiological emergency (medical response, environmental monitoring, etc.) and more than 500 people (from the CNCAN and other organisations involved in emergency response) participated in the National Exercise on Nuclear Emergency in Romania, called Valahia 2016.

## 9.4. Conclusions

- The term 'hazardous waste' is defined by GEO No 195/2005 on environmental protection and includes dangerous waste, dangerous substances, dangerous chemicals and preparations (Law No 360/2003) and dangerous chemical agents (GD No 1218/2006).
- According to the Romanian legislation, the activities of generating or handling dangerous products are inspected and controlled by the NEG and the Labour Inspectorate, an institution subordinate to the Ministry of Labour and Social Justice.
- Dangerous materials subject to confiscation are handled by the Romanian police (Directorate of Arms, Explosives and Dangerous Substances within the General Inspectorate of the Romanian Police), the National Commission for the Control of Nuclear Activities, and gendarmes, which use the services of specialised operators. The materials are managed by authorised companies, depending on the nature of the substances they contain (toxic, explosive, radioactive, etc.), in compliance with the relevant legislation. Costs are borne by the state budget and are included in court costs. The analysis of hazardous materials is carried out by the National Criminal Investigation Institute and the General Inspectorate for Emergency Situations.
- In the field of training, mainly employees of the NEG, the nuclear authority and the health inspectorate receive specialised training to be able to do their work in this field of complex regulations. Customs and national police employees receive limited training on the existence of regulations in the field of waste and dangerous goods as part of their basic training.

## 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 Romania was able to perform a satisfactory review of the system in Romania.

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

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

#### *10.1.1. Recommendations to Romania*

Romania should:

1. Consider prioritising the fight against environmental crime (e.g. by establishing a national strategy defining the main goals and the roles of the respective authorities involved in the fight against environmental crime); (cf. 3.1 and 3.6)
2. Develop methods to collect statistics referring to waste crime in comprehensive way in order to show the development/trends in waste crime in Romania; (cf. 3.3.2 and 3.6)
3. Implement a waste hierarchy, prioritising waste prevention and recycling to reduce opportunities to dispose of waste illegally; (cf. 3.5 and 3.6)
4. Consider introducing landfill taxes to discourage the illegal import of household waste; (cf. 3. and 3.6)<sup>9</sup>

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<sup>9</sup> After the evaluation mission Romania reported to the experts that a financial contribution for circular economy that applies to landfilled waste already has been introduced in January 2019

5. Is encouraged to set up a specialised unit within the police and designate prosecutors specialised in fighting waste crime at regional and/or national level; (cf. 4.1.1, 4.1.2 and 4.6)
6. Is encouraged to develop measures/tools to maintain specialised staff within the National Environmental Guard to fight against waste crime effectively; (cf. 4.2.1 and 4.6)
7. Consider vesting the National Environmental Guard with (limited) criminal investigative powers with regard to EU legislation on the illegal shipment of waste; (cf. 4.2.1 and 4.6)
8. Provide more training opportunities to practitioners involved in detecting and/or fighting environmental crime (e.g. the police, customs, prosecutors and judges); (cf. 4.5 and 4.6)
9. Is encouraged to review the level of financial penalties applicable to waste infringements committed by corporate bodies so that they are effective, proportionate and dissuasive; (cf. 5.1.1 and 5.5)
10. Is encouraged to review its national legislation on environmental crime in order to avoid inconsistencies and to allow practitioners to apply rules on environmental crime; (cf. 5.1.1, 5.5, 9.1 and 9.2)
11. Consider developing effective ways of collecting and sampling evidence so that it is more likely to be admissible in the court; (cf. 5.2.1 and 5.5)
12. Enhance its detection capacity including physical controls of illegal waste shipment and inspections of company premises; (cf. 7.1.2 and 7.3)

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

1. Member States are encouraged to organise the cooperation of local/regional authorities in a direct and informal way to strengthen their capacity to fight against illegal shipment of waste more effectively as developed in Constanța; (cf. 3.3.1, 4.1.2, 4.4.1 and 4.6)
2. Member States are encouraged to develop effective tools of cooperation with NGOs to improve the handling of environmental complaints, such as established between the Romanian authorities and Greenpeace; (cf. 5.1.5 and 5.5)
3. Member States are encouraged to enhance the cooperation with neighbouring countries including third countries by establishing contact points/liaison officers with a view to exchanging information and sharing best practices to enhance the fight against illegal shipment of waste as established by Romania; (cf. 6.1.1 and 6.5)

## **ANNEX A: PROGRAMME FOR THE ON-SITE VISIT**

### **GENVAL - EIGHT ROUND OF MUTUAL EVALUATIONS**

**“The practical implementation and operation of European policies on preventing and combating Environmental Crime”**

**Draft agenda of the on-site visit to Romania**

**Bucharest, 12 - 16 November 2018**

#### **Day 1: 12 November 2018**

Transfer from Bucharest International Airport to the hotel.

*The Romanian Authorities will provide transfer to all participants during the visit to all official programs including the transfer from and to airport.*

#### **Day 2: 13 November 2018**

*Venue: Ministry of Environment*

- |                      |   |
|----------------------|---|
| <b>09:00 - 09:30</b> | <b>Transfer from Hotel to Ministry of Environment, arrival and registration of EU delegation and national experts</b>                           |
| <b>09:30 - 10:00</b> | <b>Welcome notes on behalf of Vice Prime Minister, Minister of the Environment and General Commissioner of the National Environmental Guard</b> |
| <b>10:00 - 10:15</b> | <b>Introduction and some practical information in relation to the programs of the evaluation of Romania</b>                                     |
| <b>10:15 - 10:45</b> | <b>General presentation of the representative of the Romanian National Environmental Guard on preventing and combating Environmental Crime</b>  |

- 10:45 - 11:15**      **Coffee break**
- 11:15 - 11:50**      **G Presentation on environmental related activities by the representative of the Ministry of Finance, General Directorate for Customs**
- 11:50 - 12:25**      **Presentation on environmental related activities by the representative of the Ministry of Health, State Sanitary Inspection**
- 12:25 - 13:00**      **Presentation on environmental related activities by the representative of the National Commission for Nuclear Activities Control**
- 13:00 - 13:30**      **Discussions and conclusions**
- 13:30 - 14:30**      **Lunch**
- 14:30 - 17:30**      **Transfer from Bucharest to Constanta**
- 19:00**                **Dinner in Constanta**

**Day 3: 14 November 2018**

*Venue: Costal Guard*

- 09:00 - 09:30**      **Transfer to Coast Guard Office in Constanta**
- 09:30 - 10:30**      **Presentation on preventing and combating environmental crime by the representative of the Coast Guard**



- 10:30 - 11:00**      **Coffee break**
- 11:00 - 12:00**      **Presentation by the representative of Maritime Shipments Police Department in preventing and combating environmental crime, case study**
- 12:00 - 13:00**      **Presentation on preventing and combating environmental crime by the representative of the Constanta Customs Direction**
- 13:00 - 13:30**      **Discussions and conclusions**
- 13:30 - 14:30**      **Lunch**
- 14:30 - 17:30**      **Transfer from Constanta to Bucharest**
- 19:00**                **Dinner in Bucharest**

**Day 4: 15 November 2018**

*Venue: Public Ministry - Prosecutor' Office attached to High Court of Cassation and Justice*

- 09:00 - 09:30**      **Transfer to Public Ministry - Prosecutor' Office attached to High Court of Cassation and Justice Office**
- 09:30 - 09:45**      **Welcome notes on behalf of General Prosecutor (tbc)**
- 09:45 - 10:30**      **Presentation of the representative of General Inspectorate of Romanian Police on environmental related activities**
- 10:30 - 11:00**      **Coffee break**

- 11:00 - 13:00**      **Presentation by the representative of Public Ministry - Prosecutor' Office attached to High Court of Cassation and Justice on preventing and combating environmental crime**
- 3:00 - 14:00**      **Lunch**
- 14:00 - 15:00**      **Discussions and conclusions**
- 15:00 - 15:30**      **Transfer to Hotel**
- 15:30 - 17:30**      **Internal meeting of EU delegation**
- 19:30**                **Official Dinner**

**Day 5: 16 November 2018**

*Venue: Ministry of Interior Affairs*

- 09:00 - 09:30**      **Transfer to Ministry of Interior Affairs Office**
- 09:30 - 10:00**      **Closing notes on behalf of official representatives of Romanian Authorities**
- 10:00 - 11:00**      **Closing session for experts and/or possibility for extra exchange of view, interview, etc.**
- 11:00 - 11:30**      **Coffee break**
- 11:30 - 12:00**      **Final conclusions**
- 12:00 - 13:00**      **Lunch**
- 13:00**                **Transfer to Bucharest International Airport**

## ANNEX B: PERSONS INTERVIEWED/MET

**Meetings on 13 November 2018**

*Venue: Ministry of Environment*

| <b>Person interviewed/met</b> | <b>Organisation represented</b>  |
|-------------------------------|--|
| Gratiela Leocadia GAVRILESCU  | Vice-Prime minister, Minister of Environment   |
| Gabriela DOROJAN              | General Commissioner<br>National Environmental Guard   |
| Florin COTOȘMAN               | Deputy General Commissioner<br>National Environmental Guard  |
| Octavian POPESCU              | General Director<br>National Environmental Guard   |
| Florin HOMOREAN               | Commissioner<br>National Environmental Guard   |
| Cristian COAJE                | Head of waste shipment bureau<br>National Environmental Guard  |
| Wili APREUTESEI               | Deputy General Inspector<br>Ministry of Internal Affair - General<br>Inspectorate of Romanian Police |
| Aurel DOBRE                   | Director<br>Ministry of Internal Affair - General<br>Inspectorate of Romanian Police                 |
| George TRANDAFIR              | Director<br>Ministry of Internal Affair - General<br>Inspectorate of Romanian Police                 |
| Adina BEGU                    | Counsellor<br>Ministry of Internal Affair - General<br>Inspectorate of Romanian Police               |
| Răzvan BUDEANU                | Police Chief Commissioner<br>General Inspectorate of Border Police                                   |

|                        |  |
|------------------------|--|
| Daniela HUTUL          | Director, General Inspectorate of Border Police                              |
| Remus JURJ             | Prosecutor, Public Ministry  |
| Teodor NIȚĂ            | Prosecutor, Public Ministry  |
| Simona PÂRVU           | Head of service, Ministry of Health  |
| Cristina CÎRLAN        | Counsellor, Ministry of Health   |
| Mihaela Alina ION      | Head of Servicer, National Commission for Nuclear Activities Control (CNCAN) |
| Atena NICULESCU        | Head of service, CNCAN   |
| Liliana Despina CENUȘĂ | Legal Adviser, CNCAN   |
| Iulia BĂRBIERU         | Expert, National Agency for Fiscal Administration                            |
| Liliana GIMBUTEAN      | General Customs Directorate  |
| Liliana NISTOR         | General Customs Directorate  |
| Marcel Mutescu SIMION  | General Customs Directorate  |
| Cătălin BARONI         | Regional Customs Directorate Galați  |

**Meetings** on 14 November 2018

*Venue:* Constanta - Coast Guard Office and Maritime Ports Administration Constanta

| <b>Person interviewed/met</b> | <b>Organisation represented</b>                               |
|-------------------------------|---|
| Florin COTOȘMAN               | Deputy General Commissioner<br>National Environmental Guard   |
| Octavian POPESCU              | General Director<br>National Environmental Guard              |
| Florin HOMOREAN               | Commissioner<br>National Environmental Guard                  |
| Cristian COAJE                | Head of waste shipment bureau<br>National Environmental Guard |

|                     |   |
|---------------------|---|
| Marius GRIGORE      | Commissioner<br>National Environmental Guard                            |
| Aurel DOBRE         | Director, General Inspectorate of<br>Romanian Police                    |
| Marian BUCUR        | Director, General Inspectorate of<br>Romanian Police                    |
| George TRANDAFIR    | Director, General Inspectorate of<br>Romanian Police                    |
| Dănuț OANA          | General Inspectorate of Romanian Police                                 |
| Alexandru OAE       | Deputy Director, General Inspectorate of<br>Border Police - Coast Guard |
| Remus JURJ          | Prosecutor, Public Ministry   |
| Teodor NIȚĂ         | Prosecutor, Public Ministry   |
| Mihaela MERGEANE    | Prosecutor  |
| Gill Julien GRIGORE | Prosecutor  |
| Liliana GIMBUTEAN   | General Customs Directorate   |
| Cătălin BARONI      | Regional Customs Directorate Galați                                     |
| OSMAN ENEL          | Regional Customs Directorate Galați                                     |

