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Report on Austria

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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 AUSTRIA**

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## 1. EXECUTIVE SUMMARY

The visit was very well prepared by the Austrian authorities and included meetings with the relevant national authorities which have responsibilities in the field of preventing and combating environmental crime, as well as in the implementation and operation of European policies in the field. These included the Ministry of Justice, the Vienna Public Prosecutor's Office, the Regional Court of Vienna (judges), the Ministry of the Interior, BK Federal Criminal Intelligence Service, Provincial Criminal Investigation Service of Lower Austria, the Ministry of the Environment, the Environment Agency Austria and the Ministry of Finance, with the participation of experts from the customs administration. The evaluation team had also the opportunity to meet a representative of the local Vienna environmental authorities and also a representative of the Association of Austrian Waste Management Companies.

During the on-site visit the Austrian authorities did their utmost to provide the evaluation team with information and clarifications concerning the legal and operational aspects of preventing and combating environmental crime, cross-border cooperation and cooperation with EU agencies.

To permit a better understanding of the division of powers and duties in Austria, we will begin with a brief overview of the country, of its geographical location and of its administrative and political structure.

Austria is located in central Europe, with a surface area of about 84 000 km<sup>2</sup> and borders with eight other countries: Germany, Czech Republic, Slovakia, Hungary, Slovenia and Italy, as well as Lichtenstein and Switzerland. The population is estimated at almost 8 800 000 inhabitants.

Most of the western part of Austria is crossed by the Alps, and two large rivers cross the country, the Inn and the Danube, which are major transport routes. This must be taken into account, particularly in the context of monitoring the import/export of waste.

Administratively, Austria is a federal country divided into nine federal states known as provinces, each with its own governor, and 94 district administrative authorities.

Austria has a tradition of environmental protection which stretches back over several decades. In 1984, comprehensive environmental protection was enshrined in the Federal Constitution. In 1987, as the result of an amendment to the Criminal Code, the first environmental criminal law provisions (Sections 180 et seq. of the Criminal Code) entered into force. In 1988, the first environmental investigation groups were set up within the criminal investigation departments.

Austria has in place an adequate legislative framework and institutional set-up to fight environmental crime. However, a strategic approach defining the country's policy is lacking: the evaluation team therefore recommends that Austria adopt a strategy on environmental crime defining national priorities in this area, the roles of all relevant stakeholders and cooperation among them.

The Austrian legal system has certain peculiarities, with a difference between administrative criminal law and judicial criminal law. An act can be considered a criminal offence and subject to judicial follow-up only if it has violated a sectoral administrative law or decisions, as well as a provision of the Criminal Code.

In Austrian legislation the distinction between the regime of administrative or criminal sanctions is not always very clear, nor are the relevant criteria for determining which regime should apply; for illegal waste shipments the distinction should be made on the basis of the notion of negligible or non-negligible quantity for which, however, separate instructions have been issued by the administrative and judicial authorities, making difficult to ensure a uniform approach.

Austrian legislation on corporate liability does not apply to corporations of natural persons, and the Federal State, the provinces, the municipalities and religious organisations are excluded from its scope. Fines can be imposed on legal entities, although they are considered too low and not sufficiently used.

The organisation of the administrative authorities dealing with the environment is well established in Austria. At central level, responsibility for environmental law enforcement lies with the Federal Ministry for Sustainability and Tourism (BMNT), which has also a supervisory responsibility at the other levels. The regional and local environmental authorities play an active role in prevention and enforcement, and support the police and customs authorities in waste-crime cases. The governors are responsible for issuing permits and inspecting waste treatment facilities, including adopting the necessary enforcement measures. At the time of the evaluation, the district administrative authorities were the competent authority for 'waste declaratory rulings', which define what is classified as waste and which type of waste, as well as for the administrative prosecution of waste offences.<sup>1</sup>

The way in which the Austrian police is organised to deal with environmental crime is also well established, with a hierarchical structure that ensures appropriate coordination and synergies among the three different levels of intervention - Federal (Federal Criminal Intelligence Service - BK), provincial (Provincial Criminal Investigation Services - LKAs) and local level (officers with environmental expertise - UKOs), with the BK having a supervisory function at the other levels and acting as contact point at European and international level.

The Austrian customs administration is also well established and organised and makes a significant contribution to the control of national and international transports of waste, though its human resources are limited.

The Environment Agency Austria is an important actor, providing specialised expertise to the enforcement authorities. The evaluation considers this a good practice and encourages Austria to increase its use by all authorities, including the judiciary.

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<sup>1</sup> The Austrian authorities informed subsequently that on 1st August 2019 the competent authorities for 'waste declaratory rulings' became the provincial Governors.

The evaluation team did, however, have the impression that other Austrian institutions, in particular the judiciary, do not consider environmental crime to be a major problem. Recalling that environmental crime is present, in one form or another, all over Europe, though it is known that environmental offences are rarely self-evident, it therefore encourages the Austrian authorities to take appropriate measures for adequately prioritising this form of crime in criminal matters. For this purpose it is important to ensure that magistrates, who are supposed to handle the most important environmental cases, are specialised and cooperate with foreign partners.

Inter-institutional cooperation among the different actors involved in tackling environmental crime in Austria mainly takes place on an ad-hoc and informal basis. Although this does not seem to give rise to any problems in practice, due to the complexity of this type of crime, involving a multiplicity of actors, the evaluation team considers that a more formal and structured framework would contribute to enhancing cooperation in this area.

Each Austrian authority has its own system for collecting and providing statistics on environmental, including waste-related, crime. No overall, consolidated figures for reported environmental crime are available and there is no analysis of the complete set of data. The evaluation team therefore encourages the Austrian authorities to develop an integrated system for the collection and analysis of statistics covering the control, investigation, and follow-up to environmental infringement cases and to make it available to all the relevant stakeholders. This would make it possible to more easily assess the effectiveness of the national system in this field.

The Austrian authorities have developed Electronic Data Management (EDM), an extremely well-studied and efficient system which integrates all relevant data in the area of the environment and is used by all relevant actors: both the inspection and the judicial authorities have access to these electronically recorded data, use the system frequently and find it useful in their work. Citizens, companies and the public also have limited access to this database. This system is also beneficial to businesses because it greatly simplifies the transmission of environmental data required by different companies. The evaluation team considers this important integrated monitoring tool for information management to be a good practice.

The BMNT is in charge of training police and customs officers. This training - both basic and specialised - includes theoretical training, but is often also carried out on the ground during joint controls. The evaluation team acknowledges the efforts made by Austria to provide training to the staff of the different authorities dealing with environmental crime, and encourages it to further develop such training by also including judges and prosecutors, who currently do not receive specialised training in this area.

The BMNT has provided guidelines and manuals used by enforcement authorities, which contribute to an effective approach to environmental crime. However, as regards the distinction between waste shipments of negligible or non-negligible quantity, separate instructions have been issued by the administrative and by the judicial authorities, which do not ensure that such distinction is made on the basis of a uniform approach.

All environmental authorities, the police, and customs in Austria make significant and valuable efforts to ensure the clarity, accessibility, and transparency of relevant information on environmental protection and management for companies and for the general public, thus striking a good balance between openness and enforcement in this area.

The Austrian administrative and police authorities are actively involved in cooperation at EU level and participate in existing networks, while the customs authorities participate only occasionally and the judiciary does not participate at all, and even seems unaware of the relevant fora and the opportunities they offer.

In Austria cooperation between the public and private sectors in the area of the environment works well, with regular collaboration and exchanges of information on related matters; the evaluation team considers this a valuable approach. It is also worth mentioning the whistle-blower option that allows citizens to report waste violations via a single reporting point on the Federal Criminal Intelligence Service's homepage.

The institutional set-up for waste control is well established in Austria, with all the actors involved - federal and provincial environment administrations, police and customs - participating in enforcement activities and cooperating well with each other. The legislation combined with the inspection system appear to be effective in preventing and combating illegal activities in this area both in relation to cross-border shipments and to the management of hazardous waste.

The most problematic waste streams in Austria are the waste electrical and electronic equipment (WEEE) and end-of-life vehicles (ELVs), for which it would be a good idea to draw up a specific global action plan. The main obstacles to the detection of offences relating to illegal waste shipments reported by the Austrian authorities are a limited budget, limited human resources and the complexity of the circumstances surrounding the criminal offences. In respect of hazardous waste, Austria has highlighted some problems with waste asbestos.

Austria has put in place a legislative framework and the structures to regulate and control the production, marketing and handling of dangerous substances. The Austrian authorities are not aware of any obstacles to the successful investigation and prosecution of illegal activities in this area.

In the light of the above, the evaluation team is of the opinion that Austria has achieved a good level of management of environmental matters and has all the necessary instruments to combat environmental crime efficiently, including waste-related crime. However, by making further efforts to use the potential of the law enforcement and criminal law systems to their full extent, in particular by ensuring a strategic approach and by involving all of the stakeholders at the same level, Austria might accomplish the complex and multi-agency task of preventing and fighting environmental, including waste-related crime, even more effectively.

## 2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997<sup>2</sup>, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established. 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 the illegal production or handling of dangerous materials. It should provide a comprehensive examination of the legal and operational aspects of tackling environmental crime, cross-border cooperation and cooperation with 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>3</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>4</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>5</sup> (entry into force 12 July 2007), are particularly relevant in this context.

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<sup>2</sup> Joint Action of 5 December 1997 (97/827/JHA), OJ L 344, 15.12.1997 pp. 7 - 9.

<sup>3</sup> OJ L 312, 22.11.2008, p. 3.

<sup>4</sup> OJ L 328, 6.12.2008, p. 31.

<sup>5</sup> 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, illicit timber trade, 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, delineating targets and policies, and aiming to decouple economic growth from the environmental impacts of waste generation.

Experience from past evaluations shows that the positions of Member States will vary with regard to 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, the Council Conclusions on Countering Environmental Crime of 8 December 2016<sup>6</sup> recognise that combating environmental crime requires a comprehensive multidisciplinary approach at all levels, better cooperation and exchange of information between the competent authorities including third countries, and the need to enhance dialogue and cooperation with relevant international organisations. Also the Council Conclusions of 18 May 2017<sup>7</sup> on setting the EU's priorities for the fight against organised and serious international crime between 2018 and 2021 set the fight against environmental crime as the one of the EU's priorities.

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<sup>6</sup> 15412/16, ENFOPOL 484 ENV 791 ENFOCUSTOM 235.

<sup>7</sup> 9450/17, COSI 107 ENFOPOL 247 CRIMORG 107 ENFOCUSTOM 133.

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

The order of visits to the Member States was adopted by GENVAL on 5 May 2017. Austria was the 27th Member State to be evaluated during this round of evaluations. In accordance with Article 3 of Joint Action 97/827/JHA, a list of experts with substantial practical knowledge in the field and prepared to participate in the evaluations, designated by the Member States, was drawn up by the Presidency.

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

The experts charged with undertaking the evaluation of Austria were Ms Kristina Persson (Sweden), Ms. Sylvie Hilgers (Belgium), and Mr Freddy Agerskov (Denmark). Ms Giovanna GIGLIO from the General Secretariat of the Council was also present as an observer.

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 Austria between 26 February and 1st March 2019, and on Austria's detailed replies to the evaluation questionnaire together with their detailed answers to ensuing follow-up questions.

### 3. GENERAL MATTERS AND STRUCTURES

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

Austria does not have a comprehensive strategic document or an action plan setting out a national policy and establishing a coordinated national approach and relevant priorities for environmental crime, and more specifically for illegal waste management and waste shipments.

There are only annual specific action plans at the level of the federal and provincial inspection services, such as:

- the Waste Management Plan pursuant to Article 28 of the Waste Framework Directive, including the Austrian guidelines on waste shipment, elaborated by the Federal Ministry for Sustainability and Tourism (BMNT);
- the Inspection Plan regarding shipments of waste, also elaborated by the BMNT in accordance with Article 50 of Regulation (EC) No 1013/2006 on shipments of waste, as amended by Regulation (EU) No 660/2014;
- the Inspection Plan for Industrial Emissions Directive (IED) companies.

However, these plans relate more to the schedule and frequency of checks and inspections by the relevant stakeholders, than to a real global national strategy or control policy.

The evaluation team is of the opinion that the development in Austria of a national strategy involving a global analysis of environmental crime and of the related threats at national level would make it possible to set up a more formal framework for national policy in this crime area. This would help to identify the national priorities for research, investigation and prosecution in this field, to define the respective roles and responsibilities of all the relevant actors, as well as to ensure that all of them are specialised and trained and cooperate in an effective manner, thus contributing to a more effective environmental enforcement.

More generally, such a strategic approach would help the Austrian authorities to acquire a better understanding of this criminal phenomenon in the country and thus to focus more on the most important aspects, as well as, where appropriate, to justify increasing human and material resources and specialisation of the relevant actors, including the judiciary.

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

Under this point, the Austrian authorities referred to a number of training, cooperation and awareness activities, which are described in more detail under the relevant points of this report.

In general terms the realisation of the Electronic Data Management – Environment (EDM), which integrates all waste-related information, can be considered a national project (for more details see point 4.4.2).

At international level, the Federal Criminal Intelligence Service coordinates all international projects and operations in the field of environmental crime in which Austria takes part, such as Operation TECUM and 30 Days of Action. At national level, it coordinates the ongoing EMPACT Operational Actions in the field of environmental crime and is Austria's representative internationally.

Apart from the above, Austria does not really have any specific programmes focusing on environmental crime.

### **3.3. Statistics**

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

The current Austrian Inspection Plan regarding shipments of waste indicates that the following conclusions on the destinations of illegal shipments of specific waste streams can be drawn from past inspections of cross-border waste shipments:

- Waste electrical and electronic equipment, including waste refrigerators, is mainly shipped to West Africa, Asia and Eastern Europe (by illegal waste collectors).

- The main destinations for illegal shipments of end-of-life vehicles and automotive components are also in West Africa; however, such shipments also occur to Eastern Europe and Asian countries in the former Soviet Union.
- End-of-life tyres are also mainly shipped to West Africa.

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

The judicial authorities report the activities of the judiciary via their file management system ('e-justice'). Statistics on waste crime are included in the general statistics compiled by the judicial authorities. The statistics contain the number of cases per Section of the Austrian Criminal Code reported to the Public Prosecutors Office and all final convictions from the courts.

These statistics cover only the activities of the judiciary (and thus not the activities of the administrative authorities). In addition, all final convictions are recorded in the judicial criminal statistics of *Statistik Austria* (which receives the data directly from the criminal register). As of 2017, all convicted offences are recorded here: not only the 'principal offence', but also other offences which influence the level of the sentence.

The judicial statistics reported do not contain any information on the number of investigations closed down and why they were closed down. In addition, the statistics do not contain information on other actions taken by prosecutors. It is therefore difficult to follow up and assess the efficiency of the judicial authorities.

The following figures have been provided by the Austrian judicial authorities:

<b><u>Austrian Criminal Code (StGB)</u></b>	<b>2017</b>	<b>2018</b>
<b>Public prosecutor's office at the District Court (BAZ)</b>	<b>19</b>	<b>19</b>
180 intentional impairment of the environment	3	1
181 negligent impairment of the environment	13	13
181a serious impairment due to noise	2	3
181b intentional treatment or shipment of waste endangering the environment		1
181c negligent treatment or shipment of waste endangering the environment	1	
183 negligent endangering of animal or plant populations		1
<b>Public prosecutor's office at the Regional Court (ST)</b>	<b>196</b>	<b>183</b>
180 intentional impairment of the environment	49	58
181 negligent impairment of the environment	95	90
181a serious impairment due to noise		2
181b intentional treatment or shipment of waste endangering the environment	29	17
181c negligent treatment or shipment of waste endangering the environment	10	2
181e seriously negligent operation of plants endangering the environment	1	1
181f intentional damage to animal or plant populations	1	3
181g seriously negligent damage to animal or plant populations		1

181h intentional damage to habitats in protected areas	1	
181i seriously negligent damage to habitats in protected sites		1
182 other endangering of animal or plant populations	8	6
183 negligent endangering of animal or plant populations	2	2
Total	215	202

The above statistics show the number of environmental cases reported to the prosecutor's offices in total (without differentiation between cases that were closed by the prosecutor and cases that were prosecuted at courts).

Other statistics, as indicated below, were provided by the Austrian authorities on the number of environmental cases followed-up by an 'out-of-court offence resolution'; these include different kinds of decisions made by the prosecutor (fine, suspension, probation, etc.).

<b>Number of persons per case dealt with and Section</b>	<b>Column titles</b>		
<b>Row titles</b>	<b>2017</b>	<b>2018</b>	<b>Total</b>
<b>Austrian Criminal Code (StGB)</b>	<b>21</b>	<b>20</b>	<b>41</b>
<b>180 Intentional impairment of the environment</b>	<b>2</b>	<b>3</b>	<b>5</b>
Out-of-court offence resolution	2	3	5
200e Out-of-court offence resolution, fine, suspension	2	2	4
203ope Out-of-court offence resolution, period of probation without obligations, suspension		1	1
<b>181 Negligent impairment of the environment</b>	<b>10</b>	<b>15</b>	<b>25</b>
Out-of-court offence resolution	10	15	25
200e Out-of-court offence resolution, fine, suspension	5	12	17
200ev Out-of-court offence resolution, fine, suspension, Corporate Criminal Liability Act	1		1

203ope Out-of-court offence resolution, period of probation without obligations, suspension	4	3	7
<b>181b Intentional treatment or shipment of waste endangering the environment</b>	<b>6</b>	<b>1</b>	<b>7</b>
Out-of-court offence resolution	6	1	7
200e Out-of-court offence resolution, fine, suspension	4	1	5
203ope Out-of-court offence resolution, period of probation without obligations, suspension	2		2
<b>181c Negligent treatment or shipment of waste endangering the environment</b>	<b>1</b>		<b>1</b>
Out-of-court offence resolution	1		1
203ope Out-of-court offence resolution, period of probation without obligations, suspension	1		1
<b>181f Intentional damage to animal or plant populations</b>	<b>1</b>		<b>1</b>
Out-of-court offence resolution	1		1
200e Out-of-court offence resolution, fine, suspension	1		1
<b>182 Other endangering of animal or plant populations</b>		<b>1</b>	<b>1</b>
Out-of-court offence resolution		1	1
200e Out-of-court offence resolution, fine, suspension		1	1
<b>183 Negligent endangering of animal or plant populations</b>	<b>1</b>		<b>1</b>
Out-of-court offence resolution	1		1
200e Out-of-court offence resolution, fine, suspension	1		1
<b>Total</b>	<b>21</b>	<b>20</b>	<b>41</b>

The Federal Ministry of the Interior (BMI) keeps and publishes statistics on all criminal charges brought by the police. These also cover waste crimes within the meaning of Sections 181b and 181c of the Austrian Criminal Code.

The following statistics have been provided regarding environmental cases dealt with by UKOs.

### **Cases UKO statistics 2017**

Total ENVI 2017	federal states									Austria
	B	K	O	N	S	St	T	V	W	
Soil pollution	49	11	16	30	5	7	4	14	6	142
Water pollution	9	18	21	27	5	16	19	28	5	148
Air pollution	12	-	8	16	4	-	3	16	-	59
waste	73	1	11	64	2	2	2	64	8	227
ELV	93	-	-	99	1	3	1	25	-	222
cruelty to animals	26	7	8	19	4	10	3	23	-	100
poisoning of endangered species	3	6	6	11	2	4	6	9	-	47
endangering of habitats	5	23	6	7	1	3	3	11	-	59
food crime	-	-	-	3	-	-	-	1	1	5
total	270	66	76	276	24	45	41	191	20	1009

The Ministry of Finance (BMF) keeps its own statistics on all confiscations related to environmental crimes, and the results thereof. These statistics are not published separately; they are included in the statistics on all confiscations carried out by the customs authorities.

The BMNT keeps a statistical record of final convictions for administrative offences in the area of cross-border shipments of waste (illegal shipments of waste within the meaning of Article 2(35) of the EC Waste Shipment Regulation). Annual statistics on illegal waste shipments and returns are also transmitted to the European Commission under Article 1 of the EC Waste Shipment Regulation.

The various Austrian authorities all have more or less detailed statistics available but, firstly, these statistics are not exchanged between them and, secondly, most of these statistics are neither used to quantify the work done nor to develop a comprehensive environmental risk analysis.

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

In Austria, in the field of justice, there are no dedicated budget allocations for the prevention of and fight against waste crime. Such measures are funded from the total budget of each individual higher regional court. No specific funding is received from the EU.

The police and the customs authorities do not receive any dedicated funding for the fight against environmental and waste crime.

The BMNT has a separate budget for inspections in the area of cross-border waste shipments and for the sampling and analysis of waste in the context of such inspections.

### **3.5. Prevention of waste crime**

In general terms, a preventive function in the area of environmental crime is ensured in Austria, as in other countries, by implementation of the legislation and of dissuasive penalties, by own initiative checks in companies as well as by the conditions imposed for the granting of permits and licenses. In particular, authorisations to operate facilities, authorisations to collect or transport waste, as well as the obligations regarding declarations of waste streams and the provision of other environmental information all impose clear and sufficient operating conditions to protect the environment and reduce the risk of fraud.

Furthermore, the Federal Environmental Administration (BMNT), which has primary responsibility for environmental crime prevention in Austria, provides constant and comprehensive information. In addition to its general information campaigns, the BMNT carries out substantial work in providing information to the relevant public and private actors. Both for other inspection services (police, customs, provincial inspectorates, etc.) and for the users, relevant and clear information on environmental matters is available.

In fact, when new regulations or legislative changes come into force, the BMNT is responsible for disseminating the information through the training of agents, at meetings with the provincial inspection services or more simply by publishing the information on its website.

The BMNT website is user-friendly and includes a lot of practical information not only for the inspection authorities - manuals, guidelines, fact sheets, including specific to waste (waste transfers, waste/second hand, etc.) - which are updated as necessary, but also for private actors (industry or the public), often accompanied by explanatory notes and standard documents to be used by the users (carriers, notifiers, etc.) that meet the minimum criteria required by the legislation.

Together with the BMNT, the Federal Criminal Intelligence Service has produced an information sheet to make potential waste collectors aware of the legal requirements in Austria for legal waste collection. The information sheet, which also explains the measures which the authorities may take in the event of illegal waste collection, has been reproduced in several Eastern European languages.

The homepage of the Federal Criminal Intelligence Service ([www.bundeskriminalamt.at](http://www.bundeskriminalamt.at)) has a reporting point for the public, including for cases of waste dumping, waste shipment and water, air and soil pollution. This is a whistle-blower option used between 50 and 100 times a year. This has resulted in investigation of cases, but also to a greater extent in the confirmation of suspicions.

Furthermore, the Federal Criminal Intelligence Service, in cooperation with relevant stakeholders, organises awareness-raising activities targeted at students at schools as well as events and campaigns in cooperation with NGOs (waste association, task force illegal waste shipment, hunting association, animal welfare associations).

