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## REPORT

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- Report on Netherlands

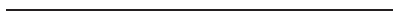
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## 1. EXECUTIVE SUMMARY

The visit took place between 21 and 24 November 2017 and was very well prepared by the Dutch authorities. It included meetings with the relevant actors with responsibilities in the field of preventing and combating environmental crime and in the implementation and operation of European policies, e.g. the Ministry of Justice and Security, the Ministry of Infrastructure and Water Management, regional environmental agencies, the National Public Prosecutor's Office for financial, economic and environmental offences and the national police.

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

The fight against environmental crime has high priority in the Netherlands.

The Netherlands has established a very good system of strategic documents which help different law enforcement agencies to implement the priorities in the fight against environmental crime at both national and regional level. The National Enforcement Strategy, as a set of policy guidelines for the administrative and law enforcement authorities tackling environmental crime, offers guidance on the appropriate enforcement interventions as well as on prevention.

The Netherlands has a functional system of organisations which are responsible for licencing, supervision and enforcement and play an important role in the prevention of waste crime. In order to ensure coordination of the authorities dealing with environmental crime, the Netherlands created the **Environment Council**. This high-level consultative forum is also responsible for coordinating the system of licencing, supervision and enforcement.

Comprehensive statistics on waste crime are not available in the Netherlands, therefore the final outcome of court cases and the efficiency of the overall system are quite difficult to assess.. Due to the lack of statistics it is also difficult to get a full picture of waste crime in the Netherlands and to assess how well the system for combating environmental crime functions.

Several education and training programmes on environmental crime are in place at national level. They are addressed to police and customs officers, prosecutors and judges. It should be stressed that prosecutors and judges receive specialised training in the field of environmental crime. The training system is therefore comprehensive and constitutes a good basis for professionals dealing with such cases.

The domestic budget allocated to preventing and fighting waste crime seems to be highly sufficient, even if there is no specific budget solely dedicated to waste crime.

The Strategic Environmental Chamber is responsible for strategic decisions and priorities, while the National Environmental Chamber is responsible for tactical decisions concerning criminal investigations, including the decision to start an investigation. This system is efficient and ensures good coordination at national level in the fight against environmental crime. However, the system could benefit from the involvement of the customs authorities at both tactical and strategic level.

The recently established 29 regional environmental agencies (REAs) ensure that waste management companies are supervised well, and on a regular basis, with the aim of reducing the risk of waste crime.

The existence of specialised police officers, prosecutors and judges must be emphasised. Each of the ten regional police units includes one specialised team dealing with environmental crime, as does the national police unit.

The Netherlands disposes also of special investigative officers (BOAs) who are competent for criminal investigations of environmental crimes and for writing a report at the end of criminal investigations. The report will be submitted to the designated office of the administrative authority who employed the investigative officer (except in the case of the regional environmental agencies).

The role of Special Investigative Services Platform has to be emphasised as well as far as its purpose is to cooperate on combating undermining crime (including environmental crime) by exchanging information between the relevant organisations about cases and reports.

The Netherlands is keen to see extensive international cooperation. It must be highlighted that the Netherlands is a leading participant in the IMPEL-TFS network, the prosecutors' network ENPE, and ENVICRIME NET, taking part in their projects and exchange programmes.

The traceability of hazardous waste is facilitated by the National Waste Disposal Contact Point, which registers and manages all notifications on processing hazardous waste, industrial waste and the shipment of waste. These notifications are made available to the authorities responsible for licencing, supervision and inspections, enforcement and policy decisions.

The investigative agencies and police units have their own experts: analysts, technical and legal experts, forensic accountants, computer forensic examiners, strategic advisors and experts in the area of obtaining and processing data and information, including in the case of illegal production or handling of dangerous materials.

## 2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997<sup>1</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 illegal production or handling of dangerous materials. It should provide a comprehensive examination of the legal and operational aspects of tackling environmental crime, cross-border cooperation and cooperation with relevant EU agencies.

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives<sup>2</sup> (transposition date: 12 December 2010),

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

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<sup>1</sup> Joint Action of 5 December 1997 (97/827/JHA), OJ L 344, 15.12.1997, p. 7.