**Meetings** on 15 November 2018

*Venue: Public Ministry*

| <b>Person interviewed/met</b> | <b>Organisation represented</b>                                     |
|-------------------------------|---|
| Dr. Ovidiu PREDESCU           | Personal counselor of the Prosecutor<br>General                     |
| Remus JURJ                    | Prosecutor, Public Ministry   |
| Teodor NIȚĂ                   | Prosecutor, Public Ministry   |
| Razvan BOSTINARU              | Ministry of Justice   |
| Răzvan BUDEANU                | Police Chief Commissioner, General<br>Inspectorate of Border Police |
| Daniela HUTUL                 | Director, General Inspectorate of Border<br>Police                  |

|                    |   |
|--------------------|---|
| Wili APREUTESEI    | Deputy General Inspector, General Inspectorate of Romanian Police |
| Aurel DOBRE        | Director, General Inspectorate of Romanian Police                 |
| George TRANDAFIR   | Director, General Inspectorate of Romanian Police                 |
| Marian BUCUR       | Director, General Inspectorate of Romanian Police                 |
| Cătălin DRĂGHICI   | General Inspectorate of Romanian Police                           |
| Adina BEGU         | General Inspectorate of Romanian Police                           |
| Dănuț OANĂ         | General Inspectorate of Romanian Police                           |
| Marian SORA        | General Inspectorate of Romanian Police                           |
| Adrian ALDEA       | General Inspectorate of Romanian Police                           |
| Alexandru PETRACHE | General Inspectorate of Romanian Police                           |
| Marian CÎRCEI      | General Inspectorate of Romanian Police                           |
| Dan BRUJA          | General Inspectorate of Romanian Police                           |
| Florin COTOȘMAN    | Deputy General Commissioner<br>National Environmental Guard       |
| Octavian POPESCU   | General Director<br>National Environmental Guard                  |
| Florin HOMOREAN    | Comissioner<br>National Environmental Guard                       |
| Cristian COAJE     | Head of waste shipment bureau<br>National Environmental Guard     |
| Marius GRIGORE     | Commissioner<br>National Environmental Guard                      |
| Liliana GIMBUTEAN  | General Customs Directorate                                       |
| Cătălin BARONI     | Regional Customs Directorate Galați                               |

**Meetings on 16 November 2018***Venue: Ministry of Interior Affairs*

| <b>Person interviewed/met</b> | <b>Organisation represented</b>                                    |
|-------------------------------|--|
| Gabriela DOROJAN              | General Commissioner<br>National Environmental Guard               |
| Angela COBZARU                | Cabinet Director<br>National Environmental Guard                   |
| Florin COTOȘMAN               | Deputy General Commissioner<br>National Environmental Guard        |
| Octavian POPESCU              | General Director<br>National Environmental Guard                   |
| Florin HOMOREAN               | Commissioner<br>National Environmental Guard                       |
| Cristian COAJE                | Head of waste shipment bureau<br>National Environmental Guard      |
| Marius Grigore                | Commissioner<br>National Environmental Guard                       |
| Marian BUCUR                  | Director, General Inspectorate of<br>Romanian Police               |
| Remus JURJ                    | Prosecutor, Public Ministry  |
| Teodor NIȚĂ                   | Prosecutor, Public Ministry  |
| Simona PÂRVU                  | Head of service, Ministry of Health                                |
| Cristina CÎRLAN               | Counsellor, Ministry of Health                                     |
| Liliana GIMBUTEAN             | General Customs Directorate  |
| Liliana NISTOR                | General Customs Directorate  |
| Marcel Mutescu SIMION         | General Customs Directorate  |
| Cătălin Baroni                | Regional Customs Directorate Galați                                |
| Răzvan BUDEANU                | Police Chief Commissioner<br>General Inspectorate of Border Police |

|                    |   |
|--------------------|---|
| Daniela HUTUL      | Director, General Inspectorate of Border Police                   |
| Wili APREUTESEI    | Deputy General Inspector, General Inspectorate of Romanian Police |
| Aurel DOBRE        | Director, General Inspectorate of Romanian Police                 |
| George TRANDAFIR   | Director, General Inspectorate of Romanian Police                 |
| Marian BUCUR       | Director, General Inspectorate of Romanian Police                 |
| Cătălin DRĂGHICI   | General Inspectorate of Romanian Police                           |
| Adina BEGU         | General Inspectorate of Romanian Police                           |
| Dănuț OANĂ         | General Inspectorate of Romanian Police                           |
| Marian SORA        | General Inspectorate of Romanian Police                           |
| Adrian ALDEA       | General Inspectorate of Romanian Police                           |
| Alexandru PETRACHE | General Inspectorate of Romanian Police                           |
| Marian Cîrcei      | General Inspectorate of Romanian Police                           |
| Dan Bruja          | General Inspectorate of Romanian Police                           |
| Ovidiu PLOSCA      | DGAESRI   |
| Otilia NEGRU       | DAEMRI  |
| Liviu VASILESCU    | Director DAESP  |
| Mădălina FRUNZĂ    | DMSSI   |
| Alexandra MITITELU | DMSSI   |



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

| LIST OF ACRONYMS, ABBREVIATIONS AND TERMS | ROMANIAN OR ACRONYM IN ORIGINAL LANGUAGE | ROMANIAN OR ACRONYM IN ORIGINAL LANGUAGE | ENGLISH   |
|---|--|--|---|
| CNCAN                                     | <i>CNCAN</i>                             |  | National Commission for Nuclear Activities Control          |
| D.A.E.D.S.                                | <i>D.A.E.D.S.</i>                        |  | Directorate of Arms, Explosives and Dangerous Substances    |
| DIOCT                                     | <i>DIOCT</i>                             |  | Directorate for Organized Crime Investigation and Terrorism |
| ECHA                                      | <i>ECHA</i>                              |  | European Chemicals Agency                                   |
| GEO                                       | <i>GEO</i>                               |  | Government Emergency Ordinance                              |
| GIRP                                      | <i>GIRP</i>                              |  | the General Inspectorate of the Romanian Police             |
| NAFA                                      | <i>NAFA</i>                              |  | National Agency for Fiscal Administration                   |
| NIA                                       | <i>NIA</i>                               |  | The National Institute of Administration                    |
| PHD                                       | <i>PHD</i>                               |  | County Public Health Directorates                           |
| SCM                                       | <i>SCM</i>                               |  | The Superior Council of Magistracy                          |
| SEPONA                                    | <i>SEPONA</i>                            |  | Environment and Nature Conservation Service                 |
| SSI                                       | <i>SSI</i>                               |  | State Sanitary Inspection                                   |

## ANNEX D: NATIONAL LEGISLATION, OTHER RULES OR INSTRUCTIONS

### *Law no. 286/2009 on the Criminal Code*

**Article 53.** The main punishments are:

- a) life imprisonment;
- b) imprisonment;
- c) fine.

**Article 54.** Accessory punishment

Indirect punishment consists in forbidding the exercise of certain rights, from the moment of the final decision of conviction until the execution or consideration of the execution of the custodial sentence.

**Article 55.** Complementary penalties

The complementary punishments are:

- a) prohibiting the exercise of certain rights;
- b) military degradation;
- c) publication the decision of conviction.

**Article 60.** Prison Rules

The imprisonment consists of a term of imprisonment of between 15 days and 30 years, and is executed according to the law on the execution of punishments.

**Article 61.** Establishment of the fine

- (1) The fine consists of the amount of money the convict is obliged to pay to the state.
- (2) The amount of the fine is set by the system of fine days. The amount of a day-fine, ranging from RON 10 to RON 500, is multiplied by the number of fine days, which is between 30 and 400 days.
- (3) The court shall set the number of fine days according to the general criteria for the individualization of punishment. The quantum of the amount corresponding to a fine is determined taking into account the material situation of the convicted person and the legal obligations of the sentenced person to his dependents.
- (4) The special limits of fine days are between:
  - a) 60 and 180 fine days, when the law provides only for the fine for the offences committed;
  - b) 120 days and 240 days fine, when the law provides for the punishment of the alternative fine with imprisonment for not more than two years;
  - c) 180 days and 300 days fine, when the law provides for the punishment of the alternative fine with imprisonment for more than 2 years.
- (5) If the committed offences was intended to obtain a patrimonial benefit and the punishment provided by the law is only a fine or the court opts for the application of this penalty, the special limits of the fine days may be increased by a third.
- (6) The fractions established by the law for the causes of mitigation or aggravation of the punishment shall apply to the special limits of the fine days provided in paragraph (4) and para. (5).

**Article 75.** - (1) The following circumstances constitute legal attenuating circumstances:

- a) committing the offences under the control of a violent disorder or emotion, caused by a provocation by the person injured, produced by violence, by a serious prejudice to the dignity of the person or by another serious unlawful action;
- b) exceeding the limits of legitimate defence;
- c) overcoming the limits of the state of necessity.
- d) full coverage of the material damage caused by the offences during the criminal investigation or the trial until the first term of the trial if the perpetrator did not benefit from this circumstance within 5 years prior to the act. The attenuating circumstance does not apply to the following offences: against the person, theft, robbery, piracy, frauds committed through computer systems and electronic means of payment, outrage, abusive behaviour, public security crimes, crimes against public health, crimes against religious freedom and respect for the deceased, against national security, against the fighting power of the armed forces, the crimes of genocide, against humanity and the war, the crimes related to the state border of Romania, the offences to the legislation on prevention and combating terrorism, corruption offences, crimes assimilated to corruption offences, those against the financial interests of the European Union, crimes related to non-observance of the regime of explosives and precursors of explosives, restriction nuclear materials or other radioactive materials, on the legal status of drugs, on the legal regime of drug precursors, on money laundering, on civil aviation activities and on those that could jeopardize flight safety and aeronautical safety, on the protection of witnesses, on the prohibition of fascist, racist or xenophobic organizations and symbols, and the promotion of the cult of persons guilty of committing crimes against humanity and peace, of organ trafficking, tissues or cells of human origin, on the prevention and combating of pornography and of pornography to the adoption regime.

(2) May be mitigating circumstances:

- a) the efforts of the offender to eliminate or mitigate the consequences of the offences;
- b) the circumstances related to the offences committed, which diminishes the seriousness of the offences or the perilousness of the offender.

**Article 77.** - The following situations constitute aggravating circumstances:

- a) committing the deed of three or more persons together;
- b) committing cruel offences or subjection of the victim to degrading treatment;
- c) committing the offences by methods or means likely to endanger other persons or goods;
- d) the offences committed by a major offender, if it was committed with a minor;
- e) committing the offences by taking advantage of the state of obvious vulnerability of the injured person due to age, state of health, disability or other causes;
- f) committing the offences in a state of voluntary intoxication with alcohol or other psychoactive substances, when it was provoked for committing the offences;
- g) the commission of the crime by a person who has taken advantage of a situation of a calamity, siege or emergency;
- h) offences committed on grounds of race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion or political affiliation, wealth, social origin, age, disability, noncontagious chronic illness or HIV / AIDS infection or other circumstances the same way considered by the perpetrator as the causes of a person's inferiority with respect to the others.

**Article 107.** Special confiscation

- (1) The safety measures aim to eliminate a state of danger and to prevent the perpetrators from committing the acts provided by the criminal law.
- (2) The security measures shall be taken against the person who committed an act, provided by the unjustified criminal law.
- (3) Safety measures may also be taken if the offender is not punished.