Against this background, the evaluation team is of the opinion that the Austrian authorities, with all the above initiatives, ensure a real transparency of their work as regards the prevention of environmental crime, including waste-related crime.

### 3.6. Conclusions

- In Austria, there is no national strategic document against environmental crime, including waste-related crime, setting out a national multidisciplinary approach at all levels to combat these forms of crime.
- The evaluation team therefore recommends that Austria adopt a more formal approach by drawing up a national strategy, outlining the country's environmental priorities and setting out the roles of the various actors and cooperation between them. This would contribute to better identifying the human and material resources needed, to enhancing the environmental enforcement capacity and thus to making the fight against criminal activities in this area more effective.
- Austria does not have any specific programmes focusing specifically on environmental crime. In this respect, the evaluation team wishes to underline that since environmental crime, including waste-related crime, is often a 'hidden' form of crime, it is very important to involve the public, law enforcement and other governmental authorities in specific initiatives that could contribute to the prevention, detection and prosecution of relevant offences.
- In Austria there are no centralised waste-crime statistics. The statistics are available, but each authority keeps them separately; they are not exchanged among the authorities or used to quantify the work done or to develop a comprehensive environmental risk analysis. It is therefore difficult to have an overview of this criminal phenomenon and of the sanctions imposed for all infringements in this area.

- The evaluation team therefore encourages the Austrian authorities to develop an integrated system for the collection and analysis of statistics on environmental crime, including waste-related crime, covering all reported environmental violations, with disaggregated data on waste crime, investigations, convictions, sanctions, administrative offences and fines applied, as well as coordinated clusters and the analysis of metadata, and to make it available to all the relevant stakeholders. This would make it easier to carry out risk analysis and help to assess the effectiveness of the work done in this area.
- As regards the prevention of environmental crime, including waste-related crime, Austria applies the basic principles regarding the obligations imposed on businesses and facilities in respect of authorisations and declarations. Furthermore, the Austrian authorities proactively and effectively provide information on environmental legislation and matters to the relevant stakeholders, as well as to the private sector and the public. The evaluation team believes that such widespread distribution of information ensures transparency and also contributes to the prevention of illegal activities in this area.
- In Austria, there are no dedicated budget allocations for the judiciary, police and customs for the prevention of and fight against environmental crime, including waste-related crime. Costs pertaining to environmental crime are handled within the total budget of each authority. Only the BMNT has a separate budget for inspections in the area of cross-border waste shipments and for sampling and analysis of waste in the context of such inspections.

## 4. NATIONAL STRUCTURES

### 4.1. Judiciary (prosecution and courts)

#### 4.1.1. Internal structure

There are four levels of ordinary courts in Austria. At present 116 district courts, 20 regional courts, four higher regional courts of appeal and the Supreme Court are responsible for adjudicating legal cases. In criminal matters, competences are delimited according to the severity of the sentence sanctioning the offence.

District courts are competent to rule on criminal law matters in the case of minor offences involving sentences of only a fine, a fine with imprisonment for a maximum term of one year, or only imprisonment with a maximum term of one year.

Regional courts are responsible for first-instance rulings on all legal matters not assigned to district courts. In addition, they are responsible for ruling on appeals against district court decisions as second-instance courts.

In criminal matters, the courts system has two [other] levels.

Four higher regional courts of appeal have been set up as a third organisational level for second-instance rulings. They are located in Vienna, Graz, Linz and Innsbruck and are appellate courts for all civil and criminal law cases. In addition, they play a specific role in the administration of the judicial system: presidents of higher regional courts are heads of administration for all courts in their jurisdiction.

The Supreme Court in Vienna is the highest instance in civil and criminal law cases. Together with the Constitutional Court and the Administrative Court, it is referred to as the ‘Highest Court’. This means that no further (domestic) remedy is possible against its decisions. The case law of the Supreme Court plays a decisive role in ensuring the uniform application of the law throughout the national territory.

An action for annulment or an appeal can be brought before the regional court if the court of first instance is the district court, and before the higher regional court against decisions of a regional court.

Environmental crimes are the responsibility of all judges as there are no judges specialised in the area of the environment. There is no specialised training for judges on environmental crime and no cooperation exists between judges.

Public prosecution offices are special bodies separate from the courts, safeguarding the public interests in the administration of criminal justice. Public prosecution offices are judicial authorities, but unlike the courts, they are not independent. They have a hierarchical structure and are bound by the instructions of the senior public prosecution offices and ultimately of the Federal Minister for Constitutional Affairs, Reforms, Deregulation and Justice.

A public prosecution office is set up at every regional court in charge of criminal cases. The public prosecutors of these courts are in charge of bringing charges against persons and raising and presenting indictments in criminal proceedings, before both regional courts and district courts of the respective regional court district. As a rule, district prosecutors present indictments at district courts. The prosecutor has a leading role and the power to give instructions to the police during investigations, including on the investigative techniques to be used.

Senior public prosecution offices are one level above the ordinary public prosecution offices and have been established within the regional courts of appeal. In addition to acting for the prosecution before higher regional courts, they are also responsible for supervising all public prosecution offices in their district and report directly to the Federal Minister for Constitutional Affairs, Reforms, Deregulation and Justice.

The Procurator General's Office, set up within the Supreme Court, holds a special position. The Procurator General reports directly to the Federal Minister for Justice but does not have the right to issue any instructions to public prosecutors or senior public prosecutors or to raise any indictments, but rather is in charge of supporting the Supreme Court.

It should be noted that there is no formal, structured specialisation in environmental crime for prosecutors: there are around 300 prosecutors and only in some prosecution offices are one or two prosecutors 'specialised de facto' in environmental matters (while also dealing with other crimes), with a few environmental cases per year. In prosecution offices which do not have such 'specialised' prosecutors, environmental cases are distributed randomly to prosecutors, regardless of their competence or experience in this specific area.

There are no networks between the different prosecutors responsible for environmental crime in the different prosecution offices, and they are not offered any specialised training in environmental law or environmental crime.

Based on the interviews with the Ministry of Justice, the Austrian authorities consider that, given the small number of cases brought before the criminal courts, there is no need to appoint specialised prosecutors.

With regard more generally to the entire judicial system, neither the judges nor the prosecutors have real specific knowledge and experience in the field of environmental crime (just one or two simple cases are brought to justice each year).

Furthermore, magistrates seem to have limited knowledge of EU environmental case law and legislation, and of networks such as the European Network of Prosecutors for the Environment (ENPE) and the EU Forum of Judges for the Environment (EUFJE). In the evaluators' view, it would be very useful for them to take advantage of the various collections of legislation and guidelines at EU level when dealing with environmental cases, and to take part in the above networks where exchanges of good practices and experience, which are essential in the fight against environmental crime, take place.

There are nine provincial administrative courts, which deal with many different legislative matters, including environmental legislation, and first apply administrative sanctions. The latter can include imprisonment of up to six months, usually applied as an alternative sentence when the offender is unable to pay the fine.

The decisions of an administrative authority can be appealed to the administrative courts. The highest administrative court is the Supreme Administrative Court.

The administrative courts have specialist judges who are responsible for the appealed administrative sanctions. However, the evaluation team did not have the opportunity to gather information on the actual level of specialisation of the administrative courts in environmental matters.

As scientific and technical expertise is needed in this complex area, administrative courts call on experts from the competent authorities when necessary, but when these are not available, they also use private experts.

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

The Ministry of Constitutional Affairs, Reforms, Deregulation and Justice (BMVRDJ) indicated that it was not aware of any major difficulties as regards the prosecution and sanctioning of waste crime. Because the prosecutors and judges are faced with relatively few cases of environmental crime, according to the Austrian authorities, they have sufficient expertise in this area and there is no need to establish special competences.

It was also mentioned that close cooperation is sought with the competent administrative authorities in order to make use of their expertise. There is no formal cooperation among prosecutors who do not know each other. There is no formal cooperation between the judiciary and the law enforcement authorities in this area.

According to the evaluation team, the number of prosecutors itself currently does not appear to be a problem in relation to environmental issues, especially as only 10 % of cases relating to environmental offences are dealt with under criminal law and the other 90 % are subject to administrative sanctions.

However, the evaluation team considers that the lack of training in environmental law, the lack of specific expertise among prosecutors and judges due to the fact that they handle very few cases in this area, and the lack of regular contacts among prosecutors may constitute an obstacle to the prosecution and sanctioning of this form of crime. Indeed, without training and specific information, it appears that magistrates might underestimate the importance of environmental cases, the risks posed to the environment and the benefits generated by the offences committed, which could lead to ineffective, non-dissuasive and disproportionate sanctions.

Therefore, the evaluation team believes that greater specialisation of such authorities would be useful and would contribute to improving the prosecution and sanctioning of these complex forms of crime. To that end, the Austrian authorities could consider increasing the range of training activities and establishing networks of expertise for magistrates dealing with cases of environmental crime.

In addition, neither the prosecutors nor the judges met by the evaluation team were aware of the two documents – one produced by the BMNT and one by the BMVRDJ – giving (admittedly different) guidance on the meaning of ‘non-negligible quantity’ in the Austrian Criminal Code (StGB).

Another problem identified is the definition of crime in the Criminal Code. To be recognised as an environmental crime, an act must constitute a violation of the environmental legislation and meet certain criteria relating to, for example, its direct impact on the environment or the profit generated by it. This differentiation determines whether a file is dealt with by the criminal sector or by the administrative sector.

The different responsible actors stressed that the above criteria are complex and unclear. In addition, there is little case law on these matters.

The Austrian authorities informed the evaluation team that the judiciary frequently designates private persons as technical experts in environmental cases. The evaluation team is of the opinion that the judicial authorities should instead take advantage of the specialists of the Austrian Federal Ministry of Sustainability and Tourism, and if needed of the Federal Environment Agency, which has not only the necessary knowledge and experience, but also the appropriate technical means to provide support and expertise in environmental matters.

Problems were also reported as regards the criteria for imposing corporate fines and the level of such fines, which are often very low, even lower than administrative fines.

## 4.2. Law enforcement authorities

Inspections and investigations in the field of environmental crime, and more specifically regarding waste management and waste transfers, are carried out by the:

- police forces
- customs authorities
- services in the environmental administrations

### *4.2.1. Structure of and cooperation between investigative authorities involved in preventing and combating waste crime*

The police are structured as follows:

#### Federal level

Austria has a federal police force attached to the Federal Ministry of the Interior (BMI). Subordinate to it, there is a Provincial Police Directorate (LPD) in each of the nine provinces. There is a Provincial Criminal Investigation Service (LKA) within the Provincial Police Directorate of each province, each with its own environmental crime investigation department (EB 07).

Organisationally, EB 07 officers are attached to the LPD and come under its authority. As regards the content of their work, however, they are supervised by Unit 3.2.4 ‘Environmental Crime’ of the Federal Criminal Intelligence Service (BK).

At the lowest level are the uniformed police officers of the LPD, some of whom are designated as officers with environmental expertise (UKOs). There are approximately 500 UKOs throughout Austria and they are subordinate, as regards their area of expertise, to the LKA/BK. This system creates a direct chain of command and reporting between the BK, LKA and UKOs.

The Criminal Intelligence Service (BK), Unit 3.2.4 'Environmental Crime', is the highest-level police department for combating environmental crime. The BK is part of the BMI. The subject matters managed by the Unit relate to the environment, food and animal welfare, and its activities include the following:

- Technical supervision of all subordinate police departments in Austria, in particular the nine environmental crime investigation departments of the criminal investigation services of the nine provinces and the specially trained uniformed police officers (UKOs). Direct instructions can be given to all police departments and activities and reports can be requested directly from them (BK reporting provision);
- Case-specific preliminary investigations, analyses and coordination among national authorities and with international partners. The BK receives initial information on possible cases (e.g. from a national or international authority or the public) and clarifies to which LKA the case should be forwarded. All available databases and information sources are used for this purpose;
- National Interpol and Europol contact point for environmental crime;
- Coordinator for cooperation between BK and the other federal authorities that deal with combating environmental crime; Ministry of Finance (BMF)/customs administration, BMNT, BMVRDJ, Federal Environment Agency (UBA), and the administrative courts. This coordination task involves both participating in the preparation of new legislation and responding to questions from the parliament, and participating in national and international operations, activities and training;
- Cooperation on planned changes to legislation and cabinet and parliamentary questions;
- Coordination of national and international operations and activities;

- Participation in national and international meetings and conferences, both case-specific and general;
- Participation in national and international training events;
- Evaluation of official action by UKOs in the UKO statistics.

Furthermore, a large part of Unit 3.2.4's work consists in developing and preparing training and curricula for the regional police departments and their staff, and also monitoring and evaluating those training programmes.

Unit 3.2.4 consists of two permanent positions occupied by staff with more than 15 years of experience in the field of environmental crime, and one rotating staff member. A local police officer (UKO) occasionally comes to reinforce the above team, for periods of three months at a time. The aim of the rotating position is to reinforce Unit 3.2.4, and also to facilitate possible recruitment and training of staff for permanent positions.

#### Provincial level

##### Environmental crime investigation departments in the LKAs:

At provincial level, the nine environmental crime specialised investigation teams consist of criminal investigation officers. Their role is to investigate major regional and cross-provincial environmental offences. The teams consist of two to eight people, depending on the size of the province.

There are approximately 30 environmental crime investigators nationwide specialised in environmental crime. They are tasked with investigating environmental crime locally, regionally, and nationally. They have a specific basic education and receive further training in environmental crime which aims at increasing their expertise as regards technical knowledge, the examination of evidence, national and international legislation, investigation, legal action and cooperation with other authorities.

The investigation teams also exercise technical supervision over, and provide guidance to, the UKOs in their province and are also responsible for their training. The investigation teams are in regular contact with the administrative authorities of their province and support one another.

### Local level

#### Officers with environmental expertise (UKOs):

There are around 500 officers with environmental expertise (UKOs) at local level. They are uniformed officers and carry out all normal police duties in police stations across Austria.

In addition, they are specially trained to identify and investigate local cases of environmental offences, such as the illegal disposal of waste or contamination of water, during normal patrols and special targeted patrols, and are prepared to react to reports and findings of environmental crime at short notice.

They are in close contact with the LKA and the local administrative authorities, and they provide support to one another.

Some UKOs work in special police units such as the river and lake police, where they are also responsible for bodies of water. Other UKOs work in the nine provincial traffic departments, where they are responsible for monitoring heavy goods traffic and therefore also for shipments of waste by heavy goods vehicles (HGVs).

The UKOs report and send a copy of each file to the Crime Department (CD) of the LKA in their province in relation to all official duties. The CDs in the LKAs compile a summary of all the reports received from their subordinate UKOs and send key data from those files, together with reports on their own files, to the BK every quarter.

#### Special Police Units are:

- the Traffic Police (ADR Dangerous Goods and Waste Shipments)
- the Water Police (Danube River)

The evaluation team shares the views expressed by the Austrian police that, due to the special nature of environmental criminal law and the related administrative provisions (e.g. the Waste Management Act), specialisation of the entire enforcement chain is needed to combat this type of crime sustainably and successfully, regardless of the number of cases.

The Austrian customs administration is subordinate to the BMF. It is established and organised in accordance with the Law on the Organisation of the Customs Administration. Austria has nine customs offices (structured largely in parallel with the provinces).

The individual tax offices are structured in accordance with the BMF's organisation manual. In each customs office there is a technical department which can be consulted by all operational staff and also acts as a point of contact with the BMF. Each of these technical departments includes at least one staff member responsible for the environment. There are around 30 staff members in the technical department of each customs office, dealing intensively, though not exclusively, with environmental matters, and carrying out inspections and confiscations in this area. In total, there are about 1 500 customs officials in Austria who also inspect cross-border waste shipments.

The BMF is notified of confiscations electronically via the customs administration's automated internal system. At any time, the BMF can retrieve the number of inspections performed by the customs offices individually or as a whole.

The customs authorities carry out regular inspections all over Austria on national and international waste shipments. They also use data-based risk profiling to select shipments for inspection.

The customs officials also work closely with the national and regional environmental authorities participating in 'ad hoc' and planned inspections. The police also participate in these inspections.

The customs authorities can impose administrative fines for minor violations of Austrian environmental law and Regulation (EU) No 1013/2006.

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

All the conventional techniques are used by the Austrian authorities for the investigation of environmental crime, including:

- surveillance;
- house searches;
- questioning of suspects, witnesses or informants;
- preservation of evidence, e.g. documents, electronic data, samples and analyses.

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

The biggest challenge for the police in the investigation of waste crime is the distinction between waste and non-waste. For this purpose, the district administrative authority can issue a waste declaratory ruling (see point 7.1.1). In order to overcome the difficulties facing the administrative authorities, a revision of the national legislation is foreseen so as to facilitate the assessment of these elements.

Assessments by the administrative authorities in the place of dispatch and the place of receipt may also differ.

Establishing that the constituent elements of a criminal offence are present is also challenging, particularly in view of the principle whereby criminal proceedings may not be brought unless an administrative act has been infringed (see point 5.1).

BK Unit 3.2.4 has proposed creating a NEST (National Environmental Security Task Force)-like structure (similar to the Interpol model) in Austria, in order to improve coordination among the authorities.

Due to the absence of internal borders and the impossibility of continuous checks, it is often difficult to detect waste offences. Moreover, carriers often choose times and – above all – places at which it is difficult or impossible to carry out checks and often arrange to transport waste illegally outside customs operating times (e.g. during shift changeovers, mostly between 6.00 and 8.00 and 18.00 and 20.00). Another problem is illegal transport at night, when not many customs officials are available.

The customs authorities have responded to this and shifted their working hours accordingly. They also try, insofar as possible, to carry out checks at night with specific focal points.

Technical and scientific expertise are essential in environmental enforcement. Objective analysis and an objective professional assessment of the environmental impact in individual cases are needed, not only in the context of supervisory enforcement but also in criminal investigations. It is often difficult to find professional, objective expertise in this field and on specific issues. However, the law enforcement authorities can use the services offered by Environment Agency Austria.

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

Austria consists of nine provinces, each with its own governor, and 94 district administrative authorities. At administrative level, competences relating to the enforcement of waste legislation are divided among the Federal Minister for Sustainability and Tourism, the provincial governors and the district administrative authorities (each responsible for a political district).

##### Federal level

The Federal Ministry of Sustainable Development and Tourism (BMNT) is the ministry responsible for environmental matters at federal level. It was reorganised in 2018. The main competences in the field of waste and cross-border waste shipments lie with Section V ‘Waste Management, Chemical Policy and Environmental Technology’, which is responsible for the following departments:

- Department of Waste Law for Facilities, Waste Shipment and Control;

- Department of Waste and Waste Law;
- Department of Waste Management Planning, Waste Treatment and Waste Loan Refurbishment;
- Department of EDM Programme Environment;
- Chemical Policy and Biocides Division;
- Waste Prevention, Recovery and Assessment Department;
- Department of Operational Environmental Protection and Technology.

The above departments deal with, *inter alia*:

- matters relating to cross-border waste shipments and the related inspections;
- supervision of the subordinate authorities (governors and district administrative authorities);
- drawing up the inspection plan pursuant to Article 50 of the EC Waste Shipment Regulation;
- drawing up the federal waste management plan (national waste management plan pursuant to Article 28 of the Waste Framework Directive), including the Austrian guidelines on waste shipment.

The BMNT is also responsible for developing and maintaining guidelines for environmental law enforcement. These guidelines are published on its website and available to all administrative authorities, as well as to the private sector, the police and customs.

## Provincial level ('Länder')

### Governors:

- Issuing permits for and inspecting waste treatment facilities, including adopting the necessary enforcement measures.

### District administrative authorities:

- Administrative prosecution authority for waste offences (see Section 79 of the 2002 Waste Management Act - AWG);
- Issuing directives for treatment where waste has not been properly handled;
- Confiscating waste;
- Determining procedures for classifying substances or objects as waste or product, or in connection with the notification obligation in cases of cross-border waste shipments.

### Municipalities

The only competence of the municipalities in the field of environmental crime is to collect information and evidence and to report suspicious cases to the prosecution office. In certain cases, officials have to make statements as witnesses or experts in court. In many cases, the court makes use of the information and evidence acquired during the municipalities' inspections and the knowledge of their officials.

### Environment Agency Austria

Environment Agency Austria was established in 1985 by the Environmental Control Act and has had the legal status of 'limited liability company' since 1999; as such, it is wholly owned by the Republic of Austria, as represented by the Ministry of Sustainability and Tourism.

The agency has more than 500 experts and is an accredited testing laboratory and leader in the field, in both Austria and internationally. As a public institution, it stands for reliability, transparency and independence.

Its analytical consultants and inspectors provide support to the law enforcement authorities during inspections and are able to provide analyses or assessments of how an act could impact or has impacted the environment.

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

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

A supervisory meeting involving customs, the police and the competent administrative enforcement authorities of all the provinces takes place annually at the BMNT. There are also quarterly meetings involving representatives of the central customs and police authorities.

Meetings between all the competent police departments (BK, LKA, UKOs) and the other competent authorities (BMNT, BMF/customs, administrative bodies, BMVRDJ, prosecution offices) are organised on a case-by-case basis.

Furthermore, all the police departments and the customs authorities have direct and informal access to advice and instruction from, and dialogue with, national and provincial environmental authorities.

As regards waste shipments, regular coordination meetings take place with the participation of the BK, the BMNT, the BMF/customs and subordinate provincial administrative authorities, with the aim of cooperating and sharing knowledge.

The customs authorities (represented by a competent customs official from the respective customs office) also attend meetings with other authorities, such as the district authorities, in the context of on-the-spot checks. BMF environmental experts take part in at least two targeted checks each year, to assist colleagues and obtain information which is then passed on to management level, and also to the customs offices, in order to optimise checks. The BMF provides X-ray equipment, service dogs and other items needed for on-the-spot checks.

Coordinated checks on heavy goods traffic are conducted regularly in Austria in relation to national and international waste shipments. These checks take place mainly on the known routes through Austria. They run for between one day and one week, and the duration, location and/or direction of the checks also vary. The following authorities are involved in these checks: the LKA, UKOs, the administrative authorities of the province in question, the BMF/customs, the BMNT and the UBA. The basis for these checks is a checklist drawn up annually by the BMNT on the basis of the inspection plan drawn up pursuant to Article 50 of the EC Waste Shipment Regulation.

Depending on trends, coordinated checks are carried out at illegal garages and places where waste is illegally collected or treated, e.g. illegal collection, dismantling and shipment of old HGVs outside Austria (Africa). The following authorities are involved in the checks: the BK, the LKA, UKOs, the administrative authorities of the province in question, the BMF/customs, the BMNT and the UBA. Other authorities are involved, too, with regard to business, working arrangements and police dog units.

There is close cooperation among the administrative authorities, the police and customs in the course of specific investigations. The work of the prosecution offices is based heavily on the results of investigations by the administrative authorities and the police, who regularly exchange information. Representatives of the administrative authorities are occasionally also consulted as experts during police investigations.

