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NOTE

From: Presidency
To: Working Party on General Matters, including evaluations (GENVAL)
Subject: Eighth round of mutual evaluations - Questionnaire

In line with Article 2 of the Joint Action 97/827/JHA of 5 December 1997, the Working Party on General Matters including Evaluations (GENVAL), at its meeting of 14 December 2016, decided that the eighth round of mutual evaluations will be devoted to the practical implementation and operation of the European policies on prevention and combating environmental crime.

In accordance with Article 191 of the Treaty on the Functioning of the European Union, the European Union should aim at achieving a high level of protection of the environment. The EU policy should focus upon the precautionary and preventive aspects, whilst ensuring that the environmental damage is rectified at source, and that the perpetrator is sanctioned for his/her illegal acts.

The Serious and Organised Crime Threat Assessment (SOCTA) 2014 – 2017 identified environmental crime as an emerging threat in the EU. Environmental crime is often perceived as ‘victimless’ crime because the damage caused is not directly visible and it usually emerges after some time. Nonetheless, the damage caused is irreparable and it may cause diseases/deaths, environmental disasters, reduced life expectancy, contamination of the food chain and irreversible climate change.¹ Despite the potentially serious consequences of such crime, its seriousness is still not fully taken into consideration.

Recent trends show that the main motive for committing environmental crimes is to gain illicit profits. Such profits could be equivalent to the profits made out of illegal drugs trafficking. Given the low penalties of environmental crimes and their low detection, these crimes are attracting the greater interest of organised criminal groups (OCG). OCGs are involved in the illicit trader as traffickers, intermediaries and facilitators². Furthermore, environmental crime appears to be linked to other forms of crime, such as money laundering, fraud, forgery, corruption and terrorism. These offences are increasingly extending beyond the borders of the States in which the offences are committed.

The Council Conclusions on Countering Environmental Crime of December 2016³ recognise that combating environmental crime requires a comprehensive multidisciplinary approach at all levels, better cooperation and exchange of information between the competent authorities and with third countries, and the need to enhance dialogue and cooperation with relevant international organisations.

The choice of environmental crime as the subject for the 8th Mutual Evaluation round was supported 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 evaluation will focus primarily on two specific areas:

¹ Environmental Crime Network Report on Environmental Crime, (The Hague May 2016)

² Doc. 16605/14

³ Doc. 15412/16

- Illegal trafficking in waste: In accordance with the Interim SOCTA Report⁴, illicit waste trafficking continues to threaten the environment and the health of EU citizens. Organised criminal groups and waste management companies traffic various types of waste, such as household waste, toxic and hazard industrial waste, e-waste and end-of-life vehicles, including lead-acid batteries. The traffic of illegal waste has as main destinations in Africa and Asia, with EU countries reporting an increase in illegal dumping or disposal.⁵ This problem came to the fore of public attention when a ship Probo Koala dumped waste in Ivory Coast in 2006, in which the dumping of hazardous waste led to the death and poisoning of several individuals.
- Illegal Production or Handling of Dangerous Materials: This includes chemical, biological, radioactive and nuclear materials, that, in addition to causing pollution of the environment and significant threats to human health, may have links with other criminal activities, including terrorism.

For the purpose of preparing the mutual evaluation, delegations will find in the Annex a preliminary version of the draft questionnaire, as foreseen in Article 5 of Joint Action 97/827/JHA, together with some guidelines and a table regarding the terminology used in the questionnaire.

The Presidency intends to have an initial discussion on the draft questionnaire at the GENVAL meeting of 3 February 2017, following which delegations will be requested to send written comments to the Presidency (genval.mhas@gov.mt) and to the General Secretariat of the Council (secretariat.mutual-evaluation@consilium.europa.eu and giovanna.giglio@consilium.europa.eu) **by 17 February 2017.**

⁴ Doc. 7271/15

⁵ SOCTA 2013

**When answering the questionnaire, delegations are invited to observe
the following guidelines:**

- one single completed questionnaire per MS combining the contributions of all appropriate authorities should be returned;
- organisation charts or alternatively brief description of the competences and the place within the national system of the respective judicial, Law Enforcement Agencies (LEAs) and other authorities that participated in completing the questionnaire, should be provided.
- practitioners (judicial and LEAs), as well as technical experts should be consulted as much possible, especially where a detail of practical expertise is sought;
- answering simply by "yes" or "no" should be avoided as far as possible;
- supporting information, including examples, both positive and negative, which may assist the evaluation team in its work should be provided, as appropriate;
- personal data relating to individual cases where specific examples are required should not be provided.