**Article 112.** Subject to special confiscation:

- a) the goods produced by committing the deed provided by the criminal law;
  - b) goods that have been used in any way or intended to be used for the commission of an act provided for by the criminal law, if they are the offender or if it belongs to another person, it has the purpose of using them
  - c) the goods used, immediately after the act was committed, to ensure the escape of the perpetrator or the preservation of the benefit or the obtained product, if the perpetrator is, or if, to another person, it has the purpose of using them;
  - d) goods which have been given to cause the commission of a criminal act or to reward the perpetrator;
  - e) the goods acquired by committing the offense provided for by the criminal law, unless they are returned to the injured party and insofar as they do not serve to compensate it;
  - f) goods the possession of which is prohibited by the criminal law.
- (2) In the case provided for in paragraph (1) let. b) and let. c) if the value of the goods subject to confiscation is manifestly disproportionate to the nature and gravity of the act, the confiscation is ordered in part, by monetary equivalent, taking into account the consequence of, or which could have resulted from, the contribution of the asset to it. If the goods were manufactured, altered or adapted for the purpose of committing the offense provided for by the criminal law, their confiscation shall be ordered in their entirety.
- (3) In the cases provided for in paragraph (1) let. b) and let. c) if the goods cannot be confiscated because they do not belong to the offender and the person to whom they belong did not know the purpose of their use, the equivalent of their money will be confiscated, applying the provisions of para. (2).
- (4) The provisions of paragraph (1) let. b) does not apply to acts committed by the press.
- (5) If the goods subject to confiscation according to para. (1) let. b) -e) are not found, money and goods are confiscated instead of their value.
- (6) The goods and money obtained from the exploitation of the goods subject to confiscation, as well as the goods produced by them, shall be confiscated, except for the goods referred to in paragraph (1) let. b) and let. c).

**Article. 112<sup>1</sup>**

- (1) Goods other than those referred to in Art. 112, if the person is convicted of committing one of the following offences, if the deed is likely to procure material benefit, and the penalty prescribed by law is a four-year or more imprisonment:
- a) offences related to drug and precursor trafficking;
  - b) offences related to the trafficking and exploitation of vulnerable persons;
  - c) offences related to the state border of Romania;
  - d) money laundering offence;

- e) offences against the legislation on preventing and combating pornography;
  - f) offences from the legislation on combating terrorism;
  - g) establishing an organised criminal group;
  - h) offences against the patrimony;
  - i) non-observance of the regime of arms, munitions, nuclear materials, explosives and precursors of explosives restricted;
  - j) forgery of coins, stamps or other values;
  - (k) disclosure of economic secrecy, unfair competition, non-compliance with provisions on import or export operations, misappropriation of funds, offences concerning the import and export regime and the introduction and removal from the country of waste and residues;
  - l) gambling offences;
  - m) offences of corruption, offences assimilated to them, as well as offences against the financial interests of the European Union;
  - n) tax evasion offences;
  - o) customs regime offences;
  - p) frauds committed through computer systems and electronic payment instruments;
  - q) trafficking in organs, tissues or cells of human origin.
- (2) Extended confiscation shall be ordered if the following conditions are cumulatively met:
- a) the value of the assets acquired by the convicted person over a period of five years before and, where appropriate, after the offense has been committed, up to the date of the referral, clearly exceeds the revenue lawfully obtained by the sentenced person;
  - b) the court is convinced that the respective goods come from criminal activities of the nature provided in para. (1).
- (3) For the application of para. (2) account shall also be taken of the value of the goods transferred by the sentenced person or by a third party to a family member or to a legal person over whom the convicted person has control.
- (4) By goods, according to the present article, is meant also the money amounts.
- (5) In determining the difference between the legal income and the value of the acquired goods, the value of the goods at the date of their acquisition and the expenses made by the convicted person, the members of his / her family, shall be taken into account.
- (6) If the goods subject to confiscation are not found, money and goods shall be confiscated instead of their value.
- (7) The goods and money obtained from the exploitation or use of the goods subject to confiscation, as well as the goods produced by them, shall also be confiscated.
- (8) The seizure may not exceed the value of the goods acquired during the period stipulated in para. (2), which exceeds the legal income of the convicted person.

**Art. 345 - Related legislation to dangerous materials.**

- (1) The reception, possession, use, disposal, modification, alienation, dispersion, exposure, production, processing, handling, intermediate storage, import, export or final disposal, transport or diversion of nuclear materials or other radioactive materials, on their movement, without right, shall be punished by imprisonment from 3 to 10 years and the prohibition of the exercise of certain rights.
- (2) The removal of nuclear material or other radioactive material shall be punished by imprisonment from 5 to 12 years and the prohibition of the exercise of certain rights.

(3) If the facts provided in paragraph (1) and (2) have endangered other persons or goods, have caused bodily injury to one or more persons, the penalty is imprisonment from 7 to 15 years and the prohibition of the exercise of certain rights.

(4) If the facts provided in para. (1) and (2) have resulted in the death of one or more persons, the punishment shall be imprisonment from 10 to 20 years and the prohibition of the exercise of certain rights.

(5) If the facts provided in paragraph (1), (3) and (4) have been committed by fault, the special limits of the penalty shall be reduced by half.

(6) By way of exception to the provisions of Art. 137 para. (2), in the case of the offences provided for in this article, the amount corresponding to a day-fine for the legal person is between RON 500 and RON 25,000.

## **Art. 135-151**

### **Criminal liability of the legal person**

**Article 136** Conditions of Criminal Liability of Legal Entities (1) Legal persons, except state and public authorities, are liable for criminal offenses committed in pursuit of the object of activity or in the interest or on behalf of the legal person. (2) The public institutions are not liable for criminal offenses committed in the exercise of an activity that can not be subject to the private domain. (3) The criminal liability of the legal person does not exclude the criminal liability of the natural person who contributed to the same act. **Article 137** Penalties for the legal person (1) The penalties applicable to the legal person are the principal and complementary. (2) The primary penalty is a fine. (3) The complementary penalties are: a) dissolution of the legal person; b) suspension of the activity or one of the activities of the legal person for a period of 3 months to 3 years; c) the closure of working places of the legal entity for a period of 3 months to 3 years; d) the prohibition to participate in public procurement procedures for a period of one to three years; e) placing under judicial supervision; f) displaying or publishing the conviction decision. **Article 138** Setting the fine for the legal person (1) The fine consists of the amount of money that the legal person is convicted to pay to the state. (2) The amount of the fine shall be established by the system of fine days. The amount corresponding to a day - fine, ranging from 100 to 5,000 lei, is multiplied by the number of fine days, which is between 15 days and 600 days.

(3) The court shall determine the number of days-fine taking into account the general criteria for the individualization of punishment. The amount of the amount corresponding to a day - fine shall be determined by taking into account the turnover in the case of the legal person for profit or the value of the assets in the case of other legal entities, as well as the other obligations of the legal person.

(4) The special days-fine limits are between: a) 60 and 180 days-fine, when the law stipulates for the offense only the punishment of the fine; b) 120 and 240 days-fine, when the law provides for imprisonment of maximum 5 years, single or alternative to the fine; c) 180 and 300 days-fine, when the law provides for imprisonment of up to 10 years; d) 240 and 420 days-fine, when the law provides for imprisonment of maximum 20 years; e) 360 and 510 days-fine, when the law provides for imprisonment for more than 20 years or for life imprisonment; (5) When the legal person has committed a criminal offense through the offense, the special limits of the fine imposed by the law for the offense committed may be increased by a third, without exceeding the general fine of the fine. The value of the fine will take into account the value of the patrimonial benefit obtained or pursued.

## CHAPTER II ADMINISTRATIVE PROCEDURES FOR THE LEGAL ENTITIES

**Article 139** Application and enforcement of supplementary punishments in the case of a legal person (1) The application of one or more complementary punishments shall be ordered when the court finds that, in view of the nature and gravity of the offense and the circumstances of the case, these penalties are necessary. (2) The application of one or more complementary punishments is mandatory when the law provides for such punishment.

(3) The complementary punishments provided in art. 137 (3) (b) - (f) may be applied cumulatively.

(4) The execution of complementary punishments begins after the final conviction has been passed.

**Article 140** Dissolution of the Legal Person (1) The supplementary punishment of the dissolution of the legal person shall apply when: a) the legal person was constituted for the purpose of committing crimes; b) his object of activity was hijacked for the purpose of committing crimes, and the punishment stipulated by the law for the offense committed is imprisonment for more than 3 years.

(2) In case of non-execution, in bad faith, of one of the complementary punishments provided in art. 137 paragraph (3) letters b) - e), the court shall order the dissolution of the legal person. (3) The complementary punishment of the dissolution of a legal entity has the effect of opening the winding-up proceedings, according to the law, and a copy of the final sentence of 42 convictions by which this punishment has been applied will be immediately communicated to the competent civil court, which will proceed when appointing the liquidator.

**Article 141** Suspension of the activity of the legal person (1) The complementary punishment of the suspension of activity of the legal person consists in the prohibition of carrying out the activity or one of the activities of the legal person in the realization of which the offense was committed. (2) In case of non-execution, in bad faith, of the complementary punishment stipulated in art. 137 paragraph (3) letter f), the court shall order the suspension of the activity or one of the activities of the legal person until the enforcement of the complementary punishment, but not more than 3 months.

(3) If, until the fulfillment of the period provided for in paragraph (2), the additional sentence has not been enforced, the court shall order the dissolution of the legal person.

**Article 142** Non-application of the dissolution or suspension of the activity of the legal person (1) The complementary punishments provided in art. 137 (3) (a) and (b) cannot be applied to public institutions, political parties, trade unions, employers' organizations and religious organizations or belonging to national minorities constituted according to the law. (2) The provisions of para. (1) shall also apply to legal persons operating in the press.

**Art. 143** Closing some work of legal person (1) Punishment complementary closure of outlets of the legal person is to close one or more of the workstations belonging to the legal entity for profit, it has carried out work in achieving to whom the offense was committed. (2) The provisions of paragraph (1) shall not apply to legal persons operating in the field of the press. Article 144 Prohibition to participate in procurement procedures The complementary prohibition to participate in public procurement procedures is the prohibition to participate, directly or indirectly, in the procedures for the award of public contracts, as provided for by law. Article 145 Placement under judicial supervision (1) Placement under judicial supervision consists in the appointment by the court of a judicial administrator who will supervise the activity that caused the offense for a period of one to three years.

(2) The judicial mandate has the obligation to notify the court when it finds that the legal person has not taken the necessary measures to prevent the commission of new offenses. If the court finds that the referral is well founded, it is necessary to replace this punishment with the punishment provided by art. 141. (3) Placement under judicial supervision shall not apply to the legal entities referred to in art. 142.

**Article 146** Displaying or Publishing the Sentence of Condemnation (1) The final judgment of the conviction is published or published, at the expense of the convicted legal person. (2) The identity of the injured person cannot be disclosed by displaying or publishing the conviction. (3) The sentence of the conviction shall be displayed on the extract, in the form and place established by the court, for a period of one month to 3 months. (4) Publication of the judgment of conviction is the statement in the form prescribed by court through written press or audio-visual media or other audio-visual designated court. (5) If the publication is in print or audio-visual court determines the number of times that are not exceed 10, and in the case of publication by other audio-visual duration may not exceed three months.

### CHAPTER III COMMON PROVISIONS

**Art. 147** repetition of legal person (1) There relapse legal person when, after a final of any conviction and to rehabilitation, legal person commits a crime again.

(2) In case of relapse, the special limits of the punishment stipulated by the law for the new offense shall be increased by half, without exceeding the general maximum of the penalty of the fine. (3) If the previous fine has not been executed in whole or in part, the fine established for the new offense according to paragraph (2) shall be added to the previous punishment or to the remaining non-executed penalty. (4) The provisions of art. 41 shall apply accordingly.

**Article 148** Attenuation and aggravation of the criminal liability of the legal person (1) In the case of an offense contest, intermediate plurality or causes of mitigation or worsening of the criminal liability, the legal person shall be subject to the regime of the fine provided for by the law for the natural person. (2) In the case of multiple offenses, complementary punishments of a different nature, with the exception of dissolution, or those of the same nature but with different content, are cumulative, and the complementary penalties of the same nature and the same content apply the most severe. (3) In the event of a plurality of offenses, the security measures taken in accordance with Articles 113 and 113 shall be cumulated.



**Article 149** Condition of Criminal Liability Criminal liability of a legal person shall be prescribed under the conditions laid down by law for the natural person, the provisions of art. 154-157 applying accordingly.