All the competent bodies correspond with one another directly and forward or request information on a case-by-case basis. As already mentioned, the BK is the national Europol and Interpol contact point, and international issues are therefore referred to it.

Where there are grounds for suspicion that an environmental infraction can constitute a criminal offence, the administrative authorities and/or the police have to report this to the relevant prosecutor, who examines the case and may either start criminal proceedings or, in cases where he or she concludes that the act does not constitute a criminal offence, return the file to the control body competent for imposing administrative sanctions.

In the light of the above, cooperation among the Austrian authorities involved in tackling environmental crime generally seems to function well. However, as it involves a wide number of actors subject to possible replacement, it could be made more formal and structured, including by establishing a forum for regular meetings with the participation of all relevant stakeholders.

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

The Austrian federal authorities have developed the EDM, ([https://secure.umweltbundesamt.at/edm\\_portal/home.do](https://secure.umweltbundesamt.at/edm_portal/home.do)) application, which is an electronic database for recording and reporting data and information for the entire environmental field. This includes:

- the drafting, submission, processing and publication of permits;
- environmental inspections and publication of the evaluation reports;
- the characterisation/testing and landfilling of waste (the entire process chain is supported);
- the verification of legal compliance.

The EDM application is an integrated cross-sectoral solution aimed at facilitating administrative processes for companies and authorities. The EDM system integrates 23 applications in the broad environmental sector, which are cross-linked to the business and transport sectors and to e-government registers and the e-company register.

This makes it possible to develop a knowledge-based solution for a better understanding of the legal requirements and economic processes and to support the entire chain of complex administrative processes in this area. The Austrian authorities use the EDM database to carry out transversal analysis of all environmental data and to compile annual reports and statistics.

EDM helps to optimise the use of synergies between different domains, reduce the administrative burden on authorities and companies, and ensure the uniform application of Austrian and EU environmental legislation. It also provides companies with a legally secure basis for fulfilling their reporting obligations, makes the results of the activities of the public authorities in the area of environment transparent and understandable, and allows for the evaluation of such activities with a view to monitoring and possibly further developing policies and legislation in this field.

The evaluation team highly appreciated not only the possibilities offered by this environmental data management system, but also the fact that all actors – relevant federal and provincial governments, law enforcement and customs authorities, businesses registered in the system and even citizens – have some degree of access to the database.

In the light of the above, the evaluation team is of the opinion that EDM is an extremely well-conceived and efficient system and that this application, which fully deserved its EuroCloudAward in 2013, can be considered a good practice.

Judicial authorities have access to the judicial database. For other sources, they must go through the administrative assistance channels. The Code of Criminal Procedure (StPO) states that in the performance of their duties, criminal investigation departments, public prosecutors and courts are entitled to call on the direct support of all federal, provincial and municipal authorities and public services, and other public-law corporations and institutions established by the law (see Section 76 StPO). Pursuant to Article 22 of the Constitution, all federal bodies – i.e. including judicial bodies – and all provincial, municipal and local government bodies and other autonomous institutions are required to assist one another in the course of their legal duties.

The police have their own databases and direct access to general electronic databases covering the whole of Austria: the population, business and land registries. They also have access to the EDM system and use it for risk profiling in addition to investigation purposes.

The customs authorities also have their own databases. For risk profiling, they use not only their own customs registration system but also the environmental authorities' database, EDM.

For the police, the focal point for intelligence is the BK Environmental Crime Unit. However, intelligence on waste crime is limited, because there is limited access to official action taken under administrative law as there is no reporting obligation for administrative authorities.

#### **4.5. Training**

The BMNT regularly offers training courses to the police and customs, in particular on the assessment of waste status, the classification of waste, and the fundamental principles of the 2002 AWG and the EC Waste Shipment Regulation.

This training is provided partly at the request of the regional customs authorities and police and partly during on-site inspections. Once a year, in cooperation with the Austrian waste management sector, a visit to a waste treatment plant is organised, during which the participating customs and police officers are given training on special waste streams and informed of problems and any irregularities in connection with their disposal.

Such training is also sometimes implemented at short notice at the request of BMNT staff. As controls of international shipments of waste by the BMNT are carried out jointly with customs and the police, topical questions are answered and current cases from inspection practices are also discussed on site during their execution. In addition, the BMNT has provided a two-day training course for customs on the use of the EDM database.

The BMNT is also able to provide information to the relevant representatives of the judicial authorities.

As regards the police, the BK's training department is responsible for organising training for the LKA investigators, with technical assistance from experts from administration and the private sector, and from BK Unit 3.2.4.

All LKA investigators dealing with environmental matters have to complete an initial three-week basic training course with the following content:

- environmental criminal law, the principle whereby criminal proceedings may not be brought unless an administrative act has been infringed;
- waste legislation, water legislation, trade law, protected species and animal welfare, food law;
- fundamental chemical principles;
- crime scene management, water sampling, handling of samples, rapid case reviews;
- self-protection and third-party security.

A follow-up one-week advanced training course is held for all LKA investigators approximately every two years. The content is determined according to needs, trends and approaches, including as regards legislative changes.

The main focus may, for instance, be on:

- waste trafficking;
- food crime;
- illegal killing of protected species.

Furthermore, investigators are able to take part in international courses, e.g. CEPOL, Central European Police Academy (CEPA).

Staff of BK Unit 3.2.4 have the same training and also take part in further training sessions.

Police UKOs receive basic and further training. The respective LKAs of the federal provinces, with the support of BK Unit 3.2.4, are responsible for organising training courses for UKOs, most of which given by the LKA investigators.

BK Unit 3.2.4 has developed a training programme for UKOs that gives them the necessary skills to complete current and prospective tasks in relation to environmental crime. The training is updated continuously, involves both theoretical and practical exercises, and has a focus on cooperation with local and regional administrative environmental authorities.

The above training makes it possible for UKOs to inspect illegal cross-border shipments of waste both independently and in cooperation with the customs authorities and regional environmental authorities.

UKOs have an initial three-day basic training course with the following content:

- environmental criminal law, the principle whereby criminal proceedings may not be brought unless an administrative act has been infringed;
- waste legislation, water legislation;
- fundamental chemical principles;
- water sampling, handling of samples, rapid case reviews;
- self-protection and third-party security.

Every year a two-day further training session is held for UKOs, involving topical subjects such as:

- trade law, protected species and animal welfare;
- changes in laws or provisions.

Both the internal training programme and the training provided by the BMNT to the police seems to be well documented. They are aware of the guidelines produced by the BMNT.

It should also be pointed out that the BMNT administration has produced a number of handbooks concerning, *inter alia*:

- waste transfers: this manual provides an explanation and description of the waste covered by each code, alongside a description of waste with which it may be confused but which is covered by another code;
- ‘waste or second-hand’: this manual gives indicators for several types of waste so as to help agents decide whether a product being transported is waste or a second-hand object.

The manuals are up-to-date and downloadable from the official BMNT website.

In the BMF, all staff are given training on environmental matters as part of their basic and professional training.

The customs authorities are trained to use EDM and also receive training in the enforcement of cross-border waste shipment legislation (Transfrontier Shipments of Waste) at a level appropriate to what is required of them in this regard.

Training is also provided for the district administrative authorities responsible for conducting administrative prosecution proceedings.

In addition, annual networking meetings are held, at which great importance is attached to the environment. BMF policy officers and BMNT experts issue guidance on subjects related to the environment and answer questions on problematic issues. In addition to the annual networking meetings, a specific networking meeting on the environment is held every four years, attended by around 50 customs staff members, in the course of which discussions on environmental issues are held together with various BMNT experts. Besides this, there are courses at the customs offices which are organised, as required, by the specific department and held at short notice.

There is no one specific Unit in the Ministry of Justice (BMVRDJ) responsible for training. The BMVRDJ, the Higher Regional Courts and the Senior Public Prosecution Offices, as well as the Association of Austrian Judges and the Association of Austrian Public Prosecutors, organise and hold seminars. The BMVRDJ is not, in principle, aware of any participation in these seminars by magistrates dealing with environmental crime.

No specific training relating exclusively to environmental and waste crime is currently offered to judges and public prosecutors in Austria. According to the information received by the evaluation team, the opportunities for participating in international seminars available to magistrates dealing with those subjects are not used. On the other hand, seminars on financial investigations in general are offered to them at regular intervals.

#### 4.6. Conclusions

- The evaluation team is of the opinion that in Austria, the organisation of the administrative authorities competent in the area of the environment is well structured and efficient and provides effective legal, technical and scientific support to all the other enforcement authorities in this field. At administrative level, the responsibility for environmental law enforcement is shared between BMNT, the governors in each province and the district administrative authorities. The supervisory responsibility of the BMNT ensures a uniform application of environmental legislation by the enforcement authorities.
- The Austrian police organisation concerning environmental crime is also well established, with three different levels of intervention: federal, provincial and local. The Criminal Intelligence Service - BK324 Environmental Crime Unit is responsible for the national overview and coordination. Its coordinated reporting system allows the BK to have a national overview, identify trends and give feedback and assistance to the other levels. However, the human resources assigned to dealing with environmental crime could be increased within both the BK and the LKAs.
- The police and customs contribute to the administrative authorities' investigations. In addition to participating in joint inspections, they also carry out inspections on their own and can impose fixed 'on-the-spot' fines. It was reported that all investigative techniques and tools are available for environmental crime cases and that the police units investigating environmental crime can be assisted by other expert units.
- If the police and customs detect an offence that is an administrative offence, they report it to the administrative authorities, whereas if the infringement might be a criminal offence, they are obliged to report it to the prosecutors, who decide if the elements of the case meet the criteria for criminal prosecution and for imposing a criminal sanction. The same reporting obligation exists for the administrative authorities; if the prosecutor decides that it is not a crime, then administrative sanctions can be imposed.

- Austria does not have formal specialised structures or prosecutors and judges specialising in environmental crime; prosecutors and judges are not offered any specialised training on the related complex subjects. The evaluation team believes that even though the judiciary has not yet encountered any particular problems in prosecuting and sanctioning in this area given the limited number of criminal cases, it nevertheless has to be taken into account that the environmental crime situation might evolve in a different way.
- On this basis, the evaluation team encourages the Austrian authorities to undertake appropriate organisational measures to ensure that magistrates who are supposed to handle the most important cases of environmental crime are specialised, receive training and cooperate with foreign partners. It is also recommended that the judiciary create a national network to enable exchanges among Austrian prosecutors.
- Environment Agency Austria has the technical and scientific expertise that is essential in environmental enforcement and seems to play an active role both in Austria and internationally. The evaluation team considers that this agency, whose experts can be used by the enforcement authorities when appropriate, is extremely useful and can make a significant contribution to the fight against environmental crime in Austria.
- The BMNT is responsible for managing Austria's EDM system, an integrated comprehensive system for recording and reporting all relevant data and information in all environmental areas, which is accessible by all relevant public and private actors. The evaluation team believes that the EDM system is an extremely efficient tool for information management in the area of the environment and can be considered a good practice.

- The evaluation team feels that in Austria, in the area of the environment, transparency and information-sharing with all the actors involved, including with the private sector, are good. The BMNT develops guidelines for environmental law enforcement which the evaluation team considers to be very clear, in line with EU legislation and guidelines, and adapted to the specific needs arising from Austrian legislation. The information available on the existence of the guidelines is adequate and the other enforcement authorities seem to know of them and use them regularly.
- In general, the evaluation team finds that in Austria, cooperation between enforcement authorities involved in tackling environmental crime takes place regularly and works sufficiently well. However, as this is partly the result of personal contacts and therefore vulnerable to the rotation of personnel, the Austrian authorities are encouraged to establish a more formal and structured cooperation framework, based on protocols or memoranda of understanding among all relevant authorities, which should also include the judicial authorities.
- According to the evaluation team the BMNT makes valuable efforts to regularly carry out training – both basic and specialised – for customs and police officers involved in the prevention of and fight against environmental crime, including on the classification of waste and on the provisions on cross-border shipments of waste and measures to be taken where necessary.
- The evaluation team appreciates the significant and valuable efforts made by Austria in providing extensive training – both basic and specialised – at all levels of the different authorities, and encourages it to maintain a focus on continuous training and to extend it to other categories of staff, in particular to prosecutors and judges.

## 5. LEGAL ASPECTS

### 5.1. Substantive criminal law

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

The Austrian legal system has certain peculiarities that distinguish it from the other Member States' legal systems. Within the concept of criminal law, there is a distinction between administrative criminal law and judicial criminal law. Environmental offences can be prosecuted according to two main different sanctions regimes: the administrative penalty system and the criminal sanction system, enforced respectively by the administrative authorities and by the courts.

These two branches of law are closely linked: the provisions on environmental offences in the Austrian Criminal Code (StGB) relate to acts "contrary to legal provisions or decisions of an authority" . This means that an act can be considered a criminal offence only if it has violated a sectoral administrative law or decisions, as in the case of environmental law, as well as a provision of the Criminal Code.

According to the principles of subsidiarity and of "ne bis in idem", generally an offence is punishable as an administrative offence only if it does not constitute an offence falling within the jurisdiction of the courts (e.g. § 22 paragraph 1 Administrative Penalties Act 1991 – VStG).

As already underlined in the previous chapter, according to the Austrian authorities, the criteria for distinguishing whether an environmental violation constitutes an administrative infringement or a crime are quite complex and unclear. This causes frequent difficulties and could result in different ways of applying the law among the enforcement and the judicial authorities, and consequently in uncertainty for the public.

In this respect, the Austrian authorities informed us that the issue of which waste offences should be subject to criminal prosecution, and whether prosecution under administrative criminal law could produce more effective results in certain areas in some circumstances, is being discussed between the BMVRDJ and the BMNT.

The environmental offences punishable by a court of law are established in Sections 180 to 183 of the Austrian Criminal Code (StGB), indicated below, which define the circumstances that constitute a crime . These circumstances are: danger to the life of another or serious bodily injury to another, considerable danger to the animal or plant population, long-lasting deterioration in the condition of a body of water, the soil or the air, intentional impairment of the environment.

### Intentional damage to the environment

#### Section 180.

*(1) A person who pollutes or otherwise impairs a body of water, the soil or the air in contravention of a provision of law or an administrative order in such a way that:*

- 1. a danger to the life of another or a danger of serious bodily injury (Section 84(1)) to another or otherwise a danger to the health or bodily safety of a large number of people,*
- 2. a considerable danger to the animal or plant population,*
- 3. a long-lasting deterioration in the condition of a body of water, of the soil or of the air, or*
- 4. an expense for disposal, or otherwise damage to another's property, to an object which is listed for heritage protection or to a natural monument exceeding EUR 50 000*

*could arise as a result, shall be liable to imprisonment for a term not exceeding three years.*

(2) *If substantial damage to the animal or plant population occurs as a result of the offence, or if the offence causes a long-lasting deterioration in the condition of a body of water, of the soil or of the air, or if the offence incurs an expense for disposal or otherwise any damage to third-party belongings, to an object which is listed for heritage protection or to a natural monument, exceeding EUR 50 000, the offender shall be liable to imprisonment for a term of between six months and five years. If the offence has one of the consequences mentioned in Section 169(3), the sentences provided for in that provision shall apply.*

### Negligent damage to the environment

#### Section 181

(1) *A person who negligently commits one of the offences punishable under Section 180 in contravention of a provision of law or an administrative order shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding 720 daily penalty units.*

(2) *If substantial damage to the animal or plant population occurs as a result of the offence, or if the offence causes a long-lasting deterioration in the condition of a body of water, of the soil or of the air, or if the offence incurs an expense for disposal or otherwise any damage to third-party belongings, to an object which is listed for heritage protection or to a natural monument, exceeding EUR 50 000, the offender shall be liable to imprisonment for a term not exceeding two years. If the offence has one of the consequences mentioned in Section 170(2), the sentences provided for in that provision shall apply.*

## Intentional treatment and shipment of waste endangering the environment

### Section 181b

*(1) A person who collects, transports, recovers or disposes of waste or supervises or controls such operations in contravention of a provision of law or an administrative order in such a way that:*

- 1. a danger to the life of another or a danger of serious bodily injury (Section 84(1)) to another or otherwise a danger to the health or physical safety of a large number of people,*
- 2. a considerable danger to the animal or plant population,*
- 3. a long-lasting deterioration in the condition of a body of water, of the soil or of the air, or*
- 4. an expense for disposal exceeding EUR 50 000*

*could arise as a result, shall be liable to imprisonment for a term not exceeding two years.*

*(2) If substantial damage to the animal or plant population occurs as a result of the offence, or if the offence causes a long-lasting deterioration in the condition of a body of water, of the soil or of the air, or if the offence incurs an expense for disposal exceeding EUR 50 000, the offender shall be liable to imprisonment for a term not exceeding three years. If the offence has one of the consequences mentioned in Section 169(3), the sentences provided for in that provision shall apply.*

*(3) Apart from in the case under paragraph 2, a person who ships a non-negligible quantity of waste in contravention of Article 2(35) of Regulation (EC) No 1013/2006 on shipments of waste shall be liable to imprisonment not exceeding one year or a financial penalty not exceeding 720 daily penalty units.*

## Negligent treatment and shipment of waste endangering the environment

### Section 181c

- (1) *A person who negligently commits one of the offences punishable under Section 181b in contravention of a provision of law or an administrative order shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding 360 daily penalty units.*
- (2) *If substantial damage to the animal or plant population occurs as a result of the offence, or if the offence causes a long-lasting deterioration in the condition of a body of water, of the soil or of the air, or if the offence incurs an expense for disposal exceeding EUR 50 000, the offender shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding 720 daily penalty units. If the offence has one of the consequences mentioned in Section 170(2), the sentences provided for in that provision shall apply.*
- (3) *Apart from in the cases under paragraphs 1 and 2, a person who, with serious negligence (Section 6(3)), ships a non-negligible quantity of waste in contravention of Article 2(35) of Regulation (EC) No 1013/2006 on shipments of waste shall be liable to imprisonment not exceeding one year or a financial penalty not exceeding 360 daily penalty units.*

## Intentional operation of plants endangering the environment

### Section 181d

- (1) *A person who, in contravention of a provision of law or an administrative order, operates a plant in which a dangerous activity is carried out in such a way that:*
1. *a danger to the life of another or a danger of serious bodily injury (Section 84(1)) to another or otherwise a danger to the health or physical safety of a large number of people,*
  2. *a considerable danger to the animal or plant population,*

3. *a long-lasting deterioration in the condition of a body of water, of the soil or of the air, or*
4. *an expense for disposal exceeding EUR 50 000*

*could arise as a result, shall be liable to imprisonment for a term not exceeding two years.*

*(2) If substantial damage to the animal or plant population occurs as a result of the offence, or if the offence causes a long-lasting deterioration in the condition of a body of water, of the soil or of the air, or if the offence incurs an expense for disposal exceeding EUR 50 000, the offender shall be liable to imprisonment for a term not exceeding three years. If the offence has one of the consequences mentioned in Section 169(3), the sentences provided for in that provision shall apply.*

### Seriously negligent operation of plants endangering the environment

#### Section 181e

*(1) A person who, with serious negligence, commits the offence punishable under Section 181d(1) in contravention of a provision of law or an administrative order shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding 360 daily penalty units.*

*(2) If substantial damage to the animal or plant population occurs as a result of the offence, or if the offence causes a long-lasting deterioration in the condition of a body of water, of the soil or of the air, or if the offence incurs an expense for disposal exceeding EUR 50 000, the offender shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding 720 daily penalty units. If the offence has one of the consequences mentioned in Section 170(2), the sentences provided for in that provision shall apply.*

## Intentional damage to animal or plant populations

### Section 181f

(1) *A person who, in contravention of a provision of law or an administrative order, kills or possesses a protected wild fauna species, who destroys their developmental forms or removes them from a natural habitat or who destroys, possesses or takes specimens of a protected wild flora species from a natural habitat, shall be liable to imprisonment for a term not exceeding two years, unless the offence concerns only a negligible quantity of such specimens and only has a negligible impact on the conservation status of the species.*

(2) *Protected wild fauna species are the species listed in point (a) of Annex IV to Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora or in Annex I to Directive 2009/147/EC on the conservation of wild birds; protected wild flora species are the species listed in point (b) of Annex IV to Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.*

## Seriously negligent damage to animal or plant populations

### Section 181g

*A person who, with serious negligence (Section 6(3)), commits one of the offences punishable under Section 181f in contravention of a provision of law or an administrative order shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding 720 daily penalty units.*

## Intentional damage to habitats in protected sites

### Section 181h

(1) *A person who substantially damages a habitat within a protected site in contravention of a provision of law or an administrative order shall be liable to imprisonment for a term not exceeding two years.*

(2) *A habitat within a protected site means any habitat of species for which an area is classified as a special protection area pursuant to Article 4(2) or Annex I to Directive 2009/147/EC on the conservation of wild birds, or any natural habitat or a habitat of species for which a site is designated as a special area of conservation pursuant to Article 4(4) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.*

## Seriously negligent damage to habitats in protected sites

### Section 181i.

*A person who, with serious negligence (Section 6(3)), commits the offence punishable under Section 181h in contravention of a provision of law or an administrative order shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding 720 daily penalty units.*

## Other endangering of animal or plant populations

### Section 182

(1) *A person who commits an act which is likely to:*

1. *engender the risk of spreading a disease among animals or*
2. *engender the risk of spreading of a pathogen or pest which is dangerous to the animal or plant population*

*shall be liable to imprisonment for a term not exceeding two years.*

(2) *A person who causes a considerable danger to the animal or plant population in contravention of a provision of law or an administrative order in a way other than that described in Section 180 shall also be liable to punishment.*

### Negligent endangering of animal or plant populations

#### Section 183

*A person who negligently commits one of the offences punishable under Section 182 shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding 360 daily penalty units.*

The culpability of the offender is the basis for sentencing. In addition particular aggravating and mitigating factors are to be taken in to account. The general sentencing principles and the list of particular aggravating and mitigating factors are in Sections 32 et seq. of the Austrian Criminal Code:

#### General principles

##### Section 32

- (1) *The culpability of the offender is the basis for sentencing.*
- (2) *When sentencing, the court must weigh the aggravating and mitigating factors against each other, to the extent that they do not already determine the range of the sentence to which the offender is liable, and must also consider the effects of the sentence and other foreseeable consequences of the offence for the future life of the offender in society. In so doing, consideration must be given first and foremost to the extent to which the offence can be imputed to an attitude on the part of the offender which rejected or was indifferent to values protected by law, and the extent to which the offence should be imputed to external circumstances or motives which could make it seem reasonable even to a person attached to those values protected by law.*

*(3) As a rule, the severity of the sentence should increase the greater the harm or danger of which the offender is guilty or, if he or she did not cause it, for which he or she bears some guilt; the greater the number of obligations he or she breached by his or her conduct; the more mature the consideration he or she gave to the act; the greater the care with which he or she prepared it; or the greater the recklessness with which he or she carried it out and the fewer the precautions that could be taken against the offence.*

### Particular aggravating factors

#### Section 33

*(1) An aggravating factor shall be held to exist, in particular, if the offender*