<sup>2</sup> OJ L 312, 22.11.2008, p. 3.

<sup>3</sup> OJ L 328, 6.12.2008, p. 31.

<sup>4</sup> OJ L 190, 12.7.2006, p. 1.



In line with 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 those 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 Member States will be in different positions regarding the implementation of relevant legal instruments and programmes, and the current process of evaluation could also provide useful input for Member States that may not have sufficiently implemented all aspects of the various instruments.

Moreover, the Council conclusions of 8 December 2016 on countering environmental crime<sup>5</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 enhanced dialogue and cooperation with relevant international organisations. In addition, the Council conclusions of 18 May 2017 on setting the EU's priorities for the fight against organised and serious international crime between 2018 and 2021<sup>6</sup> set the fight against environmental crime as the one of the EU's priorities.

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

<sup>6</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 not focus solely on the implementation of various instruments relating to fighting environmental crime, but rather mainly on the related operational aspects in the Member States. Therefore, it will encompass cooperation among environmental, police, customs and judicial authorities at national level, as well as with Europol, Interpol and Eurojust. The evaluation will also cover operational practices in the Member States with regard to waste treatment operations and establishments and undertakings which collect and transport waste.

The order of visits to the Member States was adopted by GENVAL on 5 May 2017. The Netherlands was the fifth 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 Presidency's proposal that the European Commission, Eurojust and Europol should be invited as observers.

The experts charged with undertaking the evaluation of the Netherlands were Mr Gernot Lorenz (AT), Ms Gudrun Magnusson (SE) and Mr Ondrej Koporec (SK). One observer, namely Ms Elisa Sason (Commission), was also present, together with Mr Stéphane Bonmarchand and Ms Carmen Necula from the General Secretariat of the Council.

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 the Netherlands between 21 and 24 November 2017, and on the Netherlands' detailed replies to the evaluation questionnaire and detailed answers to ensuing follow-up questions.

### 3. GENERAL MATTERS AND STRUCTURES

#### 3.1. Action Plans or similar strategic documents on combating environmental crime

There are several strategic documents and action plans on combating environmental crime.

In the field of prevention:

- National Waste Management Plan 2017-2019  
(*Landelijk afvalbeheerplan 2017-2029*) Copy provided
- National Programme for the safe and responsible management of spent fuel and radioactive waste  
(*Nationaal programma voor het beheer van radioactief afval en verbruikte splijtstoffen, juni 2016*)
- National Enforcement Strategy  
(*Landelijke Handhavingstrategie, LHS*)

The National Enforcement Strategy (LHS) is a document which gives guidance on appropriate enforcement interventions following non-compliance. All organisations involved have either implemented the LHS or have policies aligned with the strategy. The LHS provides guidelines to determine what type of intervention should take place in specific situations. The interventions are regulated under administrative and criminal law and vary from a small intervention (warning) to serious punishment. The LHS is a policy guideline for all administrative and law enforcement organisations dealing with environmental crime and for the Public Prosecution Service. The strategy is not codified in legislation.

Every four years, a threat assessment on organised crime is published which includes a threat assessment on environmental crime. The threat assessment provides the building blocks for the joint strategies and action plans. For an overview of the strategic decision-making procedures of the organisations involved, please refer to the answer to question 20. The joint strategy and action plans are incorporated in joint plans and in the individual organisations' plans.

The strategic plans and action plans are listed below, and a copy is provided.

Joint strategic documents on environmental crime:

- National Threat Assessment on Organised Crime 2017  
(*Nationaal Dreigingsbeeld Georganiseerd Criminaliteit 2017*)
- Chapter on Environmental Crime in the National Threat Assessment on Organised Crime 2017  
(*Hoofdstuk over milieucriminaliteit in het Nationaal Dreigingsbeeld 2017*)

The chapter on environmental crime is based on the report 'Threat assessment on environmental crime 2016'

- Threat Assessment on Environmental Crime 2016  
(*Dreigingsbeeld milieucriminaliteit 2016*)

This threat assessment was written by a team of analysts from the special investigative services (ILT/IOD and NVWA/IOD) and the police. The analysis was carried out on behalf of the Strategic Environmental Chamber and in consultation with the National Threat Assessment on Organised Crime project management team. The report is a joint study of all organisations involved.