**Article 150** Penalty Prescription (1) The limitation period for the execution of the penalty of the fine imposed on the legal person is 5 years. (2) The execution of the complementary punishments imposed on legal persons shall be prescribed within a period of 3 years, which shall run from the date when the fine was executed or deemed to have been executed. (3) The provisions of art. 161, 162 paragraph (2), art. 163 and art. 164 shall apply accordingly.

**Article 151** Rehabilitation of the legal person Rehabilitation of the legal person shall take place by law if, within 3 years from the date on which the punishment of the fine or the complementary punishment has been executed or deemed to be enforced, it has not committed any other offense.

### **The Code of Criminal Procedure**

**Art. 252.**(1) The body executing the seizure shall be obliged to identify and evaluate the seized assets and may, where appropriate, use the assessors or experts.

(2) Perishable goods, objects of precious metals or precious stones, foreign payment means, internal securities, art objects and museums, collections of value, and sums of money subject to seizure shall be compulsory.

(3) Perishable goods shall be surrendered to the competent authorities, according to the activity profile, who are obliged to receive them and to use them immediately.

(4) The precious metals or stones or the objects made with them and the foreign payment means shall be deposited with the nearest banking institution.

(5) Internal securities, art or museum items and valuable collections shall be handed over to specialized institutions.

(5) The objects provided in paragraph (4) and (5) shall be handed in within 48 hours of lifting. If the objects are strictly necessary for the prosecution, the preliminary procedure or the trial, the filing shall be made later, but not later than 48 hours after the pronouncement of the final decision.

(7) Seized objects shall be kept until the seizure is lifted.

(8) The amounts of money resulting from the capitalization made according to para. (3), as well as the amounts of money raised according to para. (2) shall be deposited in the account established according to the special law, within maximum 3 days from the raising of the money or from the capitalization of the goods.

(9) Other movable property seized is sealed or seized, and can be called a custodian.

**Art. 252<sup>1</sup>.** - (1) During the criminal proceedings, before the final decision is pronounced, the prosecutor or the court that instituted the seizure may immediately dispose of the seized movable assets at the request of the owner of the property or when there is the agreement of the property. In the course of the criminal proceedings, before a final judgment is pronounced, in the absence of the consent of the owner, the movable assets upon which the seizure has been established may exceptionally be capitalized in the following situations:

a) when, within one year from the date when the seizure was instituted, the value of the seized assets diminished significantly or by at least 40% compared to the time when the precautionary measure was ordered. The provisions of art. 252 para. (1) shall also apply accordingly;

b) when there is a risk of expiry of the warranty period or when the insurance seizure has been applied to live animals or birds;

- c) when the seizure has been applied to flammable or petroleum products;
  - d) when the insurance seizure has been applied to goods whose storage or maintenance requires disproportionate expenses in relation to the value of the good.
- (2) During the criminal proceedings, before a final judgment is given, when the following conditions are met cumulatively: the owner could not be identified and the capitalization cannot be made in accordance with paragraph (2), the motor vehicles on which the seizure has been established may be capitalized in the following situations:
- a) when they have been used, in any way, to commit an offense;
  - b) if, from the date of the imposition of the measure, the insurer has passed a period of one year or more.
- (3) The amounts of money resulting from the capitalization of movable goods made according to paragraph (1), (2) and (3) shall be deposited in the account provided by art. 252 para. (8).

#### **Art. 291**

##### **Notifications made by senior management and others**

(1) Any person with a leading position within a public administration authority or other public authorities, public institutions or other legal persons governed by public law, as well as any person with control duties who, in the exercise of their duties, have become aware of a criminal offense for which the criminal action is initiated ex officio, are obliged to immediately notify the criminal investigating authority and take steps to ensure that the traces of the offense, the offenses and any other means of proof do not disappear.

#### **Art. 489-503**

##### **Proceedings concerning the criminal liability of the legal person**

General provisions (1) In the case of the crimes committed by the legal entities provided by art. 135 par. (1) of the Criminal Code in carrying out the object of activity or in the interest or on behalf of the legal person, the provisions of this Code shall apply accordingly, with the derogations and additions provided in this chapter. (2) Applicable to the procedure for criminal liability of the legal person and the provisions of the preliminary-ruling procedure, which shall apply accordingly. The object of the criminal action The criminal action has as object the criminal liability of the legal persons who have committed crimes. Representation of the legal person

- (1) The legal person is represented by the legal and legal representative in carrying out the procedural and procedural acts.
- (2) If the criminal action and the legal representative of the legal person have been initiated for the same deed or for related deeds, it shall appoint a representative to represent it.

(2) In the case provided for in paragraph (2), if the legal person has not appointed a trustee, it shall be appointed, as the case may be, by the prosecutor who carries out or supervises the prosecution, by the preliminary chamber judge or by the court, among the insolvency practitioners authorized according to the law. The insolvency practitioners so designated shall be duly applied to the provisions of Art. 273 par. (1), (2), (4) and (5). Place of quoting of the legal person (1) The legal person is quoted at its headquarters. If the headquarters are fictitious or the legal person no longer operates at the declared premises and the new headquarters is unknown, a notice shall be displayed at the headquarters of the judicial body, the provisions of Art. 259 par. (5) applying accordingly. (2) If the legal person is represented by a trustee appointed under the conditions of art. 491 par. (2) and (3), the summons shall be made at the domicile of the trustee or at the place of the insolvency practitioner appointed as trustee.

Preventive Measures (1) The Judge of Rights and Freedoms may, in the course of criminal prosecution, at the proposal of the Prosecutor, or, as the case may be, the Preliminary Chamber Judge or the Court may order, if there are reasonable grounds justifying the reasonable suspicion that the legal person has committed a deed by the criminal law and only in order to ensure the proper conduct of the criminal proceeding, one or more of the following measures: a) prohibition of initiation or, as the case may be, suspension of the dissolution or liquidation procedure of the legal person; b) the prohibition of the initiation or, as the case may be, the suspension of the merger, division or reduction of the legal capital of the legal person, initiated before or during the criminal prosecution; c) the prohibition of patrimonial operations, likely to result in the diminution of the patrimonial asset or the insolvency of the legal person; d) prohibiting the conclusion of certain legal acts, established by the judicial body; e) to prohibit the carrying out of activities of the nature of the offense committed. (2) In order to ensure the observance of the measures stipulated in paragraph (1), the legal person may be obliged to deposit a bail consisting of a sum of money that cannot be less than 10,000 lei. The bail shall be restituted on the date of the final judgment of the conviction, postponement of the punishment, waiving of the punishment or termination of the criminal proceeding pronounced in question, if the legal person has respected the measure or the preventive measures, as well as if, by a final decision, the payment of the legal person has been ordered. (3) The bail shall not be restituted in the case of non-compliance by the legal person with the measure or preventive measures taken, the income to the state budget at the date of the final decision of the said decision, as well as the payment of bail the following order of compensation for the damages caused by the offense, the legal costs or the fine. (4) The preventive measures provided in paragraph (1) may be ordered for a period of up to 60 days, with the possibility of prolongation in the course of criminal prosecution and maintenance during the preliminary proceedings and the trial, if the reasons for their taking are maintained, each extension not exceeding 60 days.

(5) During the criminal prosecution, the preventive measures shall be available to the judge of rights and freedoms by a reasoned decision given in the council chamber, with the citation of the legal person. (6) Attorney's participation is mandatory. (7) Against the conclusion, the judge of rights and freedoms or, as the case may be, the judge of the preliminary chamber or the superior hierarchical court, may appeal against the present by the legal person and the prosecutor, within 24 hours from the pronouncement, and from the communication, for the missing legal person. (8) The preventive measures shall be revoked by the judge of rights and freedoms at the request of the prosecutor or of the legal person and by the judge of the preliminary chamber and by the court and ex officio only when it is ascertained that there are no longer grounds for the taking or maintaining them. The provisions of paragraph (5) to (7) shall apply accordingly. (9) Against the representative of the legal person or his representative may be taken the measures provided in art. 265 and art. 283 par. (2), and to the insolvent practitioner, the measure provided in art. 283 par. (2).

The taking of preventive measures does not prevent the taking of the precautionary measures according to art. 249-256.

The precautionary measures

The legal person may take precautionary measures, the provisions of art. 249-256 and Art. 5491 applying accordingly. Information procedure (1) In the course of criminal prosecution, the prosecutor shall communicate to the body that authorized the establishment of the legal entity and to the body that registered the legal person the commencement of the criminal action and the legal action of the legal person at the date of dispatch of these measures, making the appropriate entries.

(2) In the case of institutions which are not subject to registration or authorization to acquire legal personality, the information provided in par. (1) shall be made to the body which has set up that institution. (3) The bodies referred to in paragraph (1) and (2) shall be obliged to communicate to the judicial authority, within 24 hours of the date of registration, a certified copy of any entry recorded by them with respect to the legal person.

(4) The legal person is obliged to notify the judicial body, within 24 hours, the intention to merge, divide, dissolve, reorganize, liquidate or reduce the share capital. (5) The provisions of paragraph (1) to (3) shall also be applied in the event of preventive action against the legal person. (6) After the final judgment of the conviction has been suspended, the executing court shall communicate a copy of the decision of the body which authorized the establishment of the legal entity to the body which registered the legal person to the body which instituted the institution not subject to the authorization or, as well as to the bodies responsible for the control and supervision of the legal person, in order to make the appropriate remarks. (7) The non-fulfillment, immediately or until the fulfillment of the prescribed terms, of the obligations stipulated in paragraph (3) - (5) shall constitute a judicial deviation and shall be sanctioned with the judicial fine provided for in art. 283 par. (4). Effects of the merger, absorption, division, reduction of the share capital, dissolution or liquidation of the convicted legal person (1) If, after the conviction of the legal person and the execution of the punishment, the case of merger, absorption, dissolution, liquidation or reduction of its share capital, the authority or institution to which the power to authorize or register the transaction is required to refer the matter to the enforcement authority and to inform the legal person created by the merger, who acquired fractions from the patrimony of the divorced person.

(2) The legal person resulting from the merger, absorption or acquisition of fractions of the divided person's property takes over the obligations and prohibitions of the convicted legal person, the provisions of art. 151 of the Penal Code being applied accordingly.

Execution of the penalty of the fine (1) The legal person convicted of the fine shall be obliged to submit the full payment of the fine to the judge delegated with the execution, within 3 months from the final conviction decision. (2) Where the convicted legal person is unable to pay the full amount of the fine within the time limit provided in paragraph (1), the judge in charge of execution may, at the request of the legal person, order the payment of the fine for not more than 2 years in monthly installments. (3) In the event of non-fulfillment of the obligation to pay the fine within the time limit referred to in paragraph (1) or failure to pay a rate according to the staggering, the executing court shall communicate an extract from that part of the instrument which concerns the application or graduation of the fine to the competent bodies, in order to execute it according to the forced execution procedure of the tax receivables. (1) A copy of the sentence of the conviction shall be communicated, at the date of the final judgment, by the judge delegated to the execution of the legal person concerned and to the body which authorized the establishment of the legal person, registered legal entity, while requesting information on how to carry out the measure.

(2) At the date of the final decision of the conviction to the additional sentence of dissolution, the legal person shall enter into liquidation. Execution of a supplementary punishment for the suspension of the activity of the legal person A copy of the sentence of the conviction that imposed the punishment of the suspension of the activity or of one of the activities of the legal person shall be communicated, at the date of its final resignation, to the body that authorized the establishment of the legal person, who has registered the legal entity, the body which has set up the institution not subject to authorization or registration and the bodies responsible for the control and supervision of the legal person, in order to take the necessary measures. Enforcement of the complementary punishment of the closure of some legal work points A copy of the sentence of the conviction by which the legal person has been subject to the penalty of the closure of some working points shall be communicated to the body which authorized the establishment of the legal entity and to the body which registered the legal person, to the body which has set up the institution not subject to authorization or registration, as well as the bodies responsible for controlling and supervising the legal person, in order to take the necessary measures. Enforcement of the complementary punishment of the legal person's prohibition to participate in public procurement procedures (1) A copy of the sentence of the decision imposing on the legal person the punishment of the prohibition to participate in the public procurement procedures shall be communicated, at the date of the final resignation : a) the Trade Register Office, in order to carry out the formalities of advertising in the trade register; b) the Ministry of Justice, in order to carry out the formalities of advertising in the National Register of legal persons without patrimonial purpose; (c) any authority which keeps records of legal persons for the purposes of advertising formalities. d) the administrator of the electronic public procurement system. (2) A copy of the sentence of the conviction by which the punishment of the prohibition to participate in the public procurement procedures has been applied to shall be communicated to the body which authorized the establishment of the legal entity and the body which registered the legal person, to take the necessary action. Execution of the complementary punishment of placement under judicial supervision (1) The powers of the legal representative regarding the supervision of the activity of the legal person are included in the sentence of the conviction by which the punishment of placement under judicial supervision has been applied.

