



Council of the
European Union

Brussels, 18 June 2020
(OR. en)

8951/20

COPEN 158
CRIMORG 51
CATS 42
JAI 504
ENFOPOL 146
ENV 358

NOTE

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

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

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

Delegations will find in the Annex the follow-up report of The Netherlands regarding the recommendations that were made in the report 8379/1/18 REV1 for the Eighth Round of Mutual Evaluations.

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

- FOLLOW-UP TO THE REPORT ON THE NETHERLANDS

In the context of the eighth round of Mutual Evaluations on 'the practical implementation and operation of the European policies on preventing and combating environmental crime'

The evaluation report on the Netherlands as set out in doc. 8379/1/18, was adopted by the LEWP/COPEN WP on September 11th 2018.

We hereby submit, according the procedures set out in doc. 15538/4/15, our report on the follow-up to the recommendations made to the Netherlands in the abovementioned evaluation report.

Recommendation n. 1

Consider the possibility of increasing the involvement of the customs authorities at strategic and tactical levels as well as in the activities of the National Environmental Chamber.

At the strategic level, the Ministry of Agriculture, Nature and Food Quality and the Ministry of Infrastructure and Water Management have concluded covenants with the Ministry of Finance regarding the performance of the statutory tasks of both ministries. Based on these covenants, agreements on the identified priorities are made each year between Customs and the Ministry of Agriculture, Nature and Food Quality and the Ministry of Infrastructure and Water Management.

At the tactical level, Customs is part of the investigation team where that is deemed in the interest of the investigation. In this way, Customs is involved in the activities of the National Environmental Board, without actually being a structural part of the National Environmental Board as such. The Netherlands therefore considers that, for the time being, there is no identifiable added value for the Customs authority to be part of the Board on a structural basis. More information on the covenants can be found on the website referred to below (in Dutch):

- <https://download.belastingdienst.nl/douane/docs/convenant-douane-miw-en-minfin-do8051z2fd.pdf>

Recommendation n. 2

Encourage the national authorities to collect and publish statistics on criminal offences and court cases concerning waste crime.

The National Waste Disposal Contact Point (Landelijk Meldpunt Afvalstoffen, LMA) and the Human Environment and Transport Inspectorate (Inspectie Leefomgeving en Transport) publish quantitative and qualitative information on waste crime in their annual reports. These reports can be found on the following websites (in Dutch):

- <https://www.ilent.nl/documenten/jaarverslagen/2019/05/15/jaarverslag-ilt-2018>
- <https://www.magazinesrijkswaterstaat.nl/lma/2019/03/index>

Recommendation n. 3

Consider the possibility of sharing their expertise on financial investigations within the environmental crime priorities of the EU Policy Cycle.

The Fiscal Intelligence and Investigation Service (Fiscale Inlichtingen- en Opsporingsdienst, 'FIOD') is one of the Netherlands' four special investigative services. The organisation focuses specifically on detecting and combating tax and financial fraud, including money laundering and corruption.

In addition to performing an identifying role, the FIOD tracks and collates new developments and trends in the field of financial detection and performs data analysis for investigations into money laundering and fraud, among other things.

The FIOD has set up a secure platform “Trends4fi” with a website (www.trends4fi.org), a mobile app and trend groups with the aim of generating foresights in cooperation with allied networks of public and private organisations. This is referred to as network trendwatching, which is an effective tool that has been developed to generate as much new information and new insights as possible on developments that may have an impact on financial crime and how to combat it.

Recommendation n. 4

Consider the possibility of focusing more at national level on the inspection of waste shipments out of the Netherlands.

The Human Environment and Transport Inspectorate monitors shipments of waste with a view to reducing the risk of waste for the environment, also in combination with the aim of moving towards a circular economy. The methodology adopted not only involves the examination of the origin of waste, but also its destination. This starting point promotes the multidisciplinary approach to tackle the problem(s).

Matters such as plastics, electronic appliances, fuels, scrap ships, biomass, substances of very high concern in waste, mercury and end of life vehicles are addressed at programme level, with an additional focus on the international context in particular in order to avoid the 'waterbed' effect. Other waste issues are addressed as line tasks.

Inspections of waste shipments are therefore a focus of attention all year round, with the Human Environment and Transport Inspectorate working closely together with police and Customs.

Surveillance and monitoring are focused on waste flows in ports (particular attention is given to the port of Rotterdam). Ports receive special attention due to the far-reaching consequences:

- ports play a pivotal role in the export of waste from the EU and
- the importance of establishing a circular economy.

Recommendation n. 5

Consider connecting the competent authorities to the SIENA system.