It should be noted that in accordance with Article 9 of the Joint Action 97/827/JHA of 5 December 1997, the experts of the evaluation teams are required to respect the confidentiality of the information they receive in connection with their task.

In case you have any questions related to this questionnaire or to the evaluation process in itself, please do not hesitate to contact the General Secretariat of the Council (secretariat.mutual-evaluation@consilium.europa.eu (functional mailbox)).

For the purposes of the questionnaire the following terms are used:

<p>“waste”</p>	<p>According to Article 3 par. 1 of Directive 2008/98/EC on waste "waste means any substance or object which the holder discards or intends or is required to discard" – Waste Framework Directive (2008/91/EC)</p>
<p>"hazardous waste"</p>	<p>According to Article 3 par. 2 of Directive 2008/98/EC on waste "waste means waste which displays one or more of the hazardous properties listed in Commission Regulation (EU) 1357/2014 (replacing Annex III of Directive 2009/98/EC)"</p>
<p>“shipment ”</p>	<p>According to Article 2 par. 34 of Regulation (EC) 1013/2006 on shipments of waste, as amended by Regulation (EU) 660/2014 , "shipment" means the transport of waste destined for recovery or disposal which is planned or takes place:</p> <ul style="list-style-type: none"> (a) between a country and another country; or (b) between a country and overseas countries and territories or other areas, under that country's protection; or (c) between a country and any land area which is not part of any country under international law; or (d) between a country and the Antarctic; or (e) from one country through any of the areas referred to above; or (f) within a country through any of the areas referred to above and which originates in and ends in the same country; or (g) from a geographic area not under the jurisdiction of any country, to a country;

<p>"illegal shipment of waste"</p>	<p>According to Article 2 par. 35 of Regulation (EC) 1013/2006 on shipments of waste, as amended by Regulation (EU) 660/2014, "illegal shipment" means any shipment of waste effected:</p> <ul style="list-style-type: none"> (a) without notification to all competent authorities concerned pursuant to this Regulation; or (b) without the consent of the competent authorities concerned pursuant to this Regulation; or (c) with consent obtained from the competent authorities concerned through falsification, misrepresentation or fraud; or (d) in a way which is not specified materially in the notification or movement documents; or (e) in a way which results in recovery or disposal in contravention of Community or international rules; or (f) contrary to Articles 34, 36, 39, 40, 41 and 43; or (g) which, in relation to shipments of waste as referred to in Article 3(2) and (4), has resulted from: <ul style="list-style-type: none"> (i) the waste being discovered not to be listed in Annexes III, IIIA or IIIB, or (ii) non-compliance with Article 3(4), (iii) the shipment being effected in a way which is not specified materially in the document set out in Annex VII.
<p>"e-waste" (or WEEE)</p>	<p>According to Article 3(1) (e) of Directive 2012/19/EU, 'waste electrical and electronic equipment' or 'WEEE' means electrical or electronic equipment which is waste within the meaning of Article 3(1) of Directive 2008/98/EC, including all components, sub-assemblies and consumables which are part of the product at the time of discarding;</p>

<p>"Waste crime"</p>	<p>For the purpose of this questionnaire, waste crime is limited to the following criminal offences listed in Article 3 of Directive 2008/99/EC, when unlawful according to Article 2:</p> <p>b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including action taken as a dealer or a broker (waste management), which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;</p> <p>c) the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;</p> <p>e) the production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;.</p>
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QUESTIONNAIRE

8th round of Mutual Evaluations

The practical implementation and operation of European policies on prevention and combating Environmental Crime

I - General Matters

1. Is there an action plan or similar strategic document against environmental crime in your Member State? If so, please provide a copy.
2. Briefly outline the national priorities with regard to waste crime in your Member State, for example in the area of prevention, legislation, capacity building, training, public awareness and international cooperation.
3. How is prevention addressed in your national legislation/policy in the area of waste crime?
4. Please specify the main trends in your Member States with regard to waste crime in the recent years. If possible, provide in % the share of waste crime in the total criminality picture in your Member State.
5. Are there statistics on waste crime in your Member State? If so, please describe how they are compiled: are they integrated? Are judicial statistics kept separately from the law enforcement authorities' statistics? Are statistics kept according to the 'lead crime', for example fraud, forgery etc., or is there a separate category?