*1. has committed more than one offence, of the same or of a different type, or has continued the offence over an extended period;*

*2. has already been convicted of an offence on the basis of the same criminal tendency;*

*3. has induced another person to commit the offence;*

*4. has been the originator or instigator of an offence committed by more than one person or has taken a leading part in the commission of such an offence;*

*5. has acted out of racist, xenophobic or other especially reprehensible motives, in particular if they are directed against one of the groups of persons referred to in point 1 of Section 283(1), or a member of one those groups, expressly because they belong to that group;*

*6. has acted deviously, cruelly or in such a way as to cause distress to the victim;*

*7. has taken advantage of the defencelessness or helplessness of another person in committing the offence;*

8. *has, in the process of committing the offence, fraudulently used another person's personal data in order to gain the trust of a third party, and in so doing caused prejudice to the lawful owner of that data.*

(2) *Except in the cases referred to in Section 39a(1), an aggravating factor shall also be held to exist if an adult offender has intentionally committed an offence using violence or dangerous threats against a person under the age of 14, or against anyone related to that person in such a way that is discernible to the person under age of 14.*

(3) *An aggravating factor shall also be held to exist if the offender has intentionally committed an offence as defined in Divisions 1 to 3 or 10 of the Specific Offences Part,*

1. *against a relative (Section 72), including a former wife or husband, registered partner or cohabitee, as a person living with the victim or as a person abusing his or her position of authority;*

2. *against a person who, because of particular circumstances, has become vulnerable, by exploiting that person's particular vulnerability;*

3. *employing an exceptional degree of violence, or after such violence preceded the offence;*

4. *using or threatening to use a weapon.*

#### Particular mitigating factors

#### Section 34

(1) *A mitigating factor shall be held to exist, in particular, if the offender*

1. *was over the age of 18 but under 21 at the time of the offence, or committed the offence under the influence of an abnormal state of mind, if he or she is of limited intellectual capacity or if his or her upbringing has been severely neglected;*

2. *has previously led a respectable life and the offence stands in marked contrast to his or her other conduct;*
3. *committed the offence out of commendable motives;*
4. *committed the offence under the influence of a third party or out of fear or obedience;*
5. *committed an offence only because, in a case where by law it is a punishable offence to cause a certain outcome, he or she failed to avert the outcome;*
6. *participated in a merely subordinate capacity in an offence committed by more than one person;*
7. *only committed the offence uncharacteristically on impulse;*
8. *was induced to commit the offence by a powerful emotion such as the average person could understand;*
9. *was led to commit the offence by a particularly tempting opportunity, rather than with premeditated intention;*
10. *was induced to commit the offence by pressing hardship not due to an aversion to work;*
11. *committed the offence under circumstances which approximate to grounds of exculpation or justification;*
12. *committed the offence in a non-exculpatory error of law (Section 9), in particular if the offender is punished for intentional commission;*
13. *despite completion of the offence, did not cause any harm, or merely attempted to commit the offence;*

14. *voluntarily refrained from causing greater harm, although he or she had the opportunity to do so, or if the harm has been made good by the offender or by a third party on his or her behalf;*

15. *seriously endeavoured to make good the harm caused or to prevent further adverse consequences;*

16. *gave himself or herself up although he or she could easily have fled or it was likely that he or she could have remained undiscovered;*

17. *made a remorseful confession or significantly contributed, by his or her statements, to establishing the truth;*

18. *committed the offence a long time ago and his or her conduct since has been good;*

19. *is affected by the fact that he or she or a person close to him or her has, through or as a consequence of the offence, suffered serious bodily injury or damage to health or other serious actual or legal detriment.*

(2) *A mitigating factor shall also be held to exist if the proceedings against the offender have continued for a disproportionately long time, for a reason for which neither the offender nor his or her defence counsel is responsible.*

The administrative penalties for administrative waste violations provided for in Section 79 of the "Waste Management Law" (2002 AWG):

*Any person who:*

1. *collects, transports, stores or treats hazardous waste contrary to Section 15(1), (3) or (4) or Section 16(1) or, when otherwise handling hazardous waste, does not comply with the aims and principles, contrary to Section 15(1), or does not prevent adverse effects on public interests, or mixes or blends hazardous waste contrary to Section 15(2),*

2. *does not transfer hazardous waste to a duly authorised party in due time, contrary to Section 15(5),*
3. *infringes Section 16(2) with regard to waste containing PCBs,*
4. *treats or mixes waste oils contrary to Section 16(3),*
5. *treats waste contrary to Article 7 of the EC POP Regulation or Section 16(4),*
6. *does not return hazardous waste, or have it appropriately treated, contrary to Section 19(2),*
7. *collects or treats hazardous waste without holding the permit required under Section 24a(1), or does not desist from such activity contrary to Section 25a(6) or Section 26(5),*
- 7a. *does not collect problematic substances - or have them collected - separately, contrary to Section 28,*
- 7b. *does not establish a drop-off point for waste electrical and electronic equipment from private households and for spent portable batteries and accumulators, contrary to Section 28a,*
8. *operates a collection and recovery system without a permit under Section 29 or does not fulfil the obligations laid down in Section 29(2)(8a), Section 29a, Section 29b(2), Section 29b(7), (9) and (11), Section 29c(3), Section 29d(1), Section 32(3) or Section 78(20) or in a regulation under Section 36, points 1, 2, 5 and 6,*
9. *establishes, operates or modifies a treatment plant without holding the permit required under Section 37,*
10. *hinders the officers or experts referred to in Section 75 or the building works supervisory authorities provided for in Section 49 or the landfill site supervisory authority provided for in Section 63(3) in the performance of their activity,*

11. *as building works supervisory authority under Section 49 or landfill site supervisory authority under Section 63(3) is grossly negligent in the performance of his or her supervisory, confidentiality or reporting obligations,*

11a. *as authorised expert or expert body, carries out investigations contrary to a regulation under Sections 4, 5, 7 or 23 or Section 65(1) or contrary to the state of the art, or performs the activity of an authorised expert or expert body without fulfilling the criteria laid down in Section 2(6)(6),*

12. *sets up or operates a mobile treatment plant without a permit in accordance with Section 52(1),*

13. *does not comply with the obligation to make adaptations, instructions issued or the obligation to submit an application, contrary to Section 57 or does not fulfil the obligation to make adaptations, contrary to Section 78(5) or does not comply with the time limit laid down for beginning or ending construction work, contrary to Section 57(5), or does not submit the requisite information or data, contrary to Section 57(6),*

14. *does not give effect in due time to instructions issued under Section 58(2),*

14a. *does not take the necessary measures, contrary to Section 59b, or take measures within an appropriate time period, contrary to Section 59k(6),*

15. *does not comply with the state of the art - taking account of a regulation issued by the provincial governor under Section 76(7) -, contrary to Section 61(1) or Section 76(1),*

15a. *carries out a waste shipment which does not comply with Section 69(7) or with Articles 34, 36, 37, 39, 40, 41 or 43 of the EC Waste Shipment Regulation or receives waste in connection with such a shipment,*

- 15b. *contrary to Section 69, ships waste without the necessary authorisation or without the other necessary consents under the EC Waste Shipment Regulation or receives waste in connection with such a shipment or illegally ships waste within the meaning of Article 2(35)(a), (c) or (e) of the EC Waste Shipment Regulation or receives waste in connection with such a shipment or initiates one of these shipments,*
16. *contrary to Section 76(4), does not comply with the requirements, or deposits waste contrary to Section 76(5) or (6),*
17. *does not comply with orders issued under Section 62(2), (2a), (2b), (3), (6), (7), (8), (9) or (10),*
18. *does not comply with obligations laid down in a regulation under Section 65(1)(1) with regard to equipment and mode of operation, including waste quality, classification of waste, measurement methods, supervision and after-care, or with the emission limits laid down in a regulation under Section 65(1)(1),*
19. *does not adapt a plant, contrary to Section 65(1)(2) or close it, contrary to a declaration made under Section 65(1)(2),*
20. *does not comply with the obligations laid down in a regulation under Section 65(1)(3a),*
21. *does not comply with obligations or orders under Section 75(5), commits - provided that the act does not constitute a criminal offence falling within the jurisdiction of the courts, or is not subject to a more severe penalty under other provisions concerning administrative penalties - an administrative offence subject to a penalty in the form of a fine of between EUR 850 and EUR 41 200; however, any person who is active in the waste management sector on a professional basis shall be subject to a minimum penalty of EUR 4 200.*

(2) *Any person who*

1. *contravenes the provisions of a regulation issued under Section 4, Section 5(2), Section 13a(1a), Section 14(1) or (2b) or Section 23(1) or (2), with the exception of recording, storage, submission, and reporting obligations and the obligation to provide proof,*

2. *supplies engine oil or oil filters, or does not accept them for return, contrary to Section 12,*

2a. *does not give notification contrary to Section 13a(3),*

2b. *does not participate adequately in a collection and recovery system, contrary to Section 13g(2) to (4) and Section 13i,*

3. *collects, transports, stores or treats non-hazardous waste contrary to Section 15(1), (3) or (4) or, when otherwise handling non-hazardous waste, does not comply with the aims and principles, contrary to Section 15(1), or does not prevent adverse effects on public interests, or mixes or blends such waste contrary to Section 15(2),*

4. *does not transfer non-hazardous waste to a duly authorised party in due time, contrary to Section 15(5),*

5. *infringes Section 16(7) when demolishing facilities,*

5a. *with the intention of rendering data from the relevant register under Section 22 unusable for the authorities, falsifies the register by entering inaccurate data or erases data,*

6. *collects or treats non-hazardous waste without holding the permit required under Section 24a(1), or does not desist from such activity contrary to Section 25a(6) or Section 26(5),*
7. *does not comply with the requirements, conditions or time limits laid down in Section 25a(5),*
8. *does not comply with the time limit laid down in Section 29(5) or the requirements or conditions laid down in Section 29(6),*
- 8a. *does not conclude contracts, contrary to Section 29c(1) or (2) or Section 29e, or hand over or receive packaging, contrary to Section 29c(5), or make use of existing collection infrastructure, contrary to Section 29c(6) or enable joint use, contrary to Section 30(2),*
9. *does not comply with orders issued under Section 31(2)(2) or Section(51)(1) or (2) or Section 53 (2),*
10. *carries out measures under Section 37(4) or Section 52(6) or Section 37(4)(1), (2), (4) or (8) without notification,*
11. *does not comply with the requirements, conditions or time limits laid down under Section 43(4), Section 44, Section 54(2) or Section 58(2) or the requirements, conditions or time limits laid down in the orders referred to in Section 77 or time limits laid down under Section 48(1),*
12. *does not comply with the obligation to tolerate, contrary to Section 46(1) or Section 73a,*
13. *operates a landfill site without having provided the requisite guarantee, contrary to Section 48 (2), (2a) or (2b) or Section 76(2),*

14. *fails to carry out recurrent controls, contrary to Section 52(7) or fails to comply with the requirements, time limits or conditions laid down under Section 52(5) or (8) when setting up or operating a mobile treatment plant, or sets up or operates a mobile treatment plant contrary to Section 53(1) or (3),*

15. *operates, without a permit under Section 54, a waste materials collection centre or collection point for problematic substances which is open to the public,*

16. *does not transmit information to the Authority in due time, contrary to Section 59d(1), (2), (3) or (4),*

16a. *does not transmit information to the Authority or update it, contrary to Section 59d(5),*

16b. *contrary to Section 59e(1) and (2), does not draw up, implement or keep available for consultation by the Authority or transmit to the Authority in due time a concept for preventing serious accidents, or an amendment thereto,*

16c. *does not implement a safety management system, contrary to Section 59e(3) or review or amend the safety management system, contrary to Section 59g(2),*

16d. *does not draw up a safety report or transmit it to the Authority, contrary to Section 59f,*

16e. *does not review, update or amend the safety concept or safety report, contrary to Section 59g,*

16f. *does not draw up, review, test, apply, update or notify to the Authority, or submit on request, an internal emergency plan, contrary to Section 59h,*

16g. *does not make all information available to the Authority on request, contrary to Section 59j,*

17. *deposits waste on a landfill site, contrary to Section 63(1) or (4) or Section 76(8) in conjunction with Section 76(9),*
- 17a. *does not comply with the obligations laid down in a regulation issued under Section 65(3) concerning equipment and mode of operation, including siting, duration of establishment and minimum distances,*
18. *ships waste contrary to Article 22(4) of the EC Waste Shipment Regulation or does not comply with requirements and conditions set out in decisions issued under Section 69 or Section 71a,*
19. *carries out a shipment of waste which does not conform to the notification or movement document or the permit under Section 69,*
20. *contrary to Article 6 of the EC Waste Shipment Regulation, carries out a shipment of waste for which notification is required without providing the requisite financial guarantee or demonstrating adequate liability insurance for the means of transport used,*
21. *does not comply with orders issued under Section 73, Section 74, Section(82)(4) or Section 83(3),*
22. *ships waste without the requisite permit, contrary to the provisions of the regulation issued under Section 72(1),*
23. *does not comply with the take-back obligation, contrary to Article 22 or 24 of the EC Waste Shipment Regulation or Section 71,*
24. *(note: paragraph 24 repealed by Federal Law Gazette I No. 103/2013)*
25. *infringes the provisions of a regulation issued under Section 83(7)*

26. *declares early end of waste status under the EU End of Waste Regulation for glass cullet without fulfilling the criteria laid down in Article 3(1) to (3) and (5) of the EU End of Waste Regulation for glass cullet or declares early end-of-waste status under the EU End of Waste Regulation for scrap metal without fulfilling the criteria laid down in points (a) to (c) of Article 3 of the EU End of Waste Regulation for scrap metal in the case of iron or steel scrap or of points (a) to (c) of Article 4 of the EU End of Waste Regulation for scrap metal in the case of aluminium scrap or declares early end-of-waste status under the EU End of Waste Regulation for copper scrap without fulfilling the criteria laid down in Article 3(1) to (4) of the EU End of Waste Regulation for copper scrap in the case of copper scrap, commits - provided that the act does not constitute a criminal offence falling within the jurisdiction of the courts, or is not subject to a more severe penalty under other provisions concerning administrative penalties - an administrative offence subject to a penalty in the form of a fine of between EUR 450 and EUR 8 400; however, any person who is active in the waste management sector on a professional basis shall be subject to a minimum penalty of EUR 2 100.*

(3) *A person who,*

1. *contrary to Section 5(4), (5) or (7), Section 7(1) or (7), Section 13, Section 13a(1b), (3), (4) or (4a), Section 13g(3) or (4), Section 15(6), Section 16(2)(5), Section 17(1), (3), (4) or (5), Section 18(3), (4) or (5), Section 20, Section 21, Section 22(6), Section 22a, Section 22b, Section 22c, points 3 or 5 of Section 24a(2), Section 29(8) and (9), Section 29b(3), Section 29d(2) and(3), Section 31(2)(2), Section 32(4), Section 35(3), Section 40(3a), Section 47(3), Section 48(2a), Section 51(2a), Section 60(1), (3), (4) or (5), Section 61(2) or (3), Section 64 or Section 77(5) or (6), Section 78(7) or (12), or contrary to a regulation under Section 4, Section 5, Section 13a(1a), Section 14(1) in conjunction with point 9 of Section 14(2), Section 14(2b), Section 23(1)(5), (2) or (3), point (4) of Section 36, Section 65(1)(4) or Section 71a(6), or contrary to the EC Regulation establishing a Pollutant Release and Transfer Register (PRTR) does not comply, respectively, with the obligations to record, retain, present, provide proof, report, disclose, or allow inspections, or with the obligations to register, cooperate, notify or rectify, or with the obligation to publish,*

- 1a. *contrary to Section 5(7), does not present the declaration of conformity or does not comply with the retention obligation,*
2. *contrary to Section 10 or Section 78(3), does not draw up, present, improve or update a waste management concept,*
3. *contrary to Section 11(1), does not appoint a waste management officer or his or her deputy or, contrary to Section 11(2), does not promptly report the appointment or removal of the waste management officer or his or her deputy,*
4. *is in breach of the provisions of a regulation under Section 14(1), insofar as it concerns non-hazardous household waste,*
- 4a. *contrary to Section 15(7) or (8), does not hold or present the required documents,*
5. *contrary to Section 16(3)(6) or to a regulation under Section 23(3)(1), does not take and analyse samples, does not make the analysis results available, or does not comply with the obligations to retain and present such results,*
6. *does not collect and transfer problematic substances in accordance with Section 16(5), with the exception of waste produced by private households or, contrary to Section 16(6), collects waste fats and oils, with the exception of waste produced by private households,*
7. *contrary to Section 18(1) or (2), does not correctly declare hazardous waste when transferring it or, contrary to Section 18(1), does not declare specific risks,*
8. *contrary to Section 19, does not hold the required documents or does not transmit the information to the register or present it before the transfer takes place,*
9. *contrary to Section 27(1) or (2), Section 61(1) or Section 76(3), does not comply with the notification obligation,*

10. *does not promptly appoint a managing director in accordance with Section 26(1) or (5) or name a responsible person in accordance with Section 26(6),*
- 10a. *contrary to Section 32(1), does not publish a list of participants,*
11. *contrary to Section 33(4), does not comply with the confidentiality obligation,*
12. *does not comply with the provisions of a regulation under Section 65(1)(6),*
13. *contrary to Article 18 of the EC Waste Shipment Regulation, does not hold, present or transmit the required information, or ships waste which is subject to the information requirements under Article 18 of the EC Waste Shipment Regulation in a way which is not specified in the document set out in Annex VII to the EC Waste Shipment Regulation,*
- 13a. *contrary to Article 18 of the EC Waste Shipment Regulation, has not ensured that the required information is held, presented or transmitted,*
14. *does not comply with the provisions of a regulation under point (2) or (3) of Section 72,*
15. *contrary to Section 70(2), does not hold or present the copy of the notification or movement documents or the necessary consent,*
16. *contrary to Article 15(c), (d) and (e), Article 16(b), (d) and (e), Article 35(3)(c), Article 38(3)(b) and Article 42(3)(c) of the EC Waste Shipment Regulation, does not comply with the obligations to record, provide proof or report,*
17. *contrary to Article 4 of the EU End of Waste Regulation for glass cullet, Article 5 of the EU End of Waste Regulation for scrap metal, or Article 4 of the EU End of Waste Regulation for copper scrap, does not complete or correctly complete a statement of conformity, or does not pass on or present this statement to the authority upon request,*

18. *contrary to Article 5 of the EU End of Waste Regulation for glass cullet, does not comply with the requirements of the management system or does not ensure the implementation of, or refuses access to, this system, or contrary to Article 6 of the EU End of Waste Regulation for scrap metal, does not comply with the requirements of the quality management system or does not ensure the implementation of, or refuses access to, this system, or contrary to Article 5 of the EU End of Waste Regulation for copper scrap, does not comply with the requirements of the management system or does not ensure the implementation of, or refuses access to, this system, commits, provided the deed does not fulfil the conditions for a criminal offence falling within the competences of the courts or is not subject to a more severe penalty under other provisions concerning administrative penalties, an administrative offence subject to a penalty in the form of a fine not exceeding EUR 3 400.*

(4) *A person who, contrary to Section 16(5), collects and transfers problematic substances produced by private households or by agricultural and forestry operations which are not required, under Section 125 of the Federal Tax Code (BAO), to keep accounts, commits an administrative offence subject to a penalty in the form of a fine not exceeding EUR 360.*

(5) *A person who, contrary to Section 16(6) collects waste fats and oils produced by private households, commits an administrative offence subject to a penalty in the form of a fine not exceeding EUR 70.*

(5a) *A person who, contrary to Section 15 or Section 16, holds or transfers non-hazardous waste produced by private households, commits an administrative offence subject to a penalty in the form of a fine not exceeding EUR 180.*

(6) *A person who, under the conditions set out in Section 58(1) does not present a restructuring plan, or does not present this plan on time - provided the deed does not fulfil the conditions for a criminal offence falling within the competences of the courts or is not subject to a more severe penalty under other provisions concerning administrative penalties - commits an administrative offence subject to a penalty in the form of a fine not exceeding EUR 4 200.*

*(7) Insofar as producers and distributors are required to comply with obligations under Section 14(1) by participating in a collection and recovery system (Section 29), they may be subject, in the event of an unreasonable failure to participate in such a system, to a penalty in the form of a fine not exceeding twice the fee for participating in an existing collection and recovery system. The proceeds shall be paid to the legal entity that bears the costs of those bodies responsible for controls.*

### Corporate liability

In 2005, Austria passed a Corporate Criminal Liability Act under which not only the natural persons responsible for a company, but the company as a whole acting as a legal entity, can be prosecuted.

Companies are also held liable for acts perpetrated by their decision-maker or staff voluntarily or negligently. The company is not held liable if the act is purely accidental.

However, these provisions do not apply to the Federal State, the provinces and the municipalities, the churches and the religious associations, or to corporations of natural persons, even if an offence is committed within the framework of the professional activity of the company.

The provisions on corporate criminal liability law may be applied in particular when the offence was committed for the benefit of the company or the company has failed to fulfil its obligations and duties.

According to Chapter 2, Section IV of the Corporate Criminal Liability Act (VbVG), in Austria fines can be imposed on legal persons.

The penalty for a company is dependent on the penalty provided for in respect of natural persons. The law provides for a daily penalty unit system, a basic coefficient, which takes into account the annual income of the company and its other financial performance, and creates a sliding scale of maximum fines for legal entities ranging from 40 to 180 daily penalty units, based on the maximum sentence of imprisonment for the same offence committed by a natural person . The minimum daily penalty unit is EUR 50 and the maximum daily penalty unit has been set at EUR 10 000.

The minimum fine that can be imposed is EUR 50. The maximum fines that can be imposed are as follows:

- § 180 para. 1 Penal Code: 85 daily penalty units; consequently, a maximum amount of EUR 850 000.
- § 180 para. 3 Penal Code: 100 daily penalty units; consequently, a maximum amount of EUR 1 000 000.
- § 181b para. 3 Penal Code: 55 daily penalty units; consequently, a maximum amount of EUR 550 000.

Section 1, §5 (2) describes the aggravating and mitigating circumstances that influence the choice of the number of daily penalty units. According to the evaluation team the above fines are low, for an offence in the circumstances under consideration. According to the Austrian judicial authorities met during the visit, such fines are low and sometimes lower than the administrative sanctions that could be imposed for the act.

The statistics from the BMVRDJ reports show that there were no convictions of legal persons for environmental crimes in the years 2017 and 2018. On the one hand, the prosecutors reported that it was difficult to impose fines because the police did not investigate the necessary factors. On the other hand, the police were of the opinion that they had the relevant knowledge of what circumstances should be investigated in a case where a corporate fine could be relevant. According to the police, the judicial authorities do not apply the law on corporate fines in a uniform way.