(2) The judicial mandate cannot substitute the statutory bodies for the management of the activities of the legal person. (1) An extract of the conviction decision concerning the application of the supplementary punishment of the conviction shall be communicated to the convicted legal person at the date of final remission, in order to display it in the form, place and for the period established by the court. (2) An extract of the conviction decision concerning the application of the additional punishment of the publication of the conviction shall be communicated to the convicted legal person at the time of the final resignation, in order to publish the judgment in the form established by the court at its own expense through the written press or audiovisual or other audiovisual media, designated by the court. (3) The convicted legal person shall submit to the enforcement instance the proof of commencement of the execution of the statement or, as the case may be, the proof of execution of the publication of the conviction, within 30 days from the delivery of the judgment, but no later than 10 days from the commencement of the execution, as the case may be, from the execution of the principal sentence.

4. A copy of the conviction, in its entirety or in its extract, shall be communicated at the date of the final stay to the body which authorized the establishment of the legal person, the body which registered the legal person, the body which instituted the institution not subject to authorization or registration, as well as the bodies responsible for the control and supervision of the legal person, in order to take the necessary measures. Supervision of Supplementary Penalties for Legal Entities (1) In the event of non-execution in bad faith of the complementary punishments imposed on the legal entity, the enforcement authority shall apply the provisions of Art. 139 par. (2) or, as the case may be, art. 140 par. (2) or (3) of the Criminal Code. (2) Referring to the court shall be made ex officio by the delegated judge of the enforcement court, according to art. Article 501. (3) The legal person is summoned to the court. (4) Attorney's participation is mandatory. (5) Following the prosecutor's conclusions and the hearing of the convicted legal person, the court shall pronounce by sentence.

***Law no. 211/2011 of 15 November 2011 on waste management***

**Article 61.** - (1) The following facts constitute contravention and is sanctioned as follows:

- a) with a fine from RON 1,000 to RON 2,000, for individuals, and from RON 20,000 to RON 40,000, for legal persons, violation of the provisions of art. 8 para. (1), (2) and (4), art. 13, 14, art. 15 para. (1) let. a) and b), art. 17 para. (2), art. 19 paragraph (2) let. a), c) and d), para. (3) and (4), art. 22 para. (1) and (2), art. 26 para. (1), art. 27 para. (1), art. 28 para. (1), art. 32 para. (1);
- b) with a fine from RON 15,000 to RON 30,000, non-compliance with art. 22 para. (3), Art. 40 para. (3) and Art. 49 paragraph (1), (2), (4) and (5);
- c) with a fine from RON 5,000 to RON 15,000, the non-fulfilment of the obligations and responsibilities of the local public administration authorities, according to the provisions of art. 17 para. (1), art. 31 para. (1) and (3) and art. 59.

**Article 61.** - (1) The offences is punishable by imprisonment from 6 months to 5 years or by fine the following acts:

- a) the importation of utilised, used equipment, machinery, substances and products from the category of waste forbidden upon importation;
- b) failure or non-observance of compulsory measures in carrying out the activities for collection, treatment, transport, recovery and disposal of hazardous waste;
- c) the marketing, abandonment and / or non-insurance of the waste load during the transit of Romania's territory;

- d) the refusal to return to the origin country of waste introduced into the country for purposes other than disposal and for which the measure of return was ordered by the competent authority;
- e) the introduction into the country of waste for disposal and / or non-use for the purpose for which it was introduced;
- f) the acceptance by depositors / incinerators for disposal of waste illegally introduced into the country and / or waste introduced into the country for purposes other than disposal and which could not be used for the purpose for which they were introduced .

(2) The attempt is punished.

***Government Emergency Ordinance no. 5 of 2 April 2015 on Waste Electrical and Electronic Equipment***

Penalties

**Article 43** - (1) Infringements of the provisions of this Government Emergency Ordinance shall constitute contraventions, unless they have been committed under such conditions as to be considered as criminal offences under the criminal law and is sanctioned as follows:

a) by a fine of RON 500 to RON 1,000 for individuals and by a fine of RON 10,000 to RON 20,000 for legal persons:

1. non-observance of the provisions of art. 10 para. (2)4, art. 12 para. (2)5, art. 16 6and art. 39 para. (2);

b) with a fine from RON 30,000 to RON 40,000:

1. non-observance of the provisions of art. 8, art. 9 para. (1) let. a) and b) and para. (4) and (5), art. 11 para. (1)10, art. 1311, art. 27 paragraphs (1), (5) and (6)12, art. 3613, art. 39 para. (1).

c) with a fine from RON 40,000 to RON 50,000:

1. non-observance of the provisions of art. 9 para. (1) let. c) and para. (3), Art. 11 para. (2), art. 17, art. 28 para. (1) and (2), art. 29 para. (1), art. 30 para. (1) and (2), art. 33 para.

2. non-observance of the provisions of art. 14, 20 and 21;

3. non-observance of the provisions of art. 34 para. (1), (3) and (5);

5. non-observance of the provisions of art. 10 para. (5), art. 23 para. (3), art. 27 para. (2)28.

(2) In the case of committing contraventions stipulated in paragraph (1) (c) (5), in addition to sanctioning the contravention penalty, the additional sanction of the temporary suspension of the economic operator's activity until the compliance with the provisions of this Government Emergency Ordinance is applied.

(3) For thermal transfer equipment containing ozone depleting substances and fluorinated greenhouse gases, fluorescent lamps containing mercury, photovoltaic panels and small equipment as set out in categories 5 and 6 of annex no. 2, operators holding an environmental permit according to the provisions of Law no. 211/2011, republished, in the case of committing the offences provided in paragraph (1) let. c) item 2, in addition to the sanction of the contravention fine, the supplementary sanction of the temporary suspension of the activity of the economic operator until the compliance with the provisions of this Government Emergency Ordinance is applied.

(4) If the conditions set out in the suspension act have not been fulfilled, in the situation stipulated in paragraph (2), the competent authority for environmental protection has, after the expiry of the suspension period, to cancel the environmental permit.

***Law no. 249 of 28 October 2015 on how to manage packaging and packaging waste***

**Article 26** - (1) Infringements of the provisions of the present law constitute contraventions, if they have not been committed in such conditions as to constitute offences, and is sanctioned as follows:

- a) with a fine from RON 400 to RON 800 for individuals and a fine from RON 10,000 to RON 20,000 for economic operators in case of non-observance of the provisions of art. 20;
- b) by a fine of RON 2,000 to RON 4,000, in the case of non-observance of the provisions of art. 10 para. (5), art. 11 and 12;
- c) with a fine from RON 4,000 to RON 8,000, in case of non-compliance with the provisions of art. 9 para. (1) and (3) and art. 10 para. (1) - (3);
- d) with a fine from RON 8,000 to RON 15,000, in case of non-compliance with the provisions of art. 13;
- d) with a fine from RON 8,000 to RON 15,000, if the provisions of art. 13 para. (1);
- e) with a fine from RON 10,000 to RON 20,000, in case of non-observance of the provisions of art. 17 para. (1) - (3);
- f) with a fine from RON 15,000 to RON 25,000:
  - 1. non-observance of the provisions of art. 5 para. (1) and (2)<sup>37</sup>, art. 8 para. (1)<sup>38</sup>, art. 10 para. (4) and art. 16 para. (6), (7), (9), (11) and (14);
  - 1. 2. non-observance of the provisions of art. 5 para. (3) and (4)<sup>41</sup> and art. 16 para. (8).

***Water Law no. 107 of September 25, 1996***

**Article 92.** - (1) Evacuation, disposal or injection into surface and underground waters, in inland waterways or in territorial sea waters of waste water, waste, residues or products of any kind containing substances, bacteria or microbes in quantity or concentration that can change the characteristics of the water, endangering the life, health and physical integrity of individuals, animal life, the environment, agricultural or industrial production or the fish stock, constitutes a crime and is punished by imprisonment from one year to five years.

(2) With the punishment stipulated in paragraph (1) the following acts shall also be sanctioned:

- a) pollution in any way of water resources if it is systematic and produces damage to downstream water users;
- b) the storage of the nuclear fuel or the waste resulting from its use in the major river bed;
- c) endangering the contours of the accumulation lakes through the exploitation of mineral aggregates in the main bed or terraces.

***Government Emergency Ordinance no. 57 of 20 June 2007 on the regime of protected natural areas, conservation of natural habitats, wild flora and fauna***

**Article 53** - (1) It is a contravention and is sanctioned by a fine of RON 3,000 to RON 6,000 for natural persons and from RON 25,000 to RON 50,000 for legal persons the following acts:

- m) the non-removal by natural or legal persons of the waste generated by their own activities in the protected natural areas.



## ***Customs Code***

**Article 271** - The introduction into or removal from the country of arms, munitions, explosives, precursors of explosives, drugs, precursors, nuclear materials or other radioactive substances, toxic substances, wastes, residues or dangerous chemical materials is considered skilled smuggling and is punished by imprisonment from 3 to 12 years and banning certain rights if the criminal law does not provide for a greater punishment.

### **Law no. 211/2011, republished on waste regime**

**Article 63.** (1) The following acts is punishable by a penalty of imprisonment from 6 months to 5 years or by fine:

- a) the importation of used and frayed equipment, machinery, substances and products from the category of waste forbidden to importation;
- b) failure or non-observance of compulsory measures in carrying out the activities for collection, treatment, transport, recovery and disposal of hazardous waste;
- c) the marketing, abandonment and / or non-insurance of the waste load during the transit of Romania's territory;
- d) the refusal to return to the original country of waste introduced into the country for purposes other than disposal and for which the measure of return was ordered by the competent authority;
- e) the introduction into the country of waste for disposal and / or non-use for the purpose for which it was introduced;
- f) the acceptance by depositors / incinerators for disposal of waste illegally introduced into the country and / or waste introduced into the country for purposes other than disposal and which could not be used for the purpose for which they were introduced .

(2) The attempt is punished.

### ***Law no. 101/2011 for the prevention and sanctioning of deeds related to environmental degradation***

**Article 3.** The collection, transport, recovery or disposal of waste, including the oversight of such operations and the subsequent maintenance of the disposal sites, as well as actions taken by the brokers in the waste management process, in breach of the legal provisions in the field, which may cause death serious harm to a person or significant damage to the environment is a criminal offences and is punishable by imprisonment from 6 months to 3 years.

**Article 4.** Export of waste in breach of the legal provisions in the field, if this activity falls within the scope of art. 2 point 35 of Regulation (EC) No. No 1.013 / 2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, published in the Official Journal of the European Union, no. L 190 of 12 July 2006, regardless of whether the carriage is performed by one or more operations, is punished by imprisonment from 2 to 7 years.

**Article 5.** Operation of a facility in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used which cause the death or serious injury of a person or significant damage outside the installation brought to the environment, constitutes an offences and is punished by imprisonment from 6 months to 5 years.

**Article 6.** (1) Trade in specimens of protected wild fauna or flora species or parts or derivatives thereof, in violation of the legal provisions in the field, except when the detriment affects a small quantity of such specimens and has an insignificant impact on the conservation status of the species, is punished by imprisonment from 3 months to one year or a fine.

(2) If the trade is performed with fauna species from those stipulated in art. 33 para. (1) and (2) of Government Emergency Ordinance no. 57/2007 on the regime of natural protected areas, conservation of natural habitats, wild flora and fauna, approved with amendments and completions by Law no. 49/2011, the sanctions provided in art. 52 para. (1) of the Government Emergency Ordinance.

**Article 7.** The production, import, export, placing on the market or use of ozone-depleting substances in violation of legal provisions in the field is punished by imprisonment from 6 months to 3 years.