6. Please provide any available statistics on the number of registered cases, investigations, prosecutions, final convictions in the last 5 years.
7. Are there dedicated national budget allocations for the prevention of and fight against waste crime? Does your Member State benefit from EU funding to tackle waste crime?
8. Have you encountered cases showing links between waste crime and other forms of serious criminal offences, such as organized crime and corruption? If so, please specify.

II - Legal aspects

For the purpose of this questionnaire, waste crime will refer to the offences listed in Article 3(b), (c), and (e) of the Environmental Crime Directive (2008/99/EC).

1. Which are the acts in your national legislation that criminalise the above offences? Please indicate for each offence: (a) the title and relevant provisions in your legislation; (b); the definition and nature of the offence (criminal/administrative); (c) the minimum and maximum penalties for natural and legal persons.
2. Please indicate any other national binding or non-binding rules or judiciary instructions relevant in the area of waste crime.
3. Which are the criteria to determine the seriousness of waste crime? Are they foreseen in your national legislation? Are there sentencing guidelines and/or guidance on gravity factors to help judges in the determination of sanctions? How do they define the term ‘substantial damage’ as referred to in Article 3(d) and (e) of Directive 2008/99/EU?

III - National Structures

III a) Law Enforcement Authorities

1. Please describe the law enforcement structure for preventing and combating waste crime, specifying its composition and powers.
2. Does a specialised body to investigate waste crime exist in your Member State? If so, please provide details. If not, please explain which general entities/bodies are responsible for the investigation of waste crime and whether they have specialised officers.
3. How do investigative authorities in your Member State (police, customs, inspectorates, prosecutors' office) cooperate among themselves? Do you have examples of joint task forces?
4. Please describe the investigative techniques used for the purpose of waste crime investigations. Which ones are the most commonly used? Are the 'follow the money' investigation techniques used ?
5. Are the capabilities and equipment of the forensic units, financial units and cyber crime units used to investigate waste crime?
6. What are the main challenges or obstacles experienced in your Member State in investigating domestic and cross-border cases of waste crime?

III b) Judiciary (prosecution and court)

1. Are waste crime cases dealt with in your Member State by a general or specialised prosecution/court?
2. What measures have been taken or are planned to strengthen the capacity to prosecute and judge waste crimes in your Member State?
3. What are the main challenges or obstacles experienced in your Member State in prosecution and conviction of domestic and cross-border cases of waste crime?

III c) Cooperation and exchange of information among national authorities

1. Are there other national authorities besides the law enforcement authorities and the judiciary involved in the prevention of and fight against waste crime? If so, please provide details on their structure and powers.
2. Please explain how the cooperation, exchange of information, intelligence and data, as well as the coordination between all various authorities with a role in the prevention of and fight against waste crime is organised in your Member State.
3. Do law enforcement and judicial authorities have adequate access to information (databases and registers)?
4. Does your Member State have a national focal point on intelligence for waste crime?
5. Do national authorities encounter practical obstacles in their cooperation ?

IV - Procedural and jurisdictional issues

1. Are any difficulties encountered in your Member State with regard to the burden of proof in court proceedings ?
2. Which kind of evidence is the most important for the conviction of the offender/s? Are any difficulties encountered with regard to evidence gathering and use?
3. Do prosecutors and judges work on the basis of any defined enforcement principles, such as: (a) proportionality, deterrence and effectiveness of sanctions; (ii) "polluter pays" principle; (iii) need for cessation of illegal activities; (iv) need to achieve reduction and/or environmental remediation?
4. How are seized objects dealt with? Who bears the costs of temporary storage during investigation?
5. Who is responsible for restoring the environment and repairing damages caused by the offender?
6. Does your national legislation provide for jurisdiction with regard to waste crimes committed partially/entirely outside the territory of your Member State?
7. How are conflicts of jurisdiction with other Member States on cross-border waste crime cases resolved in your Member State?

V - Cooperation in cross-border cases

1. Which form of cooperation is used in cross-border cases of waste crime and through which instruments? Do you have practical experience in this respect?
2. Which channels are used for the purpose of information exchange in cross-border cases of waste crime? Do you have a national contact point for such purpose?
3. Do you use EU information systems in order to prevent, detect, investigate and prosecute cross-border cases of waste crime? Which systems do you use?
4. Have you already participated in JITS in cross-border waste crime cases? Do you consider JITS to be beneficial in the fight against waste crime?
5. Is your Member State a member of the Environmental Crime Network (EnviCrimeNet), the Network for the Implementation and Enforcement of EU Environmental Law (IMPEL), the European Network of Prosecutors for the Environment (ENPE), the EU Forum of Judges for the Environment (EUFJE)?, If not, for what reason?