## Period of prescription

### Section 81

*(1) The period of prescription according to § 31 Abs. 1 VStG is one year. In the case of commitments to be reported, the deadline begins when the relevant notification is received by the competent authority.*

*(2) The time of the suspension according to § 30 Abs. 2 VStG is not to be add to the period of prescription according to § 31 exp. 2 and 3 VStG and § 43 of the Federal Law over the procedure of the administrative courts (administrative court procedure)*

The prescription period of one year, according to the evaluation team, is very short and is likely to allow companies to avoid many criminal proceedings.

### Transactions

For certain offences, listed in an internal document which also determines the amount to be collected for each of these offences, direct transactions may be proposed by the police forces and the customs. The penalties are cumulative, with defined ceilings.

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

The judicial authorities have drawn up a document - the letter of 5 October 2015 from the BMVRDJ to the senior public prosecutor's office - , in which the Federal Ministry of Justice stated its view on the concept of waste in Section 181b(3) StGB and the definition of 'significant quantities'.

The concept of waste in this document is defined as follows:

*I. The term ‘waste’ in Section 181b(3) of the Criminal Code*

*The term ‘waste’ in paragraph 1 is defined, according to the explanatory memorandum of the Government bill in Annex 33 to NR (Nationalrat) XX. GP, 57f, as follows:*

*‘The term ‘waste’ used in Section 181b(1) means movable things which someone wishes to dispose of or has disposed of (as having ceased to hold any value for him or her) and which should, in the public interest, be registered and treated as waste, whether hazardous waste, waste oil, household waste or other types of waste (‘bulk waste’) (Leukauf/Steininger, StGB<sup>3</sup> [Commentary on the Criminal Code, 3rd edition]: Section 181b, point 4).’*

*This distinction between waste in the subjective sense (‘wishes to dispose of’) and in the objective sense (‘should, in the public interest’) is also drawn in the Waste Management Law (in Section 2(1)(1) and (2)). Since the wording includes ‘and’, then according to the explanatory memorandum, the prerequisites must be met cumulatively; this therefore diverges – without any stated reasons – from the concept of ‘waste’ in the Waste Management Law. In our opinion, however, it is sufficient if one of the two criteria is met (i.a. Aicher-Hadler, WK<sup>2</sup> [Vienna Commentary on the Criminal Code, 2nd edition]: Sections 181b & 181c, point 2; Leukauf/Steininger, 3rd edition, point 4).*

*Unlike Section 2 of the Waste Management Law, the provisions in EU law require both criteria to be met cumulatively (Manhart, Commentary on the Criminal Code, Section 181b, point 14).*

*Section 181b(3) of the Criminal Code was created in connection with the transposition of the Directive on the protection of the environment through criminal law. It criminalises only infringements of Regulation 1013/2006/EC on shipments of waste.*

[..]The concept of waste in Community law requires subjective and objective criteria to be fulfilled cumulatively, whereas the Austrian concept of waste presupposes only that either of the two criteria is fulfilled. Insofar as the provisions serve to transpose the Water Framework Directive (WFD), the concept of waste in Community law must be taken as a basis when interpreting both paragraphs. The case law of the CJEU must be taken into account (on the issue of recyclable materials see the *Vessoso and Zanetti* case, ECR 1990 I-1461; commentary: Dannecker, JZ 1996, 872 f; Aicher-Hadler in *WK<sup>2</sup> StGB* [Vienna Commentary on the Criminal Code, 2nd edition]: Sections 181b and 181c, point 6).

The concept of non-negligible quantity has been defined as follows:

*"According to the explanatory memorandum, a quantity is non-negligible where it gives rise to a potential hazard as provided for in Section 180(1)(1) to (4) of the Criminal Code (explanatory memorandum of the Government bill in Annex 1392 to NR XXIV GP).*

*2. To calculate a non-negligible quantity within the meaning of Section 181b(3), the quantities must be taken together if they are obviously connected".*

Prosecutors and judges who have competence for the criminal acts concerned and for deciding if an act is criminal or not (subsidiarity principle) have not been informed, or at least were not aware, of the above-mentioned guidelines.

On the other hand, the Federal Ministry for Agriculture and Forestry, the Environment and Water Management has issued guidelines according to which the following quantities are generally regarded as non-negligible:

- *Quantities in excess of 25 kilograms in the case of hazardous waste which also constitutes dangerous goods within the meaning of the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR)*
- *Quantities in excess of 1 000 kilograms in the case of hazardous waste which does not also constitute dangerous goods within the meaning of the ADR*
- *Quantities in excess of 10 tonnes in the case of non-hazardous waste*

These general limits apply to all waste which is not subject to certain specific limits (see point 7.1.2) :

The police and customs regularly apply these guidelines from the Federal Ministry for Agriculture and Forestry, the Environment and Water Management.

For areas covered by the BMNT, the following regulations should be noted:

Possibility of recovery in Section 80(3) and (4) of the 2002 AWG as follows:

- = (3) *If, by committing an offence punishable under Section 79(1) and (2), the offender has intentionally and unlawfully enriched him- or herself or a knowing third party, the offender or the third party shall be obliged to pay an amount of money equal to the amount of that enrichment.*
- = (4) *A measure pursuant to paragraph 3 may be waived if the pecuniary gain is negligible or if the measure would hit the person concerned unreasonably hard.*

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

Austrian criminal law (Section 17 StGB) divides criminal offences into indictable and summary offences:

#### Section 17.

(1) *Indictable offences are intentional acts that are punishable by life imprisonment or by a prison sentence of more than three years.*

(2) *All other criminal offences are summary offences.*

The seriousness (e.g. of the danger to the animal or plant population) is individually assessed by the courts on a case-by-case basis, taking into consideration, *inter alia*, the damage to the population and the particular sensitivity of an area.

In administrative criminal law, Sections 32 to 35 StGB apply *mutatis mutandis* when determining the sentence (Section 19 of the Administrative Penalties Act – VStG).

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

The BMVRDJ and the BMNT are not aware of any cases showing links between waste crime and other forms of serious criminal offences, such as organised crime, corporate-related offences and corruption.

The BK is aware of a small number of cases where several offenders have collaborated to illegally collect and/or ship waste.

In this connection, the evaluation team underlines that environmental crime is very often linked to financial crime and encourages the Austrian authorities to pay attention to these aspects.

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

Any person who becomes aware that a criminal offence has been committed is entitled to report it to the criminal investigation department or the public prosecutor's office; this reporting right applies to everyone.

NGOs are not entitled to bring a civil-law claim, as they are considered to be instances of 'mere' representation of interest. No provision is made for NGOs having their own role in proceedings.

## 5.2. Procedural, jurisdictional and administrative issues

### 5.2.1. Difficulties encountered with regard to evidence

In the replies to the questionnaire, the BMVRDJ answered that they are not aware of any difficulties, as there is no specific reporting obligation for waste crime cases and evidence procedures have been made much easier for the authorities thanks to Article 50(4d) of Regulation (EC) No 1013/2006, which reverses the burden of proof, placing it on the initiator.

Different expert opinions from the prosecution service and the person under investigation may lead to delays in proceedings, although it should be pointed out that the latter opinions are merely private.

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

According to the 2002 AWG the following measures other than criminal or administrative sanctions can be applied:

#### Possibility of confiscation

For areas covered by the BMNT, there is the possibility of taking measures other than imposing a fine. Such measures can be, for instance, obliging the offender to pay an amount of money equal to the amount of the enrichment derived, or the temporary confiscation of the waste, including its transport packaging. If the confiscation becomes legally effective, the waste is deemed to have been declared forfeit as a precautionary measure and then the last holder of the right of disposal is required to bear the cost of transporting, handling and storing the waste during the course of its confiscation. In addition, there is the possibility of closing the treatment facility and laying down requirements and conditions and instructions for treatment.

## Section 75b

*(1) The district administrative authority, the law enforcement services in the case of point 2, the customs authorities and the Federal Minister for Agriculture, Forestry, Environment and Water Management may, within the limits of their competence, temporarily confiscate waste, including its transport packaging,*

*1. where there are reasonable grounds to suspect that the waste*

*a) is being collected or treated without a permit pursuant to Section 24a and*

*b) is not immediately being handed over to a person authorised to collect or treat such waste,*

*Or*

*2. where there are reasonable grounds to suspect that the waste*

*a) without authorisation pursuant to Section 69,*

*b) without any other consent required under the EC Waste Shipment Regulation, or*

*c) contrary to Articles 36, 37, 39, 40, 41 or 43 of the EC Waste Shipment Regulation*

*is being shipped across a border or is intended for cross-border shipment.*

*The authority carrying out the temporary confiscation shall issue a certificate to the last holder of the right of disposal, or, as representative of the last holder of the right of disposal, to the driver of the vehicle transporting the waste, or, where appropriate, to the proprietor of the treatment facility where the waste is located, stating the reason for the confiscation and the nature and quantity of the temporarily confiscated waste.*

(2) *The temporary confiscation pursuant to paragraph 1 shall be notified to the district administrative authority in which the temporary confiscation occurred, and the temporarily confiscated waste shall be immediately transported to a proper interim storage facility at a location deemed suitable by the district administrative authority. Within two weeks of receiving the notification, the district administrative authority shall, if the conditions set out in paragraph 1 are met, issue a notice ordering the confiscation. When the confiscation becomes legally effective, the waste is deemed to have been declared forfeit as a safety measure. Otherwise the temporary confiscation shall cease to be valid.*

(3) *The right of disposal over the waste temporarily confiscated pursuant to paragraph 1 belongs initially to the authority whose body temporarily confiscated the waste. As soon as the locally competent district administrative authority becomes aware of the confiscation, the right of disposal passes to that authority.*

(4) *If the confiscated waste is declared forfeit, the last holder of the right of disposal shall bear the cost of transporting, manipulating and storing the waste during the course of its confiscation. If, when the temporary confiscation takes place, the waste is located in a vehicle, that vehicle may be used to transport the waste to a proper interim storage facility in a designated location. The district administrative authority shall issue a decision regarding the requirement to reimburse costs. Where the last holder of the right of disposal cannot be identified, or is legally incapable of bearing these costs, or cannot be instructed for any other reason, in the case of point (1) of paragraph 1, the owner of the property upon which the waste was unlawfully collected or treated may be obliged to pay these costs if he or she either consented to the storage or dumping, or tolerated it without taking reasonable defensive measures.*

(5) *The bodies mentioned in paragraph 1, except the law enforcement services, shall be authorised to determine and collect an advance payment of any expected costs incurred pursuant to paragraph 4 on a case-by-case basis.*

(6) *The waste declared forfeit shall then be recycled, taking into account any tenders submitted for its proper treatment, or, where this is not possible, disposed of.*

(7) *The cost of treatment and all necessary related measures shall be borne by the last owner of the waste or by the last holder of the right of disposal on behalf of the last owner. Any proceeds resulting from the recovery shall, after the costs under paragraph 4 have been deducted, be made payable to the last owner. If the last owner cannot be identified, the proceeds shall be made payable to the authority.*

Possibility of closure / Laying down requirements and conditions for waste treatment facilities

Section 62(2) to (5)

(2) *Where there is suspicion that a treatment facility that is subject to authorisation under Sections 37, 52 or 54 is operating in breach of an agreement, the authority – whether or not criminal proceedings have been launched – shall request that the proprietor restore the treatment facility to the state required by law within a reasonable time limit. If the proprietor does not comply with this request within the given time limit, the authority shall issue a notice ordering the appropriate measures necessary to restore the facility to the state required by law, such as the decommissioning of machinery or the partial or total closure of the facility.*

(2a) *Where it is clear that a treatment facility is being operated without authorisation or that the proprietor of the treatment facility is collecting or treating hazardous waste without being in possession of a permit in accordance with Section 24a, the authority shall issue a notice ordering the entirety of the plant failing to comply with legal requirements to be shut down without prior procedure.*

*(2b) Where the operation of a treatment facility endangers the health, life or property of a third party or poses a significant direct threat to the environment, the authority shall issue a notice ordering the necessary measures, such as the decommissioning of machinery or the partial or total closure of the facility, without prior procedure.*

*(2c) The notices pursuant to paragraphs 2a and 2b shall be immediately enforceable. If the requirements for issuing a notice in accordance with paragraphs 2, 2a or 2b are no longer met, the authority shall revoke the measures taken as soon as possible.*

*(3) If, after authorisation has been granted pursuant to Sections 37, 44, 52 or 54, it emerges that, despite compliance with the requirements, conditions and time limits contained in the authorisation notice, the interests to be safeguarded in accordance with Section 43 are not adequately protected, the authority shall prescribe the necessary measures appropriate for the current state of the technology. Appropriate measures include, in particular, investigations, samples, measurements, subsequent requirements, the creation and implementation of a restructuring plan, remedying the consequences that the effects of the treatment facility have had, temporary or permanent restrictions on the treatment facility or the full or partial cessation of operations.*

*(4) If delay poses a threat, the authority shall immediately order the appropriate measures and, if necessary, have the proprietor of the treatment facility carry them out without delay, with costs reimbursed.*

*(5) Measures pursuant to paragraphs 2 to 4 do not require a permit or authorisation under other federal legislation.*

## Instructions for treatment

### Section 73

(1) *Where*

*waste is not collected, stored, transported, shipped or treated in accordance with the provisions 1. of this Federal Law, with regulations adopted under this Federal Law, with the EC Waste Shipment Regulation or with the EC POP Regulation or*

*safe treatment of waste is required in order to prevent adverse effects on public interests (Section 2. 1(3)),*

*the authority shall issue a notice ordering the obligated party to take the necessary measures or prohibiting unlawful treatment*

(2) *If delay poses a threat, the authority shall immediately order the necessary measures and, if necessary, have the obligated party carry them out without delay, with costs reimbursed.*

(3) *If hazardous waste is mixed with other waste or objects contrary to the provisions of this Federal Law, the authority shall order the obligated party to separate them accordingly, where this is technically and financially possible and is required in order to prevent adverse effects on public interests (Section 1(3)). This shall be without prejudice to paragraph 1.*

(4) *If, after the legal or actual decommissioning or closure of a landfill site under point (4) of Section 2(7), measures such as investigations, regular sampling, the submission of a safety or restructuring plan, or of safety or restructuring measures are necessary for reasons of public interest (Section 1(3)), the authority shall issue a notice ordering the party that operated the landfill site to take the necessary measures within a reasonable time limit.*

(5) *Measures that are the subject of an instruction or order issued by a public authority under paragraphs 1 to 4 do not require a permit or authorisation under other federal legislation. This shall not apply to the authorisation or permit of the facility in which the waste is subsequently treated, or to the shipment of the waste.*

(6) *Section 138 of the Water Rights Act (WRG) 1959 shall not apply to landfilling, which is to be handled in accordance with paragraphs 1 to 4. Paragraphs 1 to 3 shall not apply to wooded areas subject to the Forestry Act, [BGBl. No 440/1975](#).*

(7) *Unless otherwise specified below, the competent authority for treatment instructions is the district administrative authority. The competent authority for treatment instructions pursuant to paragraph 4 is the provincial governor; the provincial governor may delegate the execution of a procedure pursuant to paragraph 4 in full or in part to the district administrative authority, and authorise that authority to take decisions on his or her behalf, provided that this is done in the interests of expediency, clarity, cost saving and simplicity. The locally competent authority for waste not shipped in accordance with the provisions of this Federal Law or the EC Waste Shipment Regulation is the authority in whose area of activity the waste is located when the authority is informed that the waste is located in its sphere of activity.*

(8) *In cases pursuant to paragraph 1 in which waste has been returned pursuant to Section 71 and Article 24(1) and (2)(d) of the EC Waste Shipment Regulation and the party obliged to return the waste is not in possession of a permit to treat it in accordance with Section 24a, the authority shall order the waste to be handed over to a waste treatment operator authorised to treat it.*

## Prohibition on granting consent for cross-border shipments of waste

### Section 69(5) of the 2002 AWG:

*(5) Shipment shall be prohibited where the notifier or the consignee or the person appointed to represent the notifier or the consignee externally has been penalised at least twice for illegal shipment of waste within the meaning of the EC Waste Shipment Regulation and the penalties have not yet been paid.*

Provisions concerning the stopping of shipments and coercive measures by the police are laid down in Section 82(4) and (5) of the 2002 AGW and, where the customs authorities are concerned, in Section 83(3) and (4) of the 2002 AGW (for the legal text, see answer to question 46).

The Austrian Code of Criminal Procedure (StPO) states that victims have the right to seek compensation for the damage suffered as a result of the offence or for the infringement of their legal rights protected under criminal law. In order to do this, victims must declare themselves as participating in proceedings as a civil party.

Section 65(1)(c) StPO states that a victim is any person who, as a result of the possible criminal offence, has suffered damage or whose legal rights protected under criminal law may have been infringed; in the case of a legal person, that legal person itself (represented by the entity's representatives) shall be regarded as the victim. Victim status will then be conferred where, on the basis of a theoretical assumption that the facts of the case would lead to a conviction, it could be concluded that the person concerned would also have a civil-law claim, which is not usually the case in instances of 'mere' representation of interest by NGOs.

### 5.2.3. *Treatment of seized objects*

Pursuant to Section 114 StPO, until a report is made concerning seizure (Section 113(2) StPO), the criminal investigation department must see to the safekeeping of seized items, and thereafter the public prosecutor's office; once the criminal investigation department's report has been received, responsibility for safekeeping lies with the judicial system. From this point on, therefore, storage costs are borne by the judicial system. This responsibility remains with the prosecution service even where confiscation is applied for 'immediately' and granted by the court.

As a logical consequence of the rule that the prosecution service is in charge of the investigation, the service has sole power of disposal over items which are in safekeeping or which have been confiscated; it can also use the court depository for the safekeeping of evidence it receives. When charges are brought, the power of disposal over items in safekeeping passes to the court.

If the reason for continued safekeeping of seized items ceases to exist, these items must immediately be handed to the person who had the power of disposal over them when they were seized, unless this person is clearly not entitled. In that case, they must be handed to the entitled person or, if it is not clear who this is and this cannot be established without disproportionate effort, they must be deposited with the court.

Under certain conditions, the law provides that seized or confiscated assets may also be sold at an early stage (Section 115e StPO).

In the event of a conviction, the person convicted must, in principle, pay the full cost of seizure (confiscation) (point 5 of Section 381(1) StPO). If confiscated items cannot be stored with the authority (in the court depository), a depository must be appointed (Section 610(3) of the Rules of Procedure). The full cost of this (non-official) storage and safekeeping must also be repaid.

### 5.3. Environmental restoration

The polluter-pays principle is set out in Article 14 of the Waste Frame Directive (2008/98/EU). Pursuant to Section 73 of the AWG, the polluter liable – or alternatively the property owner - is to be ordered to carry out the requisite measures, such as, for example, disposing of waste and cleaning up pollution. If neither the polluter nor the property owner can be held liable, the state is responsible for the costs.

### 5.4. Jurisdiction

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

Under the general rules of the Austrian Criminal Code (in particular Section 65 StGB) Austria has jurisdiction with regard to waste crimes committed partially/entirely outside its territory.

Punishable acts committed abroad are punished only if they are punishable under the law of the place where they were committed.

#### Section 5

*(1) For offences committed abroad (other than those described in Sections 63 and 64) provided that these offences are also punishable under the law of the place where the offence was committed, Austrian criminal law applies, if:*

*1. the offender was Austrian at the time of the offence or subsequently acquired Austrian citizenship and still holds it when the criminal prosecution commences*

*2. the offender was a foreign national at the time of the offence, is apprehended in Austria and cannot be extradited to a foreign country for a reason other than the type or nature of the offence.*

(2) *The punishment shall be determined in such a way that the perpetrator is no worse off overall than under the law of the place where the offence was committed.*

(3) *If there is no criminal jurisdiction at the place where the act was committed, it shall suffice for the act to be punishable under Austrian law.*

(4) *However, there shall be no jurisdiction if:*

*1. prosecution of the offence has lapsed under the law of the place where it was committed;*

*2. if the perpetrator has been finally acquitted by a court of the state in which the offence was committed or if proceedings against him or her have been discontinued for some other reason;*

*3. if the perpetrator has been finally convicted by a foreign court and the sentence has been carried out in full, or if the sentence has not been carried out, if it has been remitted or if enforcement is time-barred under the foreign law;*

*4. if enforcement of the sentence imposed by the foreign court has been fully or partially suspended.*

(5) *Where the relevant conditions are met, an Austrian shall be ordered to carry out preventive measures provided for under Austrian law even where he or she cannot be punished in Austria for one of the reasons stated in the preceding paragraph.*

#### *5.4.2. Rules in case of conflicts of jurisdiction*

For judicial matters, Article 13(7)(a) of the Eurojust Decision 2002/187/JHA lays down a duty to provide information. These rules were incorporated into Austrian law by point 3 of Section 67(1) of the Federal Law on judicial cooperation in criminal matters with Member States of the EU (EU-JZG; see Annex 8). Article 7(2) of the Eurojust Decision provides that the College may issue a written non-binding opinion if a conflict cannot be resolved through mutual agreement between the Member States.

## 5.5. Conclusions

- The Austrian system has certain peculiarities. In order to be criminally prosecuted, an act must first be considered as an offence against an administrative law (the 2002 AWG and 9 provincial laws) and, on the other hand, meet the requirements of Articles 180 to 183 of the Criminal Code. The vast majority of waste management violations are, however, prosecuted under administrative law.
- As regards determining whether the regimes of administrative or criminal sanctions should apply, the inspection authorities consider that the relevant criteria are not always very clear, whereas the judicial authorities seem not to be aware of these difficulties. The evaluation team encourages the Austrian authorities to continue the ongoing discussions on these issues, with a view to achieving more clarity and uniformity in the determination of the applicable legislation and sanctions regime.
- Natural persons may be punished by imprisonment or fines; the length of the imprisonment and the possible amount of a fine are defined by each provision for each criminal offence in Sections 180 to 183 in the Austrian Criminal Code (StGB). According to the general principles laid down in Section 32 in the StGB, the severity of the sentence should increase to reflect the degree of harm or danger caused by the offender. The seriousness of these circumstances is individually assessed by the courts on a case-by-case basis, taking into account the particular sensitivity of an area and other relevant factors.
- According to Article 6 of Directive 2008/99/EC, the Member States must ensure that legal persons can be held liable for the offences referred to in Article 3 (waste crimes). However, the Austrian Federal Corporate Criminal Liability Acts (VbVG) does not apply to corporations of natural persons, even if the offence is committed in a professional setting, and the Federal State, the provinces, the municipalities and religious organisations are excluded from its scope.