**Article 8.** (1) Discharging, issuing or introducing, in violation of the legal provisions in the field, a quantity of material in air or soil that may cause death or serious injury to a person or significant damage to the environment shall constitute an offences and is punishable by imprisonment from 1 to 5 years.

(2) The disruption, emission or introduction of sources of ionizing radiation into air, water or soil that may cause death or serious injury to a person or significant damage to the environment, in breach of legal provisions in the field, constitutes an offense and is punishable with imprisonment from 1 to 5 years.

**Article 9.** (1) The production, handling, processing, treatment, temporary or permanent disposal, import, export, in violation of the legal provisions in the field, of nuclear material or dangerous radioactive material constitutes a crime and is punished by imprisonment from 3 months to 10 years.

(2) If the deeds referred to in para. (1) caused public danger, had any of the consequences shown in art. 181 or 182 of the Penal Code or have caused damage, the punishment is imprisonment from 1 to 12 years and the prohibition of certain rights.

(3) If the facts provided in para. (1) had particularly serious consequences, within the meaning of Art. 146 of the Penal Code, the punishment is imprisonment from 10 to 20 years and the prohibition of certain rights, and if death of one or more persons has occurred, the punishment is life imprisonment or imprisonment from 15 to 25 years and the prohibition of certain rights.

(4) The attempt is punished.

***Government Emergency Ordinance no. 195/2005 on environmental protection***

**Article 98.** (1) Infringements and punishable by imprisonment from 3 months to one year or the following shall be punished, if they were likely to endanger human, animal or plant life or health:

- a) the burning of stalks, reeds, hedges and grass vegetation in protected areas and on lands subject to ecological restoration;
- b) producing noises beyond the permissible limits if this seriously endangers human health;
- c) the continuation of the activity after the suspension of the environmental agreement or the authorization, respectively the integrated environmental permit;

- d) the import and export of prohibited or restricted hazardous substances and preparations;
- e) failure to immediately report any major accident by persons in charge of this obligation;
- f) production, delivery or use of chemical fertilizers and any unauthorized plant protection products for crops intended for marketing;
- g) non-observance of the prohibitions on the use on agricultural lands of plant protection products or chemical fertilizers.

(3) The following are considered as offences and shall be punished by imprisonment from 6 months to 3 years if they were likely to endanger human, animal or plant life or health:

- a) failure to supervise and failure to deposit waste and hazardous substances as well as the failure to the storage of fertilizers and plant protection products packaged in protected only;
- b) the manufacture or import for the marketing and use of dangerous substances and preparations compliance with laws in force and the introduction in Romania of waste of any kind to eliminate them;
- c) the transport and transit of dangerous substances and preparations, in violation of the legal provisions in force;
- d) carrying out activities with genetically modified organisms or products thereof, without requiring and obtaining the import / export agreement or the authorizations stipulated by the specific regulations;
- e) cultivation of genetically modified higher plants for testing or for commercial purposes, without registration prescribed by law.

(4) The following acts are punishable by one year to five years' imprisonment if they are likely to endanger human, animal or plant life or health:

- a) the challenge, due to unsupervised sources of ionizing radiation, the contamination of the environment and / or the exposure of the population to ionizing radiation, the omission to promptly report the increase beyond the permissible limits of the environmental contamination, the inappropriate application or the non-intervention in the case of nuclear accident;
- b) discharging waste water and waste from ships or floating platforms directly into natural waters or knowingly causing pollution by discharging or immersing in dangerous waters, directly or from floating ships or platforms, dangerous substances or wastes .

(5) The following committed deeds are punishable by imprisonment from 2 to 7 years:

- a) the continuation of the activity that caused the pollution after ordering the cessation of this activity;
- b) failure to take measures for the complete disposal of hazardous substances and preparations which have become waste;
- c) refusal to intervene in case of accidental pollution of waters and coastal areas;
- d) the refusal to control the introduction and removal of dangerous substances and preparations from the country or the introduction into the country of crops of living microorganisms, plants and animals from wild flora and fauna without the consent of the central public authority for environmental protection.

(6) The attempt is punished.

**Article 99.** (1) The detection and investigation of offences are made from bureau by the criminal prosecution bodies, according to the legal competences.

(2) The discovery and establishment, in the exercise of the duties provided by the law, by the commissioners of the National Environmental Guard, the National Commission for Nuclear Activities Control, the gendarmes and the authorized personnel of the Ministry of National Defence, of committing any of the offences provided in art. 98, shall immediately notify the competent criminal investigation body according to the law of criminal procedure.

***Law no. 107/1996 - Water Law***

**Article 92.** (1) Exhausts, discharges or injection into surface waters and underground waters, in inland waterways or in territorial sea waters of waste waters, waste, residues or products of any kind containing substances, bacteria or microbes in quantity; or a concentration that can change the characteristics of the water, endangering the life, health and the integrity of persons' body, animal life, the environment, agricultural or industrial production or the fish stock is a crime and is punishable by imprisonment from one year to five years,

(2) With the punishment stipulated in paragraph (1) the following acts are also be sanctioned:

- a) pollution in any way of water resources if it is systematic and produces damage to downstream water users;
- b) the storage of the nuclear fuel or the waste resulting from its use in the major river bed;
- c) endangering the contours of the accumulation lakes through the exploitation of mineral aggregates in the main bed or terraces.

(3) The storage or use of chemical fertilizers, pesticides or other dangerous substances in water protection areas constitutes an offense and shall be punished by imprisonment from 3 months to 2 years or by fine.

(4) If the deeds referred to in para. (1) and (2) have been committed by fault, the special limits of the penalties are reduced by half.

(5) Attempting to the offences provided in paragraph (1) - (3) is punished.

***Government Decision (GD) no. 857/2011 on the establishment and sanctioning of contraventions to the public health norms***

Chapter VI Contraventions to Hygiene Standards for Public Use Units

**Article 18.** - It is a contravention and is sanctioned by a fine from RON 1,000 to RON 3,000 for natural persons, respectively by a fine of RON 5,000 to RON 10,000 for legal persons the following acts:

d) non-observance of hygienic sanitary norms for medical and dental offices, regardless of profile, according to the legal regulations in force:

(ii) improper management of waste resulting from medical activities;

Chapter VIII Contraventions to the rules on the prevention and control of communicable diseases and hygiene standards for sanitary units

**Article 31.** - It is a contravention and is sanctioned by a fine of RON 600 to RON 1,200 for individuals, respectively by a fine of RON 3,000 to RON 7,500 for legal persons the following facts:

- a) non-observance of the way of collection, storage, transport and treatment of medical waste, according to the legal regulations in force;
- b) the absence of records of the management of waste from medical activities at the level of the medical units and of those who provide their transport, treatment and incineration;
- c) the non-existence and, as the case may be, non-compliance with the internal plan for the management of waste from medical activities;
- d) non-observance of the conditions for temporary storage of waste from medical activities, in accordance with the legal regulations in force;
- e) the transport of dangerous waste resulting from medical activity with means of transport other than those approved for this purpose by the structures of the Ministry of Health and which do not meet the conditions established by the norms in force;
- f) failure to ensure functional circuits, as well as the proper management of waste resulting from medical activity, in accordance with the legal regulations in force;
- g) the use of packaging not complying with the requirements imposed by the rules for the collection of hazardous waste;
- h) depositing of medical waste in common containers of residential buildings or other unauthorized places.

#### Chapter XV Finding contraventions and applying sanctions

**Article 59.** - (1) The finding of contraventions and the application of the sanctions provided by the present decision shall be carried out as a result of the public health control activities exercised in the fields of competence established in accordance with the legal provisions in force by the following categories of personnel:

- a) the specialized personnel empowered by the Ministry of Health, the central authority in the public health field, for the units throughout the country;
- b) the specialized personnel of the departments, services and medical units of the other ministries and institutions with own sanitary network, defined in art. 4 para. (2) of the Law no. 95/2006, as amended and supplemented, empowered by their management for units under their direct authority;

#### ***GD no. 1061/2008 on the transport of hazardous and non-hazardous waste on the territory of Romania***

#### Chapter I General provisions

**Article 1.** (3) The waste shipment shall be carried out only to the economic operators holding an environmental permit according to the legislation in force for the temporary collection / storage / treatment / recovery / disposal activities.

#### Chapter II Transport of hazardous waste

**Article 6.** (2) The consignee of hazardous waste shall submit to the Environmental Protection Agency within the radius of which a copy of the Dangerous Goods Shipment / Shipment Form, signed and stamped, in accordance with the provisions of the present judgment.

**Article 11.** (2) In the event of an accident during transport, the hazardous waste transporter shall immediately notify the Emergency Inspectorate and the Environmental Protection Agency within the district where the incident occurred.

**Article 13.** - After the temporary / collection / treatment / recovery / disposal operations, the consignee signs and stamps the Dangerous Goods Shipment / Shipment Form, stating that the collection / temporary storage / treatment / recovery / disposal of hazardous waste carried out in accordance with the legislation in force, and shall send a copy thereof to:

- a) the shipper of dangerous waste;
- b) the county agency for the protection of the environment in whose territory the dispatcher of dangerous waste is located;
- c) the county environmental protection agency in whose territory the treatment / recovery / disposal facility is located.

**Article 14.** - (1) The emergency department of the county in whose territory the dispatcher is located, upon receipt of a copy of the form for the approval of the dangerous waste road transport and of a copy of the form for shipment / transport of dangerous waste, notifies , 48 hours before the approved transport, all the county emergency inspectorates, as well as the county police inspectorates in the counties will be transited and the destination for the execution of the transport of hazardous wastes and its characteristics.

(2) In the case of the railway and naval transport of hazardous waste, subject to the provisions of paragraph (1) the Emergency Inspectorate of the county in whose territory the dispatcher is located shall notify the regional transport police sections to be transited and the destination of the hazardous waste transport and its characteristics.

#### Chapter IV Transport of non-hazardous waste

**Article 19.** - The transport of non-hazardous waste shall be carried out on the basis of the non-hazardous waste loading / unloading form, the model of which is set out in Annex no. 3.

#### Chapter V Transport of medical waste

**Article 24.** - (1) The management of waste resulting from medical activities shall be performed in accordance with the Technical Norms on Waste Management resulting from Medical Activities and Data Collection Methodology for the National Databank on Wastes Resulting from Medical Activities, approved by Order of the Minister of Health no. 219/2002, as subsequently amended and supplemented.

(2) Waste packaging whose packaging is not labelled with the following information shall not be accepted: identification data of the sanitary unit, section / laboratory, quantity and date of filling.

(3) The transport of hazardous waste resulting from medical activity shall be carried out taking into account the following:

- a) all vehicles used for transporting hazardous waste resulting from medical activity shall be evaluated by the Ministry of Public Health through the public health institutes on the basis of a methodology approved by order of the Minister of Public Health within 60 days from the entry in force in the present retribution. Inside the vehicles, hazardous waste resulting from medical activity is transported in plastic containers with a cap, type europubel, in vertical position;
- (b) the vehicle used for the transport of hazardous waste resulting from medical activity must meet the following requirements:
- (i) be designed, specially arranged and used only for the transport of hazardous waste resulting from medical activity;
  - (ii) be a van or a vehicle with the maximum authorized mass;
  - (iii) the container compartment is separated from the driver's cabin, made of washable and steam-resistant materials and chemical agents used for cleaning and disinfection;
  - (iv) to have plastic containers with a cap, in the form of a wheelie bin type, in which waste packaged during transport is safely stored;
  - (v) have container fastening devices during transport;
  - (vi) contain systems to prevent the spread of hazardous waste in the environment in the event of an accident;
  - (vii) permanently exist a kit or a mini-compartment containing plastic bags, protective equipment, cleaning equipment, disinfection, first aid kit;
  - (viii) be fitted with kits in accordance with the provisions of the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR);
  - (ix) the container compartment shall be provided with air-cooling systems: air conditioning, refrigeration equipment;
  - (x) the vehicle will be marked and imprinted with the identification data of the carrier on both sides, the activity "Transport of hazardous waste resulting from medical activity", the "Biological Danger" icon and the A.D.R.;
- d) the transport of hazardous wastes from the medical unit where they occur and which is the sender of the waste and to the consignee of the waste, represented by the facility in which they are treated or eliminated, shall be carried out in compliance with the provisions of the present decision.
- (4) For all quantities of hazardous waste resulting from medical activity, the carrier - even if it is the consignee - shall comply with the provisions of art. 1 to 17, specifying in the forms, the models of which are presented in Annexes no. 1 and 2 the exact cumulative quantity, by weighing to shippers, on a shipment in a given area. The form will contain an attachment with the senders and individual quantities.