VI - Cooperation with EU Agencies and Interpol

1. Has your Member State had any experience of cooperation in a concrete case with Europol/Eurojust/Interpol? If not, why ?
2. What is your Member State's overall assessment of Europol, Eurojust and Interpol in terms of their contribution in dealing with waste crime cases? Would you recommend a better way of making use of Europol, Eurojust and Interpol in relation to waste crime?

3. Are the national authorities dealing with waste crime familiar with and make use of Europol products and tools such as: Environmental Crime Threat Assessment (2013), SOCTA, Early Warning Notifications, Platforms of experts available on the internet (EPEs on EnviCrimeNet and EPE on Customs Enforcement) ⁶?

VII - Cooperation with the Private Sector

1. Please explain how and on what basis the private sector is involved in the prevention of and fight against waste crime, e.g. legal or policy obligations, and if Public Private Partnership (PPP) is used.
2. Is the private sector subject to any specific responsibility/liability under your national law in case of not having met an obligation to pass on information to LEAs or other competent authorities? If so, please describe.
3. Do you have any practical experiences of cooperation with the private sectors? Please describe.

VIII - Training

1. Is in your Member State environmental crime related training provided to the general and specialised LEAs and the judiciary? Does this include targeted modules on financial investigations and for IT -forensic examiners vis-a-vis environmental crime? Describe the objectives, subject matters covered, and if possible the frequency and duration of this training.

⁶ SOCTA is the Serious and Organized Crime Threat Assessment. Early Warning Notifications is one of Europol's strategic products. The Europol Platforms of experts is available on the internet (EPEs on EnviCrimeNet and EPE on Customs Enforcement), to share knowledge and best practices related to the environmental crime area-

2. Which body or entity is responsible for the provision of environmental crime related training?

IX - Illegal Shipment of Waste

1. Which are the authorities responsible for preventing and fighting against the illegal shipment of waste between Member States, as well as to and from Member States to third countries,? Which authorities are in particular responsible for inspections? Please define their role, functions, powers and level of specialization.
2. How is the illegal shipment of waste usually detected in your Member State? (complaints, surveillance, intelligence etc.)? Which obstacles do your authorities encounter to detect offences?
3. Have you noticed any particular common modus operandi and trends in the illegal shipment of waste? Can you estimate the involvement of organized crime groups?
4. Which measures are taken to ensure that imported/exported waste is managed in an environmentally sound manner throughout the period of shipment, as well as in the recovery, recycling or disposal of waste?
5. Which instruments/methods do you use during the inspections? Are these sufficient? Do you have any best practices in this regard?
6. Do you have specific inspection activities on WEEE (Waste Electrical and Electronic Equipment) and ELV (End of Life Vehicles)?

7. In accordance with Article 50 of Regulation No. 1013/2006, as amended by Regulation No. 660/2014, the first inspection plans need to be adopted by 1 January 2017. Please provide a copy of the inspection plan, including the list of actions identified in the plan.
8. In case the inspection authorities detect irregularities, how do the authorities follow up the matter and cooperate with other authorities? Are confiscation measures applied?
9. What are the main challenges encountered with regard to the repatriation of illegal waste shipment to the State of origin?

X - Management of Hazardous Waste

1. To what extent do hazardous wastes feature in those waste crimes detected within your Member State that come within the scope of Article 3(b) of the Environmental Crime Directive?
2. Please indicate which national authority are responsible for periodic inspections in you Member State and describe briefly the system of inspections, indicating frequency and level of inspections.
3. Please indicate which national authorities are involved in investigating and prosecuting illegal exportation of hazardous waste to third countries?
4. The misclassification of waste (hazardous waste presented as non-hazardous) is apparently an important enforcement issue. Do you law enforcement authorities have experience in this regard? Please explain.

5. Which measures are taken to ensure that the production, collection and transportation of hazardous waste, as well as its storage and treatment, are carried out in conditions providing protection for the environment and human health? Kindly provide the waste management plan established in your Member State.

 6. Which actions are taken to ensure traceability from production to final destination and control of hazardous waste, in particular by record keeping pursuant Article 35 of Directive 2008/98/EC and a proper labelling of hazardous waste?

 7. Within the context of Article 3(b), do hazardous wastes present any particular burden of proof or other technical issues in terms of establishing the gravity of the offence?
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