- National Intelligence Agenda: Serious Environmental Crime

*(Nationale Intelligence Agenda: thema's zware milieucriminaliteit)* Copy provided

The National Intelligence Programme (NIA) is part of the National Intelligence Model

*(Nationaal Intelligence Model, NIM)*. The NIM is an international standardised approach for gathering, coordinating and disseminating intelligence. It is used for formulating strategic directions, making tactical decisions on investigations and managing resources and risks.

The National Intelligence Programme (NIA) is the work plan for intelligence-gathering and analysis. The NIAs consist of a list of specific subjects for which it is necessary to gather and analyse intelligence. At national, regional and local level, individual intelligence programmes are developed. Intelligence is only gathered on predetermined priorities. This NIA is on serious environmental crime.

- **Strategic Environmental Chamber Action Programme**

*(Uitvoeringsagenda SMK)*

This action programme is a new initiative. Currently, the Strategic Environmental Chamber is determining its first action programme. All organisations that are part of the SMK will commit to the programme. The programme will determine priorities and goals for specific subjects and phenomena relating to combating environmental crime. Priorities will be derived from the identified threats in the National Threat Assessment on Environmental Crime. The priorities and goals will put the focus on decision-making concerning which cases should be investigated and which subjects and phenomena call for intelligence-gathering.

- National Enforcement Strategy

*(Landelijke Handhavingstrategie, LHS)*

See above. This document gives guidance on detection (supervision, prevention) and enforcement (sanctioning).

- 2016 Agreement on Data Exchange and Cooperation between the regional environmental agencies, the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation and the National Police

*(Convenant gegevensuitwisseling en samenwerking 2016 tussen omgevingsdiensten, Functioneel Parket en de Nationale Politie)*

This agreement is a legal document which describes the legal basis for the exchange of information between the organisations and commits the organisations to actual proactive cooperation in exchanging information (e.g. the agreement describes the situations in which an organisation has to provide information to another organisation, it provides for regular meetings to exchange information, etc.). The regional environmental agencies are separate entities, and each of the 29 agencies has to sign an agreement.

Strategic documents of the organisations:

*Special investigative services: the ILT, and the NVWA and its inspection agency:*

- ILT multiannual programme 2017-2021  
*(Meerjarenplan ILT 2017-2021)*
- ILT multiannual programme 2018-2022  
*(Meerjarenplan ILT 2018-2022)*
- Policy letter for the special investigative services 2011  
*(Beleidsbrief voor de bijzondere opsporingsdiensten 2011)*

The Special Investigative Services Act (*Wet op de bijzondere opsporingsdiensten*) provides that the ministers concerned – in agreement with the public prosecutor – determine the policy directions for the tasks and operations of the special investigative services. Those policy guidelines are the political strategic framework based on which the special investigative services carry out their tasks and duties. They are determined 'periodically' – no frequency has been laid down, making it possible to set new directions at political level when necessary.

- 2017 annual plan of the Netherlands Food and Consumer Product Safety Authority  
(*NVWA Jaarplan 2017*)
- Netherlands Waste Shipment Regulation Inspection Plan 2017-2019
- Enforcement Agreement 2016-2019, and annual products 2017, between the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation (FP) and the Netherlands Food and Consumer Product Safety Authority (NVWA)  
(*Handhavingsarrangement 2016-2019 en jaarschijf 2017*)

This agreement consists of two parts:

1. agreements on policy and procedural aspects between the FP and all four special investigative services;
2. specific multiannual agreements between the FP and NVWA/IOD and a list of specific annual products for 2017 by the FP and NVWA/IOD.

#### *Customs and ILT*

- Framework agreement on cooperation between the Ministry of Infrastructure and Water Management and the Directorate-General for Tax Administration of the Ministry of Finance. Annex 1 on cooperation in waste materials  
(*Kaderovereenkomst inzake de samenwerking tussen het Ministerie van Infrastructuur en Milieu en het directoraat-generaal Belastingdienst van het Ministerie van Financiën. Bijlage 1 over de samenwerking inzake wetgeving over afvalstoffen.*)

Customs is an organisation that oversees goods crossing the EU's external border