- The statistics from the BMVRDJ show that there were no convictions of legal persons for environmental crimes in the years 2017 and 2018. In this respect, the evaluation team considers that the prescription limit of 1 year is too short and likely to lead to certain corporate offences going unpunished.
- In Austria legal entities can be fined. Though corporate fines are in principle an efficient and effective tool to counteract crimes committed by companies in Austria, they are low compared to the potential profit, and consequently not deterrent, and are not used sufficiently. The evaluation team encourages the Austrian authorities to make more use of corporate fines for environmental violations and to increase their level.
- For areas covered by the BMNT there are possibilities to take measures other than imposing a fine. Such measures can, for instance, be obliging the offender to pay an amount of money equal to the amount of the enrichment obtained, and temporarily confiscating the waste, including its transport packaging. Furthermore, there is the possibility of closing a treatment facility and laying down requirements and conditions, as well as instructions for treatment. In the context of administrative offences, there is also the possibility for the police and customs to propose an on-the-spot penalty for a defined list of offences.
- Measures other than criminal sanctions which can be imposed in a criminal case are the confiscation of means used to commit the offence, forfeiture of the proceeds of the crime and removal.
- According to the polluter-pays principle set out in Article 14 of Directive 2008/98/EU, the responsibility for restoring the environment and repairing the damage caused lies primarily with the offender, or alternatively, subject to certain conditions, with the property owner. If the property owner cannot be held liable either, the responsibility lies with the state.

## 6. COOPERATION

### 6.1. International cooperation

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

There are no specific forms of cooperation in cross-border cases of waste crime; the Austrian authorities usually make use of the general forms of cooperation existing for other cases of cross-border crime on the basis of multilateral (primarily EU, Council of Europe and UN) legal instruments and bilateral treaties in the field of extradition/surrender and mutual legal assistance in criminal matters.

Even without a regulatory framework, under Section 3(1) of the Law on Extradition and Mutual Assistance (ARHG; see Annex 7), Austria is in a position to cooperate subject to reciprocity; this also applies to waste crime proceedings.

Cooperation and information exchange exist and common inspections are performed with most of the neighbouring countries, in particular as regards cross-border shipments of waste on the basis of Regulation EU 1013/2006.

The Federal Criminal Intelligence Service has a particular focus on the Balkans Region, and supports countries there in developing expertise and capacity in the field of environmental and waste crime. For instance, as part of EU twinning projects, advice has been provided to Bulgaria, Serbia, the Republic of North Macedonia and Croatia. As part of EU TAIEX, workshops have been held in Serbia, Croatia, Bosnia & Herzegovina and the Republic of North Macedonia. Additional training for judges, prosecutors, police and administrators has been carried out in Serbia at the OSCE's request.

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

The Austrian authorities make use of the following channels for the exchange of information:

- Interpol: Use of secure connections for sensitive data exchange. Exchange of intelligence using Interpol databases;
- Europol: Use of secure connections for sensitive data exchange. Exchange of intelligence using Europol databases;
- Specific offices located at the borders to ensure cooperation with other Member States. Police officers of the countries concerned work together in these offices and also speak the other country's language. Information can therefore be exchanged particularly rapidly;
- Austrian police liaison officers at Austrian embassies in many countries (especially useful in South-East Europe);
- Direct contacts with known environmental investigation groups in the EU Member States. Most direct contact points are known, especially via EnviCrimeNet.

With regard to the police, the national contact point is the BK. The national contact point for the customs administration is the BMF. In this area the BMF is very well connected with the competent officers at international level and has good information exchange.

The Austrian authorities use Europol and Interpol databases in order to prevent, detect, investigate and prosecute cross-border cases of waste crime.

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

The Austrian authorities indicated that in judicial cooperation in criminal matters, no practical problems have been observed that occur specifically in waste crime cases.

### *6.1.4. Operational performance of Joint Investigation Teams (JITs) in waste crime*

The Austrian authorities stated that they consider that JITs can be beneficial in the fight against waste crime, as waste crime cases frequently not only have a cross-border element, but are also often linked to a multitude of potential offenders, victims, witnesses and other parties involved on account of their sometimes extensive dimensions. Particularly in such cases, JITs can speed up the flow of information, simplify the process of the hearing and exchange of evidence, and in this way allow for more efficient investigations.

However, to date, Austria has not participated in any JITs in cross-border waste crime cases.

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

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

Austria uses cooperation with Europol and Eurojust where necessary, including in connection with the cross-border fight against waste crime.

The Federal Criminal Intelligence Service is the national Europol (National Unit) and Interpol (National Central Bureau) contact point and has been very active in the networks and working groups of Europol for around 15 years.

It uses the services for exchanging information and intelligence and for taking part in international operations. The BK is familiar with SOCTA and the Early Warning Notifications. At national level, it coordinates the ongoing EMPACT Operational Actions in the field of environmental crime and is Austria's representative internationally.

The Austrian desk at Eurojust has been involved by the Austrian judicial authorities over the past few years (since 2013) in proceedings which can be classified as concerning waste crime. In these proceedings a complaint was brought regarding a violation of the law on the preservation of species. Eurojust supported the efforts made in this case to speed up the execution of mutual legal assistance by other States.

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

The Federal Criminal Intelligence Service is active in international bodies such as EnviCrimeNet, the IMPEL Trans-frontier Shipment (TFS) Working Group and Interpol Working Groups.

The BK is a founder member of EnviCrimeNet and is also represented in this network's Steering Group. The BMNT and the police frequently participate in IMPEL Waste and TFS network meetings, which bring together Member States' administrative authorities and police forces active in the field of waste shipment. The network is considered by the Austrian authorities to be extremely valuable and useful for the exchange of practical information.

Austria is currently not represented in the ENPE and in the EU Forum of Judges for the Environment (EUFJE) on the subject of waste crime. The existence of these networks was not even known to the judges and prosecutors met during the visit.

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

Austria uses cooperation with Interpol where necessary, including in connection with the cross-border fight against waste crime.

The BK has been very active in Interpol's networks and working groups for around 15 years. It uses the services for exchanging information and intelligence and for taking part in international operations.

## 6.4. Cooperation with the private sector

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

In Austria, relations between the public and the private sector in the area of the environment appear to be good.

The BMNT has dialogue-based cooperation with private companies and organisations which are concerned by environmental legislation. It holds regular meetings with the Austrian Federal Economic Chamber and with the Association of Austrian Disposal Companies. Topical problems relating to waste disposal and illegal cross-border shipments of waste are discussed at these meetings.

Two private-sector platforms have also been set up in Austria which regularly cooperate with the competent authorities enforcing waste legislation and occasionally organise information events, including plant inspections, for customs and police staff, for training purposes.

As regards the police, mention can be made of regular meetings and information exchange with the legal waste management sector's working group 'Stop illegal waste transit' which defends its interests.

In the BMF, meetings and appointments with companies and the Association of Austrian Disposal Companies take place on a regular basis. The BMF experts also support the local customs offices if meetings with the Federal Economic Chamber are convened or the Federal Economic Chamber issues invitations to meetings. The customs offices also organise 'round tables' for companies, businesses and municipal authorities. Contact with the business community is very intensive in this field.

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

There is no specific reporting obligation for waste crime cases for the private sector and citizens. However, on a voluntary basis, the police have made it possible for citizens and companies to anonymously report/inform the police of possible environmental violations using a reporting point on the homepage of the Federal Criminal Intelligence Service (whistleblower arrangement).

Waste collectors and processors, particularly the operators of waste treatment plants, comply with various reporting obligations, in accordance with the 2002 AWG and other procedures, e.g. IED, PRTR Regulation. Regulation (EC) No 166/2006 concerning the establishment of a European PRTR. The infringement of such obligations constitutes an administrative offence (see also answer to question 8).

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

During the visit the evaluation team had the opportunity to meet a representative of one of the federations of waste treatment companies who stressed that the cooperation was good and beneficial for both parties. In particular, he highlighted the importance of controls and pointed out that both the quality, the quantity and the duration of inspections carried out by the BMNT and provincial inspection services are considered sufficient.

Three or four times a year, a meeting is organised between the above federation and the inspection services of the administrations with a view to discussion, providing information and trying to ensure improvements in this area.

## 6.5. Conclusions

- Cooperation and information exchange exist between the Austrian administration and the competent authorities of other countries, and more particularly of neighbouring countries, including participation in joint controls, with a view to coordinating their efforts in fighting against cross-border environmental crime.
- The Austrian administrative and police authorities are quite actively involved in cooperation at EU level and participate in existing networks, such as EnviCrimeNet and the IMPEL TFS network. The police (BK) are also very active in the working groups of Europol and Interpol. The evaluation team encourages the Austrian authorities to maintain such commitment and to continue their active participation in the activities of these bodies.
- The Austrian customs authorities only rarely participate in international activities, depending on the topics to be dealt with. However, the evaluation team believes that more active participation by the customs authorities in international fora and activities would be an opportunity not only to gain knowledge but also to share their own expertise.
- The evaluation team also notes the absence of the Austrian judiciary at EU level. In Austria, no judges currently participate in the activities of the EU Forum of Judges for the Environment (EUFJE) and no prosecutors participate in the ENPE.
- The evaluation team, recalling that environmental legislation is mainly EU legislation, recommends the full participation of the Austrian judicial authorities in the activities of these networks, which offer platforms for the exchange of information and experience among relevant actors across the EU.

- No operational participation by Austria in JITs was observed in the area of environmental crime.
- Cooperation between the administrative authorities and the private sector in the environmental area is well established in Austria through two private-sector platforms and frequent meetings. In addition, the private sector has access to the clear and informative guidelines issued by the BMNT and the possibility to ask for a “waste declaratory ruling”. This cooperation provides a good basis for the private companies to be able to fulfil their legal obligations and to be involved in relevant activities in this field.
- The whistleblower arrangement is an excellent initiative and a good way to involve the population in the protection of the environment, which can also have a preventive effect on potential environmental crimes.

## 7. ILLEGAL TRAFFICKING OF WASTE

### 7.1. National structure

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

The 2002 AWG specifies the obligation to carry out checks and clarifies the role and competences of each actor.

In principle, general responsibility for inspections in the area of waste management lies with the competent provincial governor and district administrative authorities within their respective spheres of competence. When provincial inspection services find irregularities in their routine checks or suspicions of irregularities in shipments of waste, they contact their BMTN colleagues.

As already mentioned, one of the main problems is the classification of waste. The district administrative authority in whose sphere of activity the case is at the time when the procedure is initiated is the competent authority to issue a waste declaratory ruling, if there is reasonable doubt as to:

- 1) whether or not an item constitutes waste according to the Austrian Federal Law,
- 2) which type of waste an item represents, or
- 3) whether or not according to Union waste legislation, in particular Regulation (EC) No 1013/2006 on shipments of waste, an item is waste subject to notification when shipped.

The district administrative authority can make a waste declaratory ruling ex-officio, at the request of the person authorised to dispose of the waste or on the initiative of the Federal Police or the customs authorities and is required to deliver it within a fixed time limit.

Because of the large number of district administrative authorities, there is a possibility that their assessments may differ. However, in the evaluation team's opinion the supervision by the BMNT and the guidelines that it produces, the information it distributes, the training provision and the regular meetings on these matters all contribute to a uniform approach.

Controls on cross-border shipments of waste are carried out by:

1. - the Federal and Auxiliary Provincial Inspection Services
2. - the Police
3. - the Customs authorities.

In the administrative field, the Ministry of Sustainability and Tourism (BMNT) has the main role in the enforcement of the legislation related to cross-border shipments of waste. It is Section V / 1, "waste legislation, transfer notifications and control", of the BMNT which performs the related functions: management of notifications, repatriation in case of fraud, information and prevention.

Cross-border waste shipment inspections are carried out by BMNT staff (lawyers and official experts) specialising in that field.

The administrative authorities carry out checks on several levels:

#### Company controls

As mentioned in the annual inspection plan, the federal administration also carries out waste inspections at the level of producers, consignees and waste traders on the basis of risk analysis, information received or road checks carried out.

These controls are often carried out jointly with the provincial inspection services who have the competence and the duty to control the installations (for example: IED installations). When provincial inspection services find irregularities in their routine checks or suspicions of irregularities in shipments of waste, they contact their BMNT colleagues.

In its activities the BMNT is supported by the police, the customs authorities and the Environment Agency Austria (taking of samples). In particular, the Federal Police are required to contribute to the BMNT's investigations in the field of waste shipments, while the customs authorities are required to assist the BMNT within the framework of such investigations.

- Road controls

For safety reasons, roadside checks, including controls of transports of waste according to Article 82 of the 2002 AWG, are usually carried out by the administrative authorities in collaboration with the Traffic Police and/or customs authorities close to the border crossing points and at special places established for inspections on the most frequented motorway routes;

- Controls of carriers, collectors, traders or brokers

These controls can be carried out on the basis of relevant information received.

As far as the police are concerned, their obligations with regard to waste and waste transport controls are clearly imposed by the law - Article 82 of the 2002 AWG. Unit BK 3.2.4, the LKA environmental investigation groups and the UKOs are the competent services in that regard.

In addition to the support provided to the administrative authorities, the police carries out enforcement action in this area on its own, which consists of physical inspections and investigations based on information received from administrative authorities, NGOs, private individuals and the Criminal Intelligence Service.

Each year, the Federal Police are required to send to the Federal Ministry of Agriculture and Forestry, the Environment and Water Management an electronic report on the number of shipments of waste controlled throughout Austria, classified by the type and quantity of waste transported, the country of dispatch and the country of destination, and the sanctions and measures taken by the law enforcement services.

The customs authorities are required to carry out tasks on behalf of the Federal Minister for Agriculture and Forestry, the Environment and Water Management. Their obligation to carry out controls on the transport of waste is also specified by law - Article 83 of the 2002 AWG.

As part of their functions in dealing with cross-border cases, the customs authorities carry out regular checks of trucks concerning all goods including waste: they inspect the documents and the consignment notes or documents concerning internal transportation, the authorisations required for import, export or transit and the notification and movement documents and the information pursuant to Article 18 of the EC Waste Shipment Regulation. In the event of an illegal transfer, they notify the above Ministry, which will take charge of the management of illegally transferred waste.

The customs authorities enforce Regulation EU 1013/2006 using simple and well-defined guidelines prepared by the BMNT and on this basis classify waste in the predefined simple cases.

Both the police and the customs authorities are authorised to impose a provisional guarantee in the amount of at least EUR 360 up to a maximum of EUR 4 000. In the case of minor infringements of procedural requirements, and in particular missing information pursuant to Article 18 of the EC Waste Shipment Regulation, the law enforcement services are authorised to levy a fine of up to EUR 300 in the form of a penalty notice.

Where there are concerns that waste has been shipped without the necessary authorisation or required consents in accordance with the EC Waste Shipment Regulation, the law enforcement services are required to order its detention in transit.

The Environment Agency Austria can support the competent authorities in the enforcement of the Waste Management Act, with sampling and analysis of waste at traffic control check points, at companies and at landfill sites.

In the judicial area, the Austrian authorities responsible, in the field of criminal law, for preventing and fighting against the illegal shipment of waste between Member States, as well as to and from Member States to third countries are the public prosecutors' offices (and, acting on their behalf, the criminal investigation department) and the courts.

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

In Austria the illegal shipment of waste is usually detected as follows:

#### For areas covered by the BMNT:

- during inspections of means of transport and operational facilities in Austria;
- on the basis of inspection tip-offs received from other countries;
- through analyses of electronic data concerning waste streams;
- following tip-offs from business owners;
- following tip-offs from members of the public;
- through risk assessments of individual waste streams and undertakings.

The main obstacles to the detection of offences relating to the illegal shipment of waste are the limited budget, the limited human resources and the complexity of the circumstances underlying the criminal offences.

#### For areas covered by the BMI/BK:

- following tip-offs from administrative authorities;
- following tip-offs from NGOs and private individuals;
- following tip-offs to the BK's reporting Unit;
- based on the observations of UKO patrols.

#### For areas covered by the BMF:

- during inspections at the border crossing points;
- during mobile inspections on motorways, expressways and other traffic routes;
- following tip-offs from members of the public;
- following tip-offs from businesses;
- following tip-offs from municipal authorities.

In case of suspicion of an illegal shipment, the inspection bodies have to report to the prosecutor, if general and/or specific quantities of the illegally shipped waste, as indicated below, are exceeded:

General quantities:

- Quantities of more than 25 kg of hazardous waste, which qualify as dangerous goods according to the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR)
- Quantities of more than 1 000 kg of hazardous waste, which do not qualify as dangerous goods according to the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR)
- Quantities of more than 10 tons of non-hazardous waste

Waste-specific quantities

- fluorescent tubes: 75 units or more
- energy saving bulbs: 30 units or more
- refrigerators: 20 units or more
- hazardous WEEE: 20 units or more
- starter batteries (lead accumulator): 5 pieces or more, or more than 100 kg
- lithium batteries, button cells or accumulators, nickel-cadmium batteries and nickel-metal hydride batteries: more than 25 kg
- other mixed batteries: more than 100 kg
- ELVs: 4 units or more

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

According to the Austrian authorities, the most problematic waste streams are:

- ELVs
- WEEE
- Lead accumulators
- Plastic waste (B3010) mixed with other waste / containing flame retardants / mixed with PVC
- Rejects from paper production
- Treated wood waste (waste from chipboards)
- Composite materials
- Waste classified as by-products (such as the glycerin phase of biodiesel production)

One example of a trend is the illegal shipment of end-of-life vehicles from Austria via certain ports to West Africa, where they are used partly as containers for the transportation of dismantled end-of-life vehicles, waste electrical equipment and other household effects. Some are exported in bulk in containers, while others are exported by means of vehicle transporters. The distinction between end-of-life and second-hand vehicles is dependent on each individual case and is often difficult to make, even when - in some instances - the items in question are accompanied by purchase or repair invoices.

Problems also arise when, due to an interruption of a waste shipment ordered by the administrative authority or by the prosecutor's office because investigations need to be carried out, waste has to be stored (temporarily), as across the country there is a lack of storage areas which are suitable (in terms of both waste legislation and safety).

#### *7.1.4. Measures on shipment of wastes*

The provisions applicable are those of Directive 2008/98/EC on waste, which have been transposed by Austria, together with those of the EC Waste Shipment Regulation. Vehicles and facilities are inspected on a regular basis to ensure compliance with those provisions.

It is worth mentioning that preventive action in this area involves, among other things, issuing instructions to companies that wish to transport/ship waste but also to companies that have been involved in illegal waste shipments, in order to prevent such illegal activities occurring again. It is also possible to find relevant information and instructions in this respect on the website of the police.

## **7.2. Inspections**

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

Inspections are planned and carried out on the basis of the Austrian Inspection Plan, drawn up by the BMNT in accordance with Article 50 of the WSR. In addition to the general inspection plan valid for 3 years, an annual plan of inspections sets out the field control programme, specifying the type of control, the place of control / company to be checked and the dates of the checks. In the case of illegal shipments concerning certain waste streams, inspection campaigns targeted at the industry or trade sector concerned are organised.

Austria, as required by Article 51 of EU Regulation 1013/2006, has also drafted and published a specific inspection report on the transboundary transfer of waste.

In addition to the planned inspections, the BMNT also carries out random inspections, including inspections based on information received from other countries, through analysis of electronic data and risk assessments of waste streams and undertakings, including using information in the EDM or received from business owners and from the public.

Law enforcement authorities and customs authorities, within the limits of their competence and powers, together with the experts employed, are authorised to enter and view property and buildings, stop vehicles, open and view containers and vehicles and carry out physical inspections, demand the necessary information, and demand and examine the necessary documentation.

The persons responsible must allow the above authorities to enter the properties and buildings and to open and examine containers and vehicles, comply with the orders given by those authorities, provide the necessary information and grant access to documentation, including stock records and other operational records.

Inspections of facilities are generally conducted without prior notification, on the basis of a balance sheet analysis of waste accepted and waste transferred. In addition, samples of waste are taken for laboratory analysis, if necessary.

Depending on the local circumstances, roadside vehicle inspections involve filtering off all HGV traffic. In the case of vehicle inspections, vehicles are stopped by the customs authorities/police and the documents and cargo are examined and, if necessary, a physical inspection of the waste is carried out.

In the case of joint inspections with the BMNT, the inspections are carried out in consultation with waste experts and, in certain cases, under the guidance of lawyers specialising in the field of waste legislation. Where necessary, and in order to preserve evidence, a suitably trained specialist will take samples of the waste transported for laboratory analysis.

In the case of suspicious activity, the driver is ordered to take a break and documents are requested from the undertakings involved in the shipment (cf. Article 50(4c) of the EC Waste Shipment Regulation). In the absence of sufficient evidence, the shipment must be considered illegal pursuant to Article 50(4d) of the EC Waste Shipment Regulation.

In the case of an illegal shipment, it will be ordered that the waste be returned to the country of dispatch or to the notifier, unless the notifier is a facility which is being operated in an unauthorised manner.

Where appropriate, information is provided to the competent administrative authorities in the other States concerned (competent authority in the country of dispatch or destination).

Waste shipped illegally can be confiscated in accordance with Article 75b of the 2002 AWG. A preliminary confiscation can be ordered by the ministry, the police, the customs or the competent local authority (“Bezirksverwaltungsbehörde”), and should be followed by a confirmation concerning preliminary confiscation to be handed over to

- the person entitled to dispose of the waste
- the driver of the vehicle
- the holder of the plant where the waste is stored.

Shipments of waste in contravention of Article 2(35) of Regulation 1013/2006 are subject to either administrative sanctions or criminal sanctions. If the illegal shipment is of a non-negligible quantity of waste, then the offence is a crime and falls within the competence of the prosecutor and the court. If it is of a negligible quantity then the district administrative authorities, as the administrative prosecution authority, are responsible for the prosecution.

Both the BMNT and the judicial authorities have issued separate guidelines on how to determine if the waste shipment is of a negligible or a non-negligible quantity (see point 5.1.2). The BMNT document is known and used by the police and the customs authorities when carrying out inspections.

In this respect, the evaluation team underlines that it is important that in Austria the administrative and the criminal follow-up to illegal waste trafficking are clearly distinguished on the basis of a uniform approach.

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

The inspection plan highlights potential risks in relation to the illegal trafficking of WEEE and ELVs, and the 2017 plan provides for specific controls for the installations for WEEE and ELV pooling and treatment and for the monitoring of these two waste streams.

However, this plan does not set out any specific strategy for these waste streams and there is no overall action plan targeting WEEE and ELVs; in the evaluators' view it would be advisable for the Austrian authorities to have such a plan concerning both prevention and inspections, laying down the obligations of producers of waste, collectors, transporters, assembly centres and treatment centres. The plan should also identify the different services involved: police, customs, and federal and provincial governments.

While there are no specific inspection activities in relation to waste electrical and electronic equipment (WEEE), such shipments are subject to a thorough, focused examination in the course of general vehicle inspections, and particular attention is paid to such waste streams.

As a result of the existing legal provisions (clear minimum requirements for shipments of waste electrical and electronic equipment pursuant to Annex VI to the Directive on Waste Electrical and Electronic Equipment and the transposition of that Directive into the Austrian Regulation on Waste Electrical and Electronic Equipment), inspections of these waste streams can be carried out relatively easily and efficiently.

With regard to end-of-life vehicles (ELVs), focused examinations are likewise carried out in the course of vehicle inspections. In addition, facilities which deal in such end-of-life vehicles either legally or illegally, and which subsequently ship such vehicles across borders, are subject to special inspections.