## Chapter II Transport of hazardous waste

**Article 4.** - (1) The shipment of hazardous waste shall be carried out by the generator or keeper, hereinafter referred to as the sender, to the economic operator performing the temporary collection / storage / treatment / recovery / disposal operation, hereinafter referred to as the consignee, in compliance with the provisions of this judgment.

(2) The consignor shall complete a form for the approval of the transport of hazardous wastes, the model of which is given in Annex no. 1.

(3) The form for the approval of the transport of hazardous waste, signed and stamped, shall be forwarded to the consignee of the hazardous waste.

(4) The consignee of the hazardous waste, upon receipt of the form for the approval of the transport of hazardous waste, may accept the transport or request additional information from the sender. If the consignee accepts the transport, he signs and stamps the form for the approval of the transport of hazardous waste.

(5) The form for the approval of the transport of hazardous wastes, signed and stamped by the consignee, shall be sent to the county environmental protection agency in whose territory the treatment / recovery / disposal facility is located, in order to obtain from it the approval for carrying out transport of hazardous waste, the maximum response time being 7 working days after receipt of all required information.

(6) When establishing the consignee and the route for transporting hazardous waste, the consignor shall, as far as possible, take into account the principle of proximity, which requires that waste be recovered and disposed of as close as possible to the place of generation.

(7) The County Agency for Environmental Protection in whose territory the treatment / recovery / disposal facility is located has the following attributions:

a) to sign and stamp the form for the approval of the transport of hazardous waste only after verifying and analysing the information provided, if it agrees with the treatment, recovery or disposal operations applied to the hazardous waste by the consignee;

b) request additional information from the shipper of the hazardous waste, from the operator of the treatment / recovery / disposal facility or from the National Environmental Guard, as the case may be;

c) to verify that the transport of hazardous waste complies with the regime of protected natural areas and “Natura 2000”<sup>43</sup> sites.

(8) The form for the approval of the transport of hazardous waste signed and stamped according to the provisions of para. (7) let. a) is transmitted as follows:

a) the hazardous waste shipper and the county environmental protection agency within whose territory it is located by the county environmental protection agency in whose territory the treatment / recovery / disposal facility is located;

b) the Emergency Inspectorate of the county in whose territory the dispatcher is located for the authorization of the transport of dangerous waste by the sender.

(9) The hazardous waste transport route shall be established by the shipper and the carrier, taking into account as much as possible the bypass of the cities, and shall be authorized by the emergency inspectorate of the county in whose territory the dispatcher is located; - they are in the accompanying documents for the transport of hazardous waste.

(10) The form for the approval of the transport of hazardous wastes shall be made out in 6 original copies and shall be kept as follows:

a) one copy to the consignor;

b) one copy to the consignee;

c) one copy to the carrier;

d) a copy of the county environmental protection agency which has approved the transport of dangerous waste;

<sup>43</sup> an ecological network of protected areas that aims to maintain in a favourable conservation status a selection of the most important types of habitats and species in Europe.



e) a copy of the emergency county inspectorate of the county in which the hazardous waste shipper is located;

f) a copy of the county environmental protection agency in whose area the hazardous waste shipper is located.

(11) The provisions of paragraph (1) to (10) shall also apply if the consignor of the hazardous waste, the carrier and the consignee are the same economic operator.

## Chapter II Transport of hazardous waste

**Article 7.** - Every shipment of hazardous waste that is generated in excess of 1 tonne / year of the same hazardous waste category shall be accompanied by the Dangerous Goods Shipment / Shipment Form and the Approval Form for the Transport of Dangerous Waste.

**Article 8.** - The consignor shall complete, sign and stamp the shipment form/ shipment of hazardous waste.

**Article 14.** (3) If transport of hazardous waste of the same category to the same consignee is carried out, following the same transport route set out in the form for the approval of the transport of hazardous waste, with a frequency exceeding one transport per month, the sender is obliged to submit to the Inspectorate for Emergency Situations the form of dispatch / transport of hazardous waste only when the first transport is carried out.

(4) As from the second shipment of hazardous waste referred to in paragraph (3), the consignor is required to inform the Inspectorate of Emergency Situations 48 hours prior to each shipment of hazardous waste by fax, telephone note or e-mail. The information sent to the Inspectorate for Emergency Situations shall specify the quantity of hazardous wastes to be transported, the number of the hazardous waste shipment approval form and the carrier identification data as set out in the Dangerous Goods Shipment / Shipment form.

(5) Dangerous Goods Shipment / Shipment Forms set for the Transport of Dangerous Wastes Subject to para. (3) shall be retained by the consignor, the carrier and the consignee, the latter being required to report annually to the environmental protection agency within whose territorial jurisdiction the hazardous waste has been recovered or disposed of in accordance with the legal provisions.

## Chapter IV Transport of non-hazardous waste

**Article 20.** - (1) The non-hazardous waste destined for disposal shall be transported from the sender to the consignee and shall be controlled on the basis of the special non-hazardous waste loading and unloading form.

(2) The non-hazardous waste loading / unloading form shall be completed by the sender in 3 copies and shall be kept as follows: one signed and stamped copy to the consignor, one to the transporter, signed, completed with the personal numerical code of the person transporting the waste; with the registration number of the means of transport and the latter is transmitted to the consignee via the carrier.

(3) After the signature and stamping of the loading / unloading form by the consignee, the latter sends it to the sender by fax or by mail with acknowledgment of receipt.

(4) Every shipment of non-hazardous waste shall be accompanied by a non-hazardous waste loading / unloading form.

(5) The non-hazardous waste loading / unloading form is registered by the consignee in a secured serial number and numbered on each page.

**Article 21.** - The transport and control of non-hazardous waste destined for temporary collection / treatment / recovery / disposal operations shall be performed on the basis of the nonhazardous waste loading / unloading form completed and signed by the shipper, the transporter and the consignee of non-hazardous waste.

#### Chapter II Transport of hazardous waste

**Article 9.** - (1) The carrier shall sign and stamp the form of shipment / transport of hazardous waste upon receipt of hazardous waste.

(2) The carrier shall transport the hazardous waste on the approved route in the approval form for the transport of hazardous waste and hand it over to the consignee.

**Article 10.** - (1) The consignee, upon receipt of hazardous waste, signs and stamps the dangerous waste shipment / transport form, confirming the acceptance of hazardous waste.

(2) The consignee shall be required to take a sample of each shipment of hazardous waste and to keep it safely and appropriately labelled for at least three months.

**Article 12.** - The Dangerous Goods Shipment / Shipment Form shall be drawn up in 6 copies and kept in the same manner as the form for the approval of the transport of hazardous waste, as provided in Art. 4 para. (10).

**Article 15.** (2) In the case of the transports provided for in paragraph (1) the Dangerous Goods Shipment / Shipment Form shall be drawn up in 3 copies, which shall be kept as follows: a copy to the hazardous waste shipper, a copy to the consignee of the hazardous waste and a copy to the hazardous waste transporter.

#### Chapter III Transport of hazardous waste for collection or temporary storage

**Article 18.** (3) For each stage between the two stipulated in para. (1) the transport of hazardous waste is carried out in compliance with the provisions of art. 1 - 17. For each stage, the forms provided in the models presented in Annexes no. 1 and 2.

#### Chapter IV Transport of non-hazardous waste

**Article 22.** - (1) The loading / unloading form on which the transport and control of non-hazardous waste destined for temporary collection / storage / treatment / recovery / disposal is carried out shall be kept as follows: a copy to the consignor, a copy to the consignee and a copy to the waste transporter.

(2) The consignor, consignee and transporter of non-hazardous waste shall be obliged to submit the non-hazardous waste loading / unloading form at the request of the bodies authorized by law to carry out control on waste management.

**Article 23.** (2) The economic operators stipulated in para. (1) transporting its non-hazardous waste, such as production waste and municipal waste, must complete the non-hazardous waste loading / unloading form.

## Chapter VI Penalties

**Article 25.** - (1) Infringement of the provisions of the present decision shall entail civil or contravention liability, as the case may be.

(2) The following facts constitute contraventions and are sanctioned as follows:

a) abandonment of the waste on the route by the transport operators, non-observance of the provisions of art. 1 para. (3), Art. 6 para. (2), art. 11 para. (2), art. 13, art. 14 para. (1) and (2), art. 19 or art. 24 paragraph (1), (2), (3) let. a), b) and d), para. (4) with a fine from RON 15,000 to RON 30,000;

b) non-observance of the provisions of art. 4, 7, 8, art. 14 para. (3) - (5), art. 20 and 21, with a fine from RON 10,000 to RON 20,000;

c) non-observance of the provisions of art. 9, 10, 12, art. 15 para. (2), art. 18 para. (3), Art. 22 and art. 23 para. (2), with a fine from RON 5,000 to RON 10,000;

d) the transport of municipal waste by unauthorized operators for the provision of the sanitation service in the localities, with a fine of RON 3,000 to RON 6,000.

(3) In the case of committing the offences provided in paragraph (2) let. a) applies in addition to the main contravention sanction and the complementary contravention sanction of confiscation of the means of transport destined or used for committing the deed.

(4) The means of transport confiscated according to para. (3) shall be capitalised under the conditions stipulated by the Government Ordinance no. 14/2007 for the regulation of the manner and conditions of capitalization of the assets entered, according to the law, in the private property of the state, approved with amendments by Law no. 274/2007, as amended and supplemented.

(5) If the measure of seizure of the means of transport is ordered, the investigating officer shall take the necessary measures for the transport of the waste to the economic operators holding an environmental permit according to the legislation in force for the treatment / recovery / disposal activities, all the expenses being borne by the offender.

**Article 26.** - Establishment of contraventions and application of the sanctions provided in Art. 25 shall be made by the empowered personnel of the Ministry of Environment and Sustainable Development and the Ministry of Interior and Administrative Reform, together with the personnel empowered by the Ministry of Agriculture and Rural Development, the Ministry of Transport, the Ministry of Public Health or the Ministry of Economy and Finance, as the case may be, according to the competencies of the nominated institutions.

***Law no. 111/1996 on the safe conduct, regulation, authorization and control of nuclear activities, republished, as subsequently amended and supplemented***

**Article 44.** (1) The carrying out of an activity as provided in art. 2, art. 24 paragraph (1), art. 28 para. (2) and art. 38 para. (1), without the appropriate authorization provided by the law, as well as the non-observance of art. 38 para. (21) and (22) constitute an offense and are punished as follows:

a) by imprisonment from 6 months to 2 years or by fine, the activities stipulated in: art. 2 let.

(a) relating to the research, design, possession, location, construction or installation, conservation of nuclear installations; art. 2 let. b); art. 2 let. d) regarding the means of transporting or transporting radioactive materials, specially designed for this purpose; art. 2 let. g) art. 24 paragraph (1) and art. 38 para. (1);

b) with imprisonment from 2 to 7 years and the prohibition of certain rights, non-observance of art. 38 para. (21) and (22) and the unauthorized carrying out of activities provided for in: art. 2 let. (a) with regard to putting into service, testing, exploiting, modifying, decommissioning, importing and exporting nuclear installations; art. 2 let. (c) whether radiological installations, nuclear or radioactive materials, radioactive waste and radiation generators present a particular nuclear or radiological risk; art. 2 let. e) and f) and art. 28 para. (2), if nuclear or radioactive materials, radioactive waste and radiation generators present a particular nuclear or radiological risk.

(2) Attempting to the offences provided in para. (1) let. b) is punished.

**Article 45.** - (1) Discharge of all or part of the surveillance and control equipment installed in accordance with Art. 31 para. (1) let. b) and para. (2) without reasons arising from the requirements of nuclear safety or protection against ionizing radiation, if the deed is not a more serious offences, shall be punished by imprisonment from 3 months to 2 years or by fine.

(2) If the deed provided in para. (1) is committed by fault, the penalty is imprisonment from one month to one year or a fine.