- Participation in Dutch Desk

Since 1 August 2019, an investigator from the Intelligence and Investigation Service of the Human Environment and Transport Inspectorate (ILT/IOD) has been seconded to the Dutch Desk of Europol in the role of Europol Environment Liaison Officer. This means, among other things, that the investigator has become a regular “end user” of the SIENA message exchange system. The investigator has also been allocated a SIENA account. Thanks to the end user status and the creation of a SIENA, the ILT/IOD now has direct access to SIENA, through the investigator. Therefore, the ILT/IOD is able to exchange information freely (under certain conditions) with the Europol member countries, third countries and, of course, with Europol itself (i.e. Analytical and Focal Points). The ILT/IOD is also able to use the ENU (Europol National Unit).

- EIS (Europol Information System)

The EIS is an additional resource whereby information that is held in the EIS can be transferred directly and in an automated manner from the SUMMIT environment. This mainly concerns entities (subjects from investigations, persons, locations, etc.) Although EIS is different from SIENA, the information included in EIS is now automatically compared via the ELM (Europol Link Management system). The intention is for all special investigative services and the Police in the Netherlands to be connected to the EIS. The FIOD has been connected to the EIS since 3 June 2019. The Dutch Police has been connected to the EIS since 2017. The remaining special investigation services (including ILT-IOD) will be connected to the EIS in the future (once certain ICT-related questions have been resolved).

Recommendation n. 6

Assess the necessity of establishing JITs from the very beginning phase of the investigations (as for the financial investigations), if appropriate.

This recommendation is established practice. The following three news reports refer to cases where a joint investigation team was set up at the start of the investigation:

- <https://www.ilent.nl/onderwerpen/afvaltransport-evoa/nieuws/2019/12/16/10-gecontroleerde-zendingen-voldoet-niet-aan-wetgeving-bij-afvaltransporten-naar-het-buitenland>
- <https://www.ilent.nl/actueel/nieuws/2020/02/26/onderzoek-bij-verdachte-transportbedrijven>
- http://intranet.minienm.nl/Organisatie/Agentschappen/ILT/ILT_Nieuws/2020.02.11/Werkplaats_monteur_voor_rechter_om_tachograaffraude

Recommendation n. 7

Encourage the 29 regional environmental agencies to work in a more integrated way, including by sharing more information.

Regional environmental agencies share knowledge on legislation, monitoring and enforcement in different areas in various working groups. The sharing of information at case level needs improving. The Ministry of Justice and Security is working with the Ministry of Infrastructure and Water Management, the Public Prosecution Service, investigation services and provinces on an action plan to improve ways of tackling environmental crime. Combined with the implementation agenda for Licencing, Supervision and Enforcement (Vergunningverlening, Toezicht en Handhaving, VTH), which the Ministry of Infrastructure and Water Management is developing with the provinces and municipalities, this should also lead to an even better information exchange.

'Omgevingsdienst NL' is the association of the 29 regional environmental agencies in the Netherlands. Omgevingsdienst NL facilitates and supports the system of regional environmental agencies and is the first point of contact for cross-regional environmental agency matters, including:

- Coordination at tactical level for the implementation of environmental legislation
- Exchange of knowledge related to substantive and corporate information
- Quality development
- Labour market development
- Point of contact for administrative umbrella organisations
- Promotion of interests

Recommendation n. 8

Consider the possibility of creating guidelines on the distinction between (by-)products and waste.

The Ministry of Infrastructure and Water Management has prepared guidelines on the distinction between (by-)products and waste; they are contained in the Guidance on Waste or product, Guidelines for interpreting and applying the terms 'waste material', 'by-product' and 'end-of-waste status', which was recently revised (2019). The revised guidance and associated assessment framework can be found on the website referred to below (in Dutch):

- <https://lap3.nl/nieuws/nieuws-2018/leidraad-afvalstof/>

Recommendation n. 9

Review the inspections system in relation to Article 50(c) and (d) of the Shipment Regulation.

The amendment of article 50, with the addition of paragraphs 4a and 4b, has not resulted in significant implications for the method of inspection. It follows from case law (e.g. ECLI:NL:GHAMS:2019:4247) that the regulator cannot ask for direct proof to demonstrate 'non-waste status' and in the absence of such proof come to the conclusion that 'it is waste'. Before any check is carried out, there need to be indications for the existence of waste. This should also be substantiated with arguments that there is waste, with physical checks generally being indispensable. In addition, most checks concern waste materials where the discussion whether something is 'waste or not' is irrelevant. In case of checks focused on used/discarded electronic appliances, this discussion is relevant.

(poss.) GENERAL REMARKS

We have no additional (general) remarks.