In order to make inspections of end-of-life vehicles more effective, Section 75a of the 2002 AWG introduced a power of confiscation in cases where it is suspected that waste is being shipped illegally.

Information from the EDM and the customs authorities information is used to detect cross-border shipments of waste including ELVs and WEEE. The BMNT has also drawn up instructions that make it easy for the enforcing authorities to deal with ELVs and WEEE when the two types of waste appear together. In order to make it easier to distinguish between waste electrical and second-hand electrical and electronic equipment, a manual on the cross-border shipment of second-hand goods has also been drawn up.

As part of preventive work and when planning enforcement action, dialogue with companies known for or under suspicion for shipping ELVs and WEEE is also an important component that could contribute to avoiding violations in this field.

The Austrian authorities stated that the inspection of shipments of waste will continue to have focus on these waste streams in the years to come.

### *7.2.3. First inspection plan*

The first of the three-year inspection plans adopted by Austria in accordance with Article 50 of Regulation (EC) No 1013/2006, as amended by Regulation (EU) No 660/2014, has been drawn up by the BMNT.

The plan also explains the organisation of training and the manual made available to the staff (police, customs, administration). It is evident from this plan that the Austrian authorities are focusing their controls of cross-border shipments of waste on three main areas:

- Road inspections: taking advantage of the controls on the most frequented motorway routes.

- controls of installations, chosen on the basis of risk analysis, information received or road checks carried out.

- Controls of carriers, collectors, traders or brokers (based on information received).

The BMNT, in cooperation with the police and customs authorities, also draws up a detailed annual inspection and enforcement plan.

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

According to §71 of the Waste Management Act, if the obliged returning party fails to fulfil the take-back obligation under Article 22 or 24 of the Waste Shipment Regulation (WSR) in due time, the Federal Minister of Agriculture, Forestry, Environment and Water Management must order the necessary measures, if necessary subject to obligations, conditions or time limits and the costs must immediately be reimbursed.

In such a case, the advance payment of the estimated costs may be charged, unless a financial guarantee in accordance with Article 6 of the WSR adequately covers the costs. Appeals against a pre-payment order have no suspensive effect. However, the administrative court may grant the suspensive effect of the appeal on request if, after weighing all the interests involved, the decision appealed would involve serious and irreparable damage to the complainant.

Where appropriate, the competent authorities organise a take-back procedure in accordance with Art 24 of the WSR (Regulation (EC) No 1013/2006) and the return of the waste to the country of dispatch.

The duration of the take-back procedure varies considerably depending on the Member State of origin. In some cases, there are no suitable waste treatment facilities in the Member State of origin. Occasionally, there is disagreement between two Member States regarding responsibility for the illegal shipment since, pursuant to the EC Waste Shipment Regulation, the country of dispatch is subject to a take-back obligation only in cases where the notifier is liable. In practice, co-responsibility of the recipient is often asserted in order to circumvent take-back obligations.

Apart from the above difficulties, the Austrian authorities indicated that they did not encounter any other obstacles with taking back illegal waste nor did they experience any drawbacks; this is probably the result of clarity and transparency in the classification of waste, which makes it easier for companies to adhere to the rules.

### 7.3. Conclusions

- With regard to controls of cross-border shipments of waste, Austria has put in place the right structures. Indeed, all the actors involved (federal and provincial environment administrations, police and customs authorities) participate, each in their functions, with their specific skills and the necessary powers, in carrying out inspections and investigations.
- The BMNT is the competent authority in Austria for enforcing the provisions of Regulation (EU) 1013/2013 and is responsible both for the management of notifications and for inspections of cross-border waste shipments.
- The district administrative authorities have a general responsibility for inspections in the area of waste enforcement for issuing administrative fines. They can also issue a waste declaratory ruling to create legal certainty, on a case-by-case basis, if there is reasonable doubt as to whether an item is waste or not and which type of waste it represents.
- As the consideration of objective or subjective definitions of waste in accordance with the Environmental Crime Directive is often a problem in the enforcement chain, the possibility of obtaining these waste declaratory rulings from a competent authority contributes to ensuring legal certainty as regards the waste-related obligations to be complied with.

- In order to detect illegal waste shipments, the Austrian authorities' enforcement action consists both of planned and random checks of three main types - road and river inspections, controls of the installation, controls of carriers, collectors, traders or brokers -, based on various sources of information from public and private sources, including tip-offs and risk assessments. As risk assessment-based inspections are essential for effective enforcement of the legislation, the evaluation team encourage the BMNT, the police and the customs authorities to maintain this valuable approach.
- The police and the customs authorities support the BMNT in its enforcement activities regarding cross-border waste shipments - in particular, for safety reasons, with stopping vehicles on the road and boats on the rivers, and also carry out investigations in this area on their own initiative, including joint investigations. The cooperation between the BMNT, police and customs authorities in the area of illegal waste trafficking is considered by the evaluation team to be adequate.
- The personnel of both the police and the customs authorities are adequately trained and dedicated in this field and therefore well prepared to carry out the tasks of detecting and investigating illegal waste shipments efficiently and professionally. The customs authorities, however, have limited human resources, which the evaluation team recommends that the Austrian authorities increase.
- Shipments of waste in contravention of Regulation 1013/2006 are subject to either administrative sanctions or criminal sanctions, and are reported respectively to the competent district administrative authorities or to the competent public prosecutor, depending on whether the illegal shipments of waste are of a negligible or non-negligible quantity. However, separate instructions have been issued by the administrative and the judicial authorities regarding this distinction, which could be an obstacle to ensuring a uniform approach.

- The BMNT has provided several useful guidelines and manuals used by the police and customs authorities in order to make the enforcement of waste legislation more effective. In the evaluation team's opinion, this contributes to an effective and coherent approach to waste crime.
- As the inspection plan highlights potential risks in relation to WEEE and ELVs, the evaluation team recommends that the Austrian authorities draw up a global action plan for the entire cycle of these waste streams, from their production to their elimination, which also identifies the different services involved in the related enforcement activities.
- According to the Austrian authorities, the main obstacles to the detection of offences relating to illegal waste shipments are the limited budget, the limited human resources and the complexity of the circumstances underlying the criminal offences.

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

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

Waste is classified as hazardous or non-hazardous according to Directive 2008/98/EC on waste (Waste Framework Directive) and by applying Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (CLP Regulation).

Since classification as hazardous waste often depends on limit values being exceeded, evidence has to be collected in individual cases by analysing the chemical composition of the waste in question, which requires a high degree of technical expertise and in certain cases entails high costs.

Sporadic cases of misclassification of waste as non-hazardous do occur, e.g. the declaration of asbestos cement as normal construction waste. Something that, according to the Austrian authorities, is even more problematic, however, is the classification of (hazardous) waste as a by-product, without the criteria for the existence of a by-product being met.

### **8.2. The system of inspections and the authorities involved**

Controls of hazardous waste treatment facilities are done:

- based on a control schedule (for example, for companies covered by the IED): control every 1 to 3 years,
- in response to complaints,
- following an accident or the detection of pollution,
- on the initiative of the inspection authorities, when they have information that suggests illegal behaviour.

The authorities involved are those that normally control companies and facilities, as well as those involved in roadside checks: federal and provincial environmental authorities, police and customs.

The competent authority for inspecting hazardous waste treatment facilities is the governor of the province where the facility is located. See Section 62(1) of the 2002 AWG and Section 3a(1) to (4) of the 2002 AWG, below.

#### Monitoring of treatment facilities and measures for the operational phase and completion phase

##### Section 62

- (1) The authority must conduct inspections of treatment facilities that are subject to authorisation pursuant to Sections 37, 52 or 54 at least every five years. IED treatment facilities must be inspected in conformity within the time limits provided for in Section 63a(4).

#### Environmental inspections for IED treatment facilities

##### Section 63a

*(1) IED treatment facilities shall be subject to regular environmental inspections. Sections 52 to 53a of the General Administrative Procedure Act (AVG) shall apply.*

*(2) The Federal Minister for Agriculture, Forestry, the Environment and Water Management shall draw up an environmental inspection plan covering all IED facilities, which must be reviewed at regular intervals and, where appropriate, updated.*

*(3) The environmental inspection plan shall include the following:*

1. a general assessment of relevant significant environmental issues;
2. the geographical area covered by the inspection plan;
3. a register of the IED facilities covered by the plan, using the identification numbers contained in the EDM master data register;
4. procedures for drawing up programmes for routine environmental inspections pursuant to paragraph 4;
5. procedures for non-routine environmental inspections pursuant to paragraph 6;
6. where necessary, provisions on cooperation between different inspection authorities.

*(4) Based on the environmental inspection plan, the governor must regularly draw up a programme for routine environmental inspections, including the frequency of site visits for different types of facilities. The period between two site visits shall be based on a systematic appraisal of the environmental risks associated with the IED treatment facilities concerned and shall not exceed one year for IED treatment facilities posing the highest risks and three years for IED treatment facilities posing the lowest risks. If an inspection has identified an important case of non-compliance with the permit, an additional site visit must be carried out within six months of that inspection.*

Under Section 75 (6) of the 2002 AWG, the authorities and the institutions referred to in paragraph 4, or the experts appointed by them, are entitled to take samples in an amount required for the purposes of the investigation, without compensation. Wherever possible, an officially sealed duplicate sample must be handed over, unless the person concerned relinquishes that right.

For inspections in the area of cross-border waste shipments, a checklist is to be drawn up annually by the BMNT based on the national inspection plan containing the planned transport checks and inspections of facilities in this area.

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

The authorisations granted to companies which set standards for emissions to the atmosphere, wastewater discharges, safety measures, etc. are the first measures taken for the protection of human health and reduce the risks for the environment.

General and special treatment obligations for waste holders are laid down respectively in Sections 15 and 16 of the 2002 AWG, set out below.

#### General treatment obligations for waste holders

##### Section 15

*(1) Where the collection, transport, storage and treatment of waste, and other handling of waste, are concerned,*

*1. the objectives and principles pursuant to Sections 1 and 2 must be respected, and*

*2. any adverse effects on public interests (Section 1(3)) must be avoided.*

*(2) Mixing or blending waste with other waste or with objects is not permissible, where*

*1. inspections or treatments that are required under waste law are hindered or prevented,*

*2. solely as a result of the mixing process,*

*(a) waste-specific threshold limit values or quality requirements, or*

*(b) facility-specific threshold limit values concerning the waste used*

*are complied with, or*

*3. this waste is treated or used in contravention of Section 1(3).*

*The joint treatment of different types of waste or of waste and objects in a facility is not in any event deemed to be mixing or blending within the meaning of this provision if this treatment is permissible for each individual type of waste. The joint collection of different types of waste, or of waste of the same type but with varying levels of pollutant content, is permissible if there is no chemical reaction between the different wastes and the joint use or treatment is permissible in accordance with the criteria referred to.*

*(3) Waste may not be collected, stored or treated outside 1. facilities authorised for this purpose, or 2. locations that are designated and appropriate for collection or treatment.*

*1. facilities authorised for this purpose, or*

*2. locations that are designated and appropriate for collection or treatment.*

*Waste may only be deposited in landfill sites authorised for that purpose.*

*(4) Waste must be recovered pursuant to Section 16 or in accordance with the provisions of a Regulation pursuant to Section 14(1) or Section 23.*

*(4a) Recovery is only permissible if the waste concerned can be safely used for the intended useful purpose and provided that no subjects of protection (within the meaning of Section 1(3)) could be adversely affected by that use, and the measure does not contravene any legal provisions.*

*(5) If the waste holder is not entitled or able to carry out an appropriate treatment, he must transfer the waste to an operator entitled to collect or treat the waste. The transfer must take place in sufficiently good time to avoid any adverse effects on public interests (Section 1(3)); waste for disposal must be handed over on a regular basis, at least once a year, to an operator entitled to collect or treat the waste; waste for recovery must be handed over on a regular basis, at least once every three years, to an operator entitled to collect or treat the waste.*

*(5a) The waste holder is responsible for*

*(a) handing over the waste to a waste collection or treatment operator who is entitled to collect or treat that type of waste, and*

*(b) giving an explicit mandate for the environmentally sound recovery or disposal of that waste.*

*(5b) Any party who does not hand over waste in accordance with subsection (5a) may, until such time that this waste is fully recovered or disposed of in an environmentally sound manner, be held liable as the party under obligation of a mandate to ensure treatment pursuant to Section 73(1).*

*(6) The waste holder is obliged, in accordance with the provisions of a Regulation pursuant to*

*(7) Any person who, on a commercial basis, transports non-hazardous waste, must carry a document with them when transporting that waste that states the transferor and the transferee of the waste, the mass of the transported waste in kilograms and a brief description of the waste.*

*(8) During the transport of substances, products or objects that have ceased to be waste pursuant to Article 6(2) of Directive 2008/98/EC on waste, a copy of the declaration on conformity pursuant to this Regulation must be carried.*

#### Special treatment obligations for waste holders

##### Section 16

*(1) Without prejudice to Section 15(3), the deposit of hazardous waste is permissible solely in underground storage for hazardous waste; this does not apply to*

*1. waste that was permissibly deposited in a landfill site before 16 July 2001, and*

*2. hazardous waste which has been classified and is stable, non-reactive and not leachable in accordance with the provisions of a Regulation pursuant to Section 65(1).*

(2) For waste containing PCBs [waste that contains polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs), monomethyl-tetrachlorodiphenyl methane, mono-methyl-dichloro-diphenyl methane or monomethyl-dibromo-diphenyl methane with a total content of more than 30 ppm], the following applies:

1. Waste containing PCBs must be disposed of by thermal process in facilities authorised for that purpose; other disposal procedures are permissible insofar as, compared to incineration, equivalent provisions on environmental protection are complied with and the state of the art is maintained.

2. Waste containing PCBs must be handed over without delay to an operator entitled to collect or treat that waste.

3. Separation from other substances for the purpose of re-use is not permissible.

4. To the extent that it is possible to do so with reasonable effort, equipment containing PCBs that forms part of other equipment must be removed and collected separately as soon as the equipment in question has been taken out of use, prepared for re-use, recycled or otherwise recovered or disposed of.

5. The content of the substances referred to in the first sentence must be stated in records pursuant to Section 17 and notifications pursuant to Section 18(3) or (4).

(3) *The following shall apply for waste oils:*

*Waste oils shall undergo recycling (R9 pursuant to Annex 2) where it is technically possible to produce a base oil from the waste oil and where this is economically reasonable for the holder of*  
1. *the waste, taking into consideration the volumes produced, transport distances and the resulting costs. If waste oils undergo recycling, the petroleum products produced as a result not contain more than 5 ppm PCB/PCT and not more than 0.03% halogens – in relation to the mass.*

2. *Waste oils containing up to 50 ppm PCB/PCT, which are not subject to recycling pursuant to the provisions of point (1), shall undergo thermal recovery.*

3. *Waste oils containing more than 50 ppm PCB/PCT must be disposed of in an environmentally sound manner.*

*The incorporation of substances that are not naturally contained in the precursor of the waste oil*  
4. *is not permissible. However, additional substances required in the recycling process for technological reasons may be added.*

5. *The incorporation of halogens, PCBs or PCTs and other hazardous waste is not permissible.*

*Anyone who collects waste oil must, in order to document the quality of the waste oil pursuant to points (1) to (5), take a sample and have the sample analysed, and, insofar as he is not entitled to*  
6. *undertake the treatment of waste oils, he must make this available to the operator treating the waste. Samples must be kept for one year and the results of analyses must be kept for seven years, and must be provided at the request of the authorities.*

(4) Waste that is governed by this Regulation pursuant to Annex IV to Regulation (EC) No.850/2004 on persistent organic pollutants and amending Directive 79/117/EEC (hereinafter referred to as EC-POP-V), OJ L 158, 30.4.2004, p. 7, corrected by OJ L 229, 29.6.2004, p. 5, in the respective versions in force, (waste containing persistent organic pollutants – POP waste), must be subjected to thermal or physico-chemical treatment in a facility authorised for that purpose in such a way that the persistent organic pollutant content is destroyed or irreversibly transformed so that the remaining waste and releases do not exhibit the characteristics of persistent organic pollutants.

For certain types of waste specified in Annex V to EC-POP-V containing metal and metal compounds, the recovery procedure of recycling/reclamation of metals and metal compounds (R4) is permissible, as long as the operations are limited to processes for the recovery of iron and iron alloys (blast furnace, shaft furnace and hearth furnace) and non-ferrous metals (Waelz rotary kiln process, bath melting processes using vertical or horizontal furnaces), and provided that the emission limit values for PCDDs and PCDFs laid down for incineration and co-incineration facilities are met, in accordance with the provisions of a Regulation pursuant to Section 65.

Storage pursuant to Part 2 of Annex to EC-POP-V underground in safe, deep, hard rock formations, in salt mines or in landfill sites for hazardous waste is permitted for the persistent organic pollutant waste specified in Part 2 of Annex V to EC-POP-V up to the limits specified in that Annex provided that it has been demonstrated pursuant to point (i) of Article 7(4)(b) of the EC-POP-V that this different treatment represents the environmentally preferable option.

(5) Problematic substances must be collected separately and handed over to an operator entitled to collect or treat that waste.

(6) Waste edible fats and oils must be collected separately and handed over to an operator entitled to collect or treat that waste. Waste edible fats and oils must undergo recovery insofar as this is environmentally appropriate and technically possible, and this does not entail disproportionate cost.

(7) *The following applies to waste that is produced in the course of construction works:*

*1. Material that can be recovered must undergo recovery insofar as this is environmentally appropriate and technically possible, and this does not entail disproportionate cost.*

*2. Waste that cannot be recovered must be duly disposed of.*

Special treatment obligations for specific waste streams are laid down in the Waste Treatment Obligations Regulation, Federal Law Gazette II 2017/102.

The traceability of hazardous waste is ensured through the (electronic) system of accompanying documents. The relevant legal provision in this context is the Waste Documentation Regulation, Federal Law Gazette II 2012/341. This control of the whereabouts of hazardous waste is supplemented by the waste balance notification, which must be submitted annually by those who collect or treat hazardous waste. The relevant legal provision in this context is the Waste Documentation Regulation, Federal Law Gazette II 2008/497 in the version currently in force.

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

The following modus operandi and trends in illegal hazardous waste management have been noticed in Austria:

- Illegal establishments for stripping end-of-life vehicles;
- Attempts to set up pyrolysis plants for end-of-life tyres, with hazardous waste as an end product;
- Incorrect declaration of hazardous production residues as a by-product.

As regards trends in illegal hazardous waste management, Austria has highlighted some problems regarding waste asbestos. The police regularly identify cases of illegal handling of asbestos waste during the demolition of old buildings. Although the dangers posed to the human body (specifically the respiratory tract) by asbestos fibres are well known and there are specific rules in place for such demolition work and the handling of asbestos waste, certain construction companies clearly lack the necessary awareness. Proper demolition procedures and the proper handling of asbestos waste involve increased logistical efforts and financial costs. This is certainly the reason why these measures are not applied.

### **8.5. Conclusions**

- Through its Waste Management Law and its IED inspections, Austria has established an enforcement system that appears to be effective for preventing and combating illegal activities related to the management of hazardous waste.
- The BMNT, following consultation of the provincial governors, is required to draw up an environmental inspection plan covering all IED facilities, to be reviewed at regular intervals and, where appropriate, updated. Based on the environmental inspection plan, the governor must regularly draw up a programme for routine environmental inspections.
- The competent authority for inspecting hazardous waste treatment facilities is the governor of the province where the facility is located. These authorities must, at least every five years, conduct inspections of treatment facilities (non-IED facilities) that are subject to authorisation. In order to verify the hazardous nature of the waste, inspectors are authorised to take samples.
- Measures for the protection of the environment and human health in the treatment of hazardous waste include the authorisations granted to companies which set standards for emissions in order to reduce the risks for the environment, as well as general and special treatment obligations for waste holders laid down in the 2002 AWG.

- The traceability of hazardous waste is ensured through the (electronic) system of accompanying documents based on the Waste Documentation Regulation, supplemented by a system of waste balance notifications.
- According to the Austrian authorities, the most relevant hazardous waste streams include end-of-life cars that have not been drained of fluids, lead-acid batteries and waste electrical and electronic equipment classified as hazardous, such as refrigerators, televisions and similar appliances.
- As regards trends in illegal hazardous waste management, Austria has highlighted some problems concerning waste asbestos, in particular during the demolition of old buildings.

## 9. ILLEGAL PRODUCTION OR HANDLING OF DANGEROUS MATERIALS

### 9.1. The concept of dangerous materials

Under Article 3 of Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification (CLP), labelling and packaging of substances and mixtures, a substance or a mixture is considered to be "dangerous" if it fulfils the criteria relating to physical hazards, health hazards or environmental hazards laid down in Parts 2 to 5 of Annex I of Regulation (EC) No 1272/2008 and is to be classified in relation to the respective hazard classes provided for in that Annex.

Under Article 4 of Regulation (EC) No 1272/2008, importers and downstream users are to classify substances or mixtures in accordance with Title II of Regulation (EC) No 1272/2008 (CLP) before placing them on the market.

In Austria, the concept of dangerous materials is covered by the Chemicals Act of 1996, the purpose of which is set out in Section 1 of the Act.

#### Chemicals Act of 1996

##### Section 1

*The aim of this Federal Act is the precautionary protection of human life and the environment from direct or indirect harmful effects that may result from the manufacture, marketing, acquisition, use or waste treatment of substances, mixtures or articles, in particular by preventing their emergence or making them recognisable and averting them.*

*In order to achieve this objective, manufacturers, importers and other registrants of substances, mixtures or articles shall have the duty to check by self-monitoring or to let check whether the substances, mixtures or articles manufactured, placed on the market or used may cause harmful effects and by what means they can be effectively counteracted by such measures in the interests of maximum protection.*

The categorisation "dangerous" for substances and mixtures is described in Section 4 of this law in line with the hazard classification provided for in the CLP Regulation:

Hazard class as provided for in the CLP Regulation

#### Section 4

*1. Substances and mixtures are considered to be "dangerous" within the meaning of Article 3 of Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548 / EEC and 1999 / 45 / EC and amending Regulation (EC) No 1907/2006, OJ. 1 ('the CLP Regulation'), if they can be classified in the hazard classes and hazard categories listed in Part 2 to 5 of Annex I to the CLP Regulation, as well as other subdivisions.*

*2. Substances and mixtures which according to Article 3 in conjunction with Annex I of the CLP Regulation are considered to be dangerous are "dangerous" within the meaning of this Federal Act. If the application of the CLP Regulation requires more detailed regulation, in particular with regard to the unambiguous application of classification criteria, the Federal Minister for Sustainability and Tourism can make issue by decree in agreement with the Federal Minister for Digital and Economic Affairs and the Federal Minister for Labour, Social Affairs, Health and Consumer Protection if this appears necessary in view of the protection objectives of this Federal Law.*

At the level of the Federal Government, competence in this area lies with the BMNT - Section V / 5 - Department of Chemistry and Biocides Policy, whose remit includes the following:

- Hazard assessment of chemicals (chemicals and products) and synthetic nanomaterials as well as development and implementation of precautionary measures;
- Substance and poison law including legislation and enforcement coordination;
- International strategies and agreements on protection against hazardous chemicals (Stockholm, Rotterdam and Minamata Conventions, the Strategic Approach to International Chemicals Management - SAICM) and their implementation in national and EU legislation;
- Authority for EU regulations and directives on chemicals - in particular, REACH (Regulation (EC) No 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals) and the CLP Regulation, and on POPs;
- Export Reporting Authority (PIC);
- EU and national biocidal products legislation including legislation, coordination and control;
- Authority for the authorisation of biocidal products;
- Implementation of legal instruments for protection against ground-level ozone;
- Vienna Convention for the Protection of the Ozone Layer and its Implementation;
- Principles and methodology of international (OECD, UN) hazard and risk assessment of substances, products and processes.