(3) Preventing by any means the representatives of the National Commission for the Control of Nuclear Activities at any place where the activities under control are carried out constitutes an offences and shall be punished by imprisonment from one year to 5 years and the prohibition of certain rights.

(4) Preventing, without right, in the event of a nuclear accident, the intervention of the intervention personnel within the perimeter of the areas where the nuclear activities are carried out constitutes an offences and shall be punished by imprisonment from 2 to 7 years and the interdiction of some rights.

(5) The penetration, without right, in any way in a space, room or delimited and marked area in which the nuclear activities referred to in art. 2 let. a) -f), without the consent of the person using them, or the refusal to leave them at his / her request is a criminal offences and shall be punished by imprisonment from one year to 5 years.

**Article 46.** - (1) The development, manufacture, possession, import, export, transit or detonation of nuclear weapons or any other nuclear explosive devices shall be punished by imprisonment from 10 to 25 years and the interdiction of certain rights.

(2) The attempt is punished.

**Article 48.** - The following acts are contravened:

a) non-compliance with the reporting obligations provided in art. 25 para. (1) let. b) and art. 31 para. (1) let. f);

b) non-observance of the limits and conditions stipulated in the permits issued in accordance with the provisions of art. 8;

c) failing to comply with the written provisions, with acknowledgment of receipt, by the Commission, or by means of a control report, by its representatives within the prescribed time limit;

d) use in the activities provided in art. 2 staff not having the necessary training, unqualified or rejected staff at the regular examinations or staff who does not have the appropriate exercise permit provided in art. 9;

- (e) the use of staff who do not prove the necessary knowledge or skills or do not apply them in the course of their work, with implications for the operation of the nuclear or radiological installation under nuclear safety, on the risks associated with the applicable nuclear safety measures;
- f) breach of the provisions of art. 25 para. (1) let. (a) by persons having the right of decision making control in the management of the works, during the construction, operation or decommissioning of the nuclear or radiological installation;
- g) non-compliance with the obligations stipulated in art. 25 para. (1) let. d) if this generates unacceptable risks of any nature;
- h) the use by authorized persons of radioactive materials, ionizing radiation generating devices or nuclear installations entrusted for other purposes or for operations other than those intended for the performance of their duties;
- i) the exercise of nuclear activities without the appropriate exercise permit provided in art. 9;
- j) failure to request the reauthorization, within the deadline established by the specific regulations, before the expiry of the old authorization;
- k) unauthorized manufacture and supply of dosimetric control apparatus for ionizing radiation and materials and devices used for protection against ionizing radiation;
- l) non-observance of the notification and reporting obligations provided in art. 25 para. (1) let. f) and g) at the deadlines established by the specific regulations;
- m) unauthorized performance of an activity provided under art. 2 let. (c) where the Commission finds that nuclear or radioactive materials, radioactive waste and radiation generators are not of particular nuclear or radiological risk;
- n) violation of the provisions of art. 16 para. (3);
- o) violation of the provisions of art. 25 para. (1) let. c), but art. 26 and 27;
- p) violation of the provisions of art. 28 para. (2) in cases where the Commission finds that nuclear or radioactive materials, radioactive waste and radiation generators do not present a particular nuclear or radiological risk;
- q) non-observance of the notification obligation according to the provisions of art. 71(1), as well as the obligation to take verification measures according to art. 29;
- r) non-compliance with the obligations stipulated in art. 31 para. (1) let. e) granting access to Commission representatives.

***Government Ordinance no. 14 (\* Republished \*) of 31 January 2007***

**Article 1.** - (1) The assets of any kind, entered under the law, in the private property of the state shall be capitalised under the terms of the present ordinance by the National Agency for Fiscal Administration through the competent capitalization bodies, unless otherwise provided by law.

(11) Goods belonging to the private property of the state which are not on the territory of Romania shall be capitalized by the Ministry of Foreign Affairs.

(2) They are exempted from the provisions of para. (1) goods which do not meet the legal conditions of marketing.

(3) The goods referred to in paragraph (2) shall be destroyed at the expense of the natural or legal persons from whom they were confiscated or the holder, if they can not be identified. The destruction shall be carried out in the presence and with the signing of a takeover and destruction commission made up of representatives of the holder, the National Authority for Consumers Protection, the Recovery Authority, the Ministry of Internal Affairs and the Ministry of Environment.

(4) The destruction of drugs, precursors, medicaments, medical consumables, materials of the nature of objects of medical inventory and of medical devices, toxic substances, radioactive materials and confiscated explosives precursors shall be carried out under the conditions provided for in the special laws regulating the regime of these substances.

Declaration and takeover of property entered into the private property of the state

**Article 4.** - (1) The declaration of the property that has passed into the private property of the state shall be made to the recovery bodies within 10 days from the date of receipt by the holder of the document constituting the ownership of the state over them.

(2) The property that has become private property of the state shall be declared and surrendered to the organs of valorisation after the taking of the act in the private property of the state, stipulated in art. 3, became enforceable, according to the law.

**Article 5.** - (1) Owners of goods that have passed into the private property of the state, natural or legal persons, as the case may be, are obliged to inventory the respective goods, while taking the appropriate security, conservation and conservation measures up to their actual handing over to the recovery bodies.

(2) They are exempted from the provisions of para. (1) the following categories of goods:

(a) medicinal products, medical supplies, medical devices, toxic substances, radioactive materials, cultural heritage assets, historical documents, archive materials, objects, wood materials, metal detectors, ivory, and any goods the sale of which is prohibited by law and which are handed over to the specialized bodies of the competent state to handle such goods in accordance with the law;

b) means of payment in non-convertible currency deposited with the National Bank of Romania under the terms of the law;

c) Firearms, ammunition, explosives and military goods, which shall be handed over free of charge to the Romanian Police, to the Ministry of National Defense or, as the case may be, to other authorized legal entities, provided for by the legislation on the Weapons and Ammunition regime.

(3) The goods referred to in paragraph (2) shall be assessed, used, exploited, destroyed or accommodated by the specialized bodies that have taken over them, dispensing them according to their legal duties.

(4) The amounts obtained as a result of the valorisation of the goods provided in paragraph (2) shall be paid to the state budget, within 5 working days after receipt, after deduction of expenses incurred in accordance with the legal provisions in force, as well as other deductions provided for by special laws.

(5) They are exempted from the provisions of para. (4) the amounts resulting from the capitalization of goods subject to the legislation in force on the exclusive right of religious denominations for the production of objects of worship, which remain at the disposal of religious denominations.

(6) Drug precursors shall be exploited by the recovery bodies only to an operator with classified substances, according to the legislation on the legal regime of drug precursors.

Evaluating and capitalizing on property entered into the private property of the state

**Article 6.** - (1) The handing over of the property entered into the private property of the state is made

by the holders to the recovery bodies.

(2) The goods shall be handed over by the owners to the recovery bodies, who are obliged to take over the goods within 10 days from the date of receipt by the holder of the document constituting the title of state ownership thereof.

(4) The evaluation committee is composed of 5 members: 3 representatives of the recovery body, one representative of the National Authority for Consumer Protection and one representative of the owner of the respective goods.

(41) When recovery involves property seized in criminal proceedings, the Evaluation Commission may also include a representative of the National Agency for the Management of Unavailable Utility. In this case, the Evaluation Committee consists of 5 members: 2 representatives of the Recovery Authority, one representative of the National Agency for Undisclosed Assets, one representative of the National Authority for Consumer Protection and one representative from the Ministry of Internal Affairs.

(42) Where the representative of the National Agency for the Administration of Undisputed Assets does not participate in the valuation, the goods shall be valued in the absence thereof.

(5) Travel and accommodation expenses shall be paid to the members of the evaluation committee by the institution which has appointed it. In addition, the Romanian Police ordered the confiscation measure, according to Law 171/2010.

***Law no. 171/2010 on the establishment and sanctioning of forestry offences provides for complementary contravention sanction - seizure of the goods destined, used or resulted from the committing of the forestry contravention***

**Article 24.** (1) The following observing officers have the obligation and the right to carry out the control, to establish forest contraventions and to apply the sanctions provided in the present law:

a) the forestry personnel within the central public authority responsible for forestry and its forestry territorial structures, empowered for this purpose;

b) the forestry staff from the state forestry fund administrators - for the forestry offences committed in the forestry fund that it manages / provides forestry services or which it takes for the management / insurance of the forestry services, as well as for controlling the application of the rules on circulation of wood materials;

c) the forestry staff of the higher-ranking structures and of the regime's dwellings - for the forestry offences committed in the forest fund that it manages / provides forestry services, as well as for exercising the control over the application of the norms regarding the circulation of the wood materials;

d) officers and police officers of the Romanian Police - for finding contraventions and applying sanctions for the deeds stipulated in art. 3 para. (3) let. a) and b), art. 5 ^ 1 let. b), art. 6 let. c) and d), art. 7 para. (1) let. a) -c) and e), art. 8, art. 9, art. 11, art. 12, art. 15 para. (1) let. f), art. 16 para. (1) let. a), b) and e), art. 17 let. c) and d), art. 19 para. (1) - (3), para. (4) let. a), g), l) and m) and art. 21;

d1) officers and police officers of the Romanian Border Police - for finding contraventions and applying sanctions for the acts provided for in art. 8 para. (1) and (2), art. 9 let. b), art. 11 let. d), art. 12 let. f) and h), art. 19 para. (1) - (3) and art. 21;

e) the officers and non-commissioned officers of the Romanian Gendarmerie - for establishing the contraventions and applying sanctions for the deeds stipulated in art. 7 para. (1) let. e), art. 8 para. (1) and (2), art. 9, art. 11, art. 12, art. 17 let. c), art. 19 para. (1) - (3) and art. 21;

f) the forestry staff within the structures of administration of the national parks and the natural parks, empowered for this purpose - for the forestry offences committed in the park it administers, as well as for exercising control over the application of the norms regarding the circulation of the wood materials;

g) officers and non-commissioned officers of the professional services - for emergencies, for the detection of contraventions and the application of sanctions for the deeds stipulated in art. 9 let. b) and art. 10 let. a).

***GD no. 857/2011 on the establishment and sanctioning of contraventions to the public health norms.***

Chapter VI Penalties

**Art. 25** - (1) Infringement of the provisions of the present decision shall entail civil or contravention liability, as the case may be.

(2) The following facts constitute contraventions and are sanctioned as follows:

a) abandonment of the waste on the route by the transport operators, non-observance of the provisions of art. 1 para. (3), but Art. 6 para. (2), art. 11 para. (2), art. 13, art. 14 para. (1) and (2), art. 19 or art. 24 paragraph (1), (2), (3) let. a), b) and d), para. (4), with a fine from RON 15,000 to RON 30,000;

b) non-observance of the provisions of art. 4, 7, 8, art. 14 para. (3) - (5), art. 20 and 21, with a fine from 10,000 to 20,000 lei;

c) non-observance of the provisions of art. 9, 10, 12, art. 15 para. (2), art. 18 para. (3), Art. 22 and art. 23 para. (2), with a fine from RON 5,000 to RON 10,000;

d) the transport of municipal waste by unauthorized operators for the provision of sanitation services in localities, with a fine from RON 3,000 to RON 6,000.

(3) In the case of committing the offences provided in paragraph (2) let. a) applies in addition to the main contravention sanction and the complementary contravention sanction of confiscation of the means of transport destined or used for committing the deed.

(4) The means of transport confiscated according to para. (3) shall be capitalized under the conditions stipulated by the Government Ordinance no. 14/2007 for the regulation of the manner and conditions of capitalization of the assets entered, according to the law, in the private property of the state, approved with amendments by Law no. 274/2007, as amended and supplemented.

(5) If the measure of seizure of the means of transport is ordered, the investigating officer shall take the necessary measures for the transport of the waste to the economic operators holding an environmental permit according to the legislation in force for the treatment / recovery / disposal activities, all the expenses being borne by the offender.



**Article 26.** - Establishment of contraventions and application of the sanctions provided in Art. 25 shall be made by the empowered personnel of the Ministry of Environment and Sustainable Development and the Ministry of Interior and Administrative Reform, together with the personnel empowered by the Ministry of Agriculture and Rural Development, the Ministry of Transport, the Ministry of Public Health or the Ministry of Economy and Finance, as the case may be, nominated institutions.

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