In case of problems, Section V / 5 - Department of Chemistry and Biocides Policy - is available to support the police or the provincial inspectors in their investigations.

As part of their monitoring work, provincial environmental authorities have to deal with the concepts of dangerous substances produced, stored and / or handled in plants and facilities that fall under their control jurisdiction. When there are questions about the hazardous or non-hazardous nature of certain products, inspectors may refer to product data sheets and/or carry out analysis.

With regard to the transport of dangerous materials (ADR / ADN), the federal administration concerned is Section IV - Transport of the Federal Ministry of Transport, Innovation and Technology (BMVIT).

With regard to radioactive waste, the federal administration concerned is the Nuclear Energy and Radiation Protection Department of BMNT.

Since Austria does not have a nuclear power plant, the waste concerned is weakly or moderately radioactive. The annual quantity is about 15 tons. All radioactive waste produced in Austria is collected, consolidated and pre-treated in the Nuclear Engineering Seibersdorf (NES) facility. This facility, and the export of nuclear waste, are controlled by the BMNT.

## **9.2. Types of illegal activities related to illegal production and handling of hazardous materials and current trends in that field**

In addition to the general criminal provisions, the Austrian Criminal Code contains the following special provisions relating to ionising radiation or similar materials.

## Intentional endangerment with nuclear energy or ionising radiation

### Section 171

(1) *Any person who, through the release of nuclear energy or through other forms of ionising radiation, creates a danger to the life or physical integrity (Section 89) of another person or causes a risk to the property of another person on a large scale shall be liable to imprisonment for a term of between one and ten years.*

(2) *If the offence has one of the consequences mentioned in Section 169(3), the penalties provided for in that provision shall apply.*

## Negligent endangerment with nuclear energy or ionising radiation

### Section 172

(1) *Any person who negligently commits the offence punishable under Section 171 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding 720 daily penalty units.*

(2) *If the offence has one of the consequences mentioned in Section 170(2), the penalties provided for in that provision shall apply.*

## Preparation of an offence using nuclear energy, ionising radiation or explosives

### Section 175

(1) *Any person who, with the intention of facilitating the commission, by themselves or another person, of an offence punishable under Section 171 or 173, even if the offence has not yet been specified, manufactures, acquires or possesses nuclear fuel, radioactive material, an explosive, a component of an explosive or a device required for the production or use of any such material, or gives any such material to another person in the knowledge that that person (Section 5(3)) is acquiring the material in order to prepare one of the stated punishable offences, shall be liable to imprisonment for a term of between six months and five years.*

(2) *The offender shall not be liable to punishment if, before the authorities (Section 151(3)) become aware of the offender's wrongdoing, he or she voluntarily surrenders the item to the authorities, makes it possible for the authorities to take possession of the item, or otherwise eliminates the danger that the item will be used to commit an offence punishable under Section 171 or 173.*

#### Intentional public endangerment

##### Section 176

(1) *Any person who, other than through an offence punishable under Sections 169, 171 and 173, creates a danger to the life or physical integrity (Section 89) of a large number of people or causes a risk to third party property on a large scale shall be liable to imprisonment for a term of between one and ten years.*

(2) *If the offence has one of the consequences mentioned in Section 169(3), the penalties provided for in that provision shall apply.*

#### Negligent public endangerment

##### Section 177

(1) *Any person who, other than through an offence punishable under Sections 170, 172 and 174, negligently creates a danger to the life or physical integrity (Section 89) of a large number of people or causes a risk to third party property on a large scale shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding 720 daily penalty units.*

(2) *If the offender knows that the weapons are destined for an area in which war or armed conflict has broken out or could imminently break out, he or she shall be liable to imprisonment for a term of between five and fifteen years; if the offender knows that the weapons are intended to be used, he or she shall be liable to imprisonment for a term of between ten and twenty years or to life imprisonment.*

## Production and distribution of weapons of mass destruction

### Section 177a

(1) *Any person who*

1. *produces, processes or develops for the purpose of production,*

2. *imports, exports or transits through Austria, or*

3. *acquires, possesses or gives to or acquires for another person any nuclear, biological or chemical weapons designed for and capable of mass destruction*

*shall be liable to imprisonment for a term of between one and ten years.*

## Unauthorised handling of nuclear or radioactive material or radiation equipment

### Section 177b

(1) *Any person who, in contravention of a provision of law or an administrative order, produces, handles, processes, uses, possesses, disposes of, transports, imports, exports or transits through Austria nuclear material shall be liable to imprisonment for a term not exceeding three years.*

(2) *The same penalty shall apply to any person who, in contravention of a provision of law or an administrative order, produces, handles, processes, uses, possesses, disposes of, transports, imports, exports or transits through Austria radioactive material or radiation equipment in a manner that may cause*

1. *a danger to the life of another or a danger of serious bodily injury (Section 84(1)) to another or otherwise a danger to the health or bodily safety of a large number of people;*

2. a considerable danger to the animal or plant population;

3. a long-lasting deterioration in the condition of a body of water, of the soil or of the air, or

4. an expense for disposal exceeding EUR 50 000.

(3) Any person who, in contravention of a provision of law or an administrative order, produces, handles, processes, uses, possesses, disposes of, transports, imports, exports or transits through Austria nuclear or radioactive material, and thereby creates a risk that nuclear or radioactive material will become available for the production or processing of nuclear weapons capable of mass destruction, shall be liable to imprisonment for a term of between six months and five years. The same penalty shall apply to any person who commits one of the offences mentioned in subsection 1 or 2 in a professional capacity.

(4) If any of the offences mentioned in subsection 1 or 2 brings about the danger specified in Section 171(1), substantially damages the animal or plant population or causes a long-lasting deterioration in the condition of a body of water, of the soil or of the air, the offender shall be liable to imprisonment for a term of between one and ten years. If the offence has one of the consequences mentioned in Section 169(3), the penalties provided for in that provision shall apply.

(5) The term 'nuclear material' refers to source material and special fissile material as well as equipment, technology and material which is subject to the safety control system under the 1991 Safety Control Act (Federal Law Gazette No 415/1992). The term 'radioactive material' refers to material containing one or more radionuclides, if the activity or concentration thereof cannot, in light of the state of technology, be disregarded in the context of radiation protection; items which contain radioactive material or have radioactive material on their surface shall be treated in the same way as radioactive material. 'Radiation equipment' refers to devices or facilities which, while not containing radioactive material, are capable of emitting ionising radiation and the operation of which requires authorisation under the latest version of the Radiation Protection Act (Federal Law Gazette No 227/1969).

## Negligent unauthorised handling of nuclear or radioactive material or radiation equipment

### Section 177c

*(1) Any person who negligently commits one of the offences punishable under subsections 1, 2 or 3 of Section 177b in contravention of a provision of law or an administrative order shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding 720 daily penalty units.*

*(2) If the offence brings about the danger specified in Section 171(1), substantially damages the animal or plant population or causes a long-lasting deterioration in the condition of a body of water, of the soil or of the air, the offender shall be liable to imprisonment for a term not exceeding two years. If the offence has one of the consequences mentioned in Section 170(2), the sentences provided for in that provision shall apply.*

The illegal use of pesticides and herbicides in agriculture presents a different picture. Either the chemicals are banned or they are not properly used. This can cause an environmental or health hazard.

The inspections relating to dangerous products are carried out on the basis of:

- Complaints;
- Own initiative;
- Information from companies impacted by illegal marketing;
- Information received via the RAPEX system.

The inspections are mainly carried out by the V / BMNT Section and the Provincial Criminal Intelligence Services (Landeskriminalämter). These services regularly work together.

For product analysis, the inspection services can rely on the BMNT.

Austria highlights two main illegal activities concerning hazardous products:

- a) The police regularly identify cases of illegal handling of asbestos waste during demolition work on old buildings (see point 8.4)
- b) The illegal use of pesticides and herbicides in agriculture presents a different picture. Either the chemicals are banned or they are not properly used. This can cause an environmental or health hazard.

### **9.3. Procedural aspects**

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

To establish the facts of a case regarding illegal production or handling of dangerous substances, all evidence which documents the illegal activity and substantiates the necessary elements of the offence is collected. This could include information from the competent inspection and regulatory authorities, questioning of accused persons and witnesses, crime scene documentation and information from house searches. All the necessary investigative measures provided for in the Code of Criminal Procedure can be used.

In relation to the handling of hazardous materials, if the materials seized in accordance with Section 67(6) of the 1996 Chemicals Act cannot be left in operation, the transport and storage costs incurred by the authorities are borne by the owner of the seized materials. The dangerous materials can be analysed by the UBA or a provincial laboratory.

### *9.3.2. The cooperation with European and international partners*

If necessary to establish the facts of a cross-border case regarding illegal production or handling of dangerous substances, an international exchange of information could take place with the countries involved via Europol's SIENA (for EU Member States) or Interpol (for non-EU states).

The BMNT's Chemistry and Biocides Policy Department collaborates internationally using the information available, feeding information collected in Austria into the RAPEX system, a European alert system for the rapid exchange of information between European Member States on dangerous products with the exception of foodstuffs, pharmaceuticals and medical devices.

The BMNT is in contact with its counterparts in neighbouring countries regarding the marketing of banned products.

National authorities warn the central contact point at the European Commission when they discover dangerous products on the market. When the European Commission sends the information to other Member States, the sale of the product may also be prohibited in those countries or subject to conditions.

This procedure ensures that all Member States are informed rapidly about the presence in the European market of products which represent a risk to consumer safety.

### *9.3.3. Techniques of investigation*

The police's own investigative methods are used in this field or those of other authorities and departments, such as the Federal Ministry of Finance, are used, as appropriate.

It should also be noted that BMNT Section V / 5 - Chemistry and Biocides Policy Department - conducts internet research to control the on-line sale of products the marketing of which is banned.

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

The Ministry for Constitutional Affairs, Reforms, Deregulation and Justice (BMVRDJ) is not aware of any obstacles to the successful investigation and prosecution of illegal activities involving the production and handling of dangerous substances. According to the Austrian authorities, the Ministry of the Interior (BMI)/ Federal Criminal Intelligence Service (BK) also has insufficient information in this regard to identify the main obstacles to prosecution.

#### *9.3.5. Training*

In addition to the training described under point 4.5, self-protection and third-party security, including in the context of dangerous materials, are a substantial component of the BMI/BK's training courses.

The BMNT holds regular meetings between its representatives and the representatives of the provincial branches of the Chemicals Inspectorate.

Specific training on 'the response to an incident involving dangerous materials, such as chemical, biological, radiological and nuclear materials' is available only to staff members who have received their own radiation protection training (approximately 20 % of staff).

#### 9.4. Conclusions

- Austria has covered the relevant aspects concerning the production, storage and placing on the market of dangerous products in its 1996 Chemicals Act. The Act is very comprehensive and provides a clear framework for this area: it includes all the concepts relating to the production, marketing, and handling of dangerous substances and defines which administrations are responsible for managing all aspects of this subject.
- The BMNT - Department of Chemistry and Biocides Policy - performs its functions as regards chemicals legislation, and its duties as an inspection service as regards the prevention of and fight against the illegal production and handling of dangerous substances, in collaboration with provincial and local governments, as well as with the police.
- Inspections relating to dangerous products are carried out on the basis of complaints, own-initiative action, information from companies and information received through the RAPEX system.
- In addition to the general criminal provisions, the Austrian Criminal Code contains special provisions relating to ionising radiation or similar materials. With regard to radioactive waste, the competent federal administration is the Nuclear Energy and Radiation Protection Department of the BMNT.
- The Austrian authorities are not aware of any obstacles to the successful investigation and prosecution of illegal activities regarding the production and handling of dangerous substances.
- From the information gathered, the evaluation team believes that Austria has good cooperation with the other Member States as regards the prevention of and fight against the illegal production and handling of dangerous substances, including through the RAPEX system.

## 10. FINAL REMARKS AND RECOMMENDATIONS

### 10.1. Suggestions from Austria

No comments.

### 10.2. Recommendations

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

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

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

#### *10.2.1. Recommendations to Austria*

To enhance the Austrian system in the areas covered by this evaluation, the evaluation team addresses the following recommendations to Austria, which:

1. is encouraged to develop a national environmental strategy in one single comprehensive document, establishing the country's priorities and the resources planned to tackle environmental crime, including waste/related crime, and setting out the roles of the various actors, including the Public Prosecution Service, and their cooperation in this field;

2. is recommended to establish centralised and integrated statistics encompassing figures on each stage of criminal and administrative proceedings, in order to obtain an overview of environmental crime in the country, which would make it possible to evaluate the efficiency of the environmental law enforcement system;
3. should more clearly define the distinction between the administrative and criminal sanctions systems, by adopting and making available to all relevant actors specific and uniform criteria to facilitate the differentiation between violations that constitute an administrative infringement and those that constitute a crime;
4. s should take measures to increase the amounts of corporate fines for environmental crimes and to encourage, as far as practicable, that such fines are actually imposed in every case when the relevant criteria are met, with a view to encouraging a more uniform application of such fines;
5. should take appropriate measures to further increase the specialisation of prosecutors and judges in the field of the environment, including by further providing them with continuous specialised training in waste legislation and waste crime, and consider establishing a national network of environmental prosecutors in order to facilitate their exchanging experience and assisting each other in such a complex area;
6. is recommended to ensure more involvement of prosecutors and judges at European level, by encouraging their participation in the activities of the ENPE and of the EU Forum of Judges for the Environment (EUFJE);
7. should consider enhancing investigative capabilities in the area of environmental crime, including waste-related crime, by increasing the human resources both of the police - BK and LKA - and, when it comes to inspections, of the relevant departments of the customs administration;

8. is recommended to ensure regular participation by the customs authorities in activities at EU and international level in the field of environmental crime, in order to share experience and knowledge with their colleagues of other States;
9. is recommended to encourage the courts, when expertise is needed in environmental cases, to make more use of the specialised competence available within the Austrian Federal Ministry for Sustainability and Tourism and, if needed, the Environment Agency Austria;
10. should consider establishing more formal and structured cooperation among all the environmental and enforcement authorities, including with the participation of prosecutors, based on cooperation agreements or memoranda of understanding, with a view to preventing and fighting against environmental crime more efficiently.

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

Based on certain practices identified by the evaluation team in Austria, Member States are:

1. encouraged to develop integrated cross-sectoral solutions similar to Austria's EDM system, for recording and reporting all relevant data and information in the environmental field, accessible by all relevant actors;
2. recommended to ensure a solid and well-functioning administrative institutional set-up in the area of the environment, where the central level, like the BMNT in Austria, ensures a high level of transparency for all relevant stakeholders dealing with environmental crime, by offering support and providing clear guidance to them;
3. recommended to ensure the well-structured organisation and adequate specialisation of the law enforcement authorities competent for environmental crime, as is the case in Austria for the police and the customs authorities;

4. encouraged to establish a specialised entity with technical and scientific expertise in the field of the environment to be used by the enforcement authorities in the investigation and prosecution of environmental crimes, similar to the Environment Agency Austria.

*10.2.3. Recommendations to Eurojust/Europol/Commission*

None.

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

### **Draft PROGRAMME**

#### **8<sup>th</sup> Round of Mutual Evaluations (“Environmental Crime”)**

#### **Evaluation Visit to Austria, Vienna (25 February – 1 March 2019)**

##### **Tuesday, February 26<sup>th</sup>, 2019:**

10 00 – 12 30 a.m. (with coffee break): discussions of the evaluation team with representatives of the Austrian Ministry of Justice (*location: Ministry of Justice, 1070 Vienna, Museumstrasse 7, Room Nr. 542*);

12 30 – 14 00 p.m.: drinks in the Banquet Hall of the AT Ministry of Justice, followed by lunch;

14 30 – 17 00 p.m. (with coffee break): discussions of the evaluation team with representatives of the Vienna Public Prosecutor’s Office and judges of the Regional Court of Vienna, dealing with environmental crimes (*location: Vienna Regional Court of Justice, Landesgerichtsstraße 11*).

##### **Wednesday, February 27<sup>th</sup>, 2019:**

09 30 – 12 00 a.m. (with coffee break): discussions of the evaluation team with representatives of the Austrian Ministry of the Interior (*location: Ministry of the Interior, 1010 Vienna, Minoritenplatz 9, Meeting Room “Schauflegasse”*);

12 00 – 13 00 p.m.: Working Lunch in the Ministry, hosted by the AT Ministry of the Interior;

13 00 – 17 00 p.m.: (with coffee break): visit of operational team Crime Investigation Department/Environmental Crime Unit of Lower Austria.

**Thursday, February 28<sup>th</sup>, 2019:**

10 00 – 12 30 a.m. (with coffee break): discussions of the evaluation team with representatives of the Austrian Ministry of the Environment (*location: Ministry of Sustainability and Tourism, 1010 Vienna, Stubenbastei 5, Room Nr. 527*) with participation of representatives of the Environment Agency Austria and the Association of Austrian Waste Management Companies;

12 30 – 14 30 p.m.: working lunch at “*Magazin 3 Hacken*” (1010 Vienna, Riemergasse 14) (reservation made in the name of *Herics*), hosted by the AT Ministry of Finance;

14 30 – 17 00 p.m. (with coffee break): presentation, followed by discussions of the evaluation team with representatives of the Austrian Ministry of Finance (*location: Ministry of Finance, Johannesgasse 5, 1010 Vienna [Room Nr. to be indicated]*) with participation of experts of the Custom Administration;

17 30 p.m.: Dinner at “*Figlmüller*”, 1010 Vienna, Lugeck 4, hosted by the AT Ministry of the Environment.

**Friday, March 1<sup>st</sup>, 2019:**

10 00 – 12 00 a.m. (with coffee break): wrap-up session with representatives of the Austrian Ministry of Justice, the Austrian Ministry of the Interior, the Austrian Ministry of the Environment and the Austrian Ministry of Finance (*location: Ministry of Justice, Museumstrasse 7, 1070 Vienna, Room Nr. 542*);

12 00: end of the meeting

## ANNEX B: PERSONS INTERVIEWED/MET

*Venue: Ministry of Constitution, Reforms, Deregulation and Justice*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Irene Gartner	Deputy Head of Unit responsible for legislative matters regarding judicial cooperation in criminal matters, Ministry of Justice
Christian Manquet	Head of Unit responsible for the AT Penal Code, Ministry of Justice
Christian Mayer	Unit responsible for the AT Penal Code, Ministry of Justice
Marie-Christin Wieser	Unit responsible for legislative matters regarding judicial cooperation in criminal matters, Ministry of Justice
Stefan Benner	Deputy Head of Unit responsible for individual cases of judicial cooperation in criminal matters, Ministry of Justice
Fridolin Krepp-Honeck	Unit responsible for training measures, Ministry of Justice
Clemens Burianek	Unit responsible for the AT Procedural Code, Ministry of Justice
Karin Bachert-Sedlak	Administrative Court Vienna

*Venue: Vienne Office of Public Prosecutions*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Maria-Luise Nittel	Head of Vienna Office of Public Prosecutions
Katharina Stauber	Public Prosecutor at Vienna Office of Public Prosecutions, Unit responsible for Environmental Crimes

**Meetings on February 27, 2019**

*Venue: Ministry of the Interior*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Antonio-Maria Martino	EU-coordination unit, Ministry of the Interior
Burkhard Mühl	EU-coordination unit, Ministry of the Interior
Karl Frauenberger	Criminal Intelligence Service, Ministry of the Interior

*Venue: Provincial Crime Investigation Service Lower Austria*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Klaus Preining	Vice Head of Provincial Crime Investigation Service Lower Austria
Christian Ebner	Vice Head of Environmental Crime Investigation Department
Maria Gröbl	Investigation Officer
Karl Frauenberger	Criminal Intelligence Service

*Venue: Ministry of Finance*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Gerhard Marosi	Ministry of Finance
Bernhard Herics	Ministry of Finance
Thomas Joszt	Ministry of Finance

## Meetings on February 28, 2019

*Venue: Ministry for the Environment*

Person interviewed/met	Organisation represented
Christian Glasel Gernot Lorenz Andreas Moser Ulrich Kremser	Ministry for Sustainability and Tourism
Robert Kindermann Thomas Remesch	Environment Agency Austria
Stephan Broukal	Government of Vienna
Andreas Feistritzer	Vereinigung Österreichischer Entsorgungsbetriebe

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

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	ENGLISH	X- LANDISH OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
WSR	Waste Shipment Regulation		
IED	Industrial Emissions Directive		
CLP	Regulation (EC) No 1272/2008 of on classification, labelling and packaging of substances and mixtures		
REACH	Regulation (EC) No 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals		
PRTR	Regulation (EC) No 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register		

2002 AGW	2002 Waste Management Act		
EMPACT	European multidisciplinary platform against criminal threats		
TECUM	EU-wide waste trafficking project led by the Italian Carabinieri		
StGB	Criminal Code		
stop	Code of Criminal Procedure		
VStG	Administrative Penalties Act 1991		
VbVG	<u>Corporate</u> Criminal Liability Act		
BMVRDJ	Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice		
BMNT	Ministry of Sustainability and Tourism		

BMI	Federal Ministry of the Interior		
BMF	Federal Ministry of Finance		
BK	Federal Criminal Intelligence Service		
LPD	Provincial Police Directorate		
LKA	Provincial Criminal Intelligence Service		
Officers with environmental expertise	UKOs		
UBA	<i>Federal Environment Agency</i>		
NEST	<i>National Environmental Security Task Force)</i>		

ENPE	European Network of Prosecutors for the Environment		
EDM	Electronic Data Management – Environment		
IMPEL- Waste and TFS	European Union Network for the Implementation and Enforcement of Environmental Law -Waste and Trans-frontier Shipment		
EnviCrimeNet	European Network for Environmental Crime		
EU Forum of Judges for the Environment	EUFJE		
Heavy Goods Vehicles	HGVs		
CEPOL	European Union Agency for Law Enforcement Training		
CEPA	Central European Police Academy		

WEEE	Waste Electrical and Electronic Equipment		
ELVs	End-of-Life Vehicles		
ADR	European Agreement concerning the International Carriage of Dangerous Goods by Road		
ADN	Annexed Regulations to the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways		
RAPEX	Rapid Alert System for non-food consumer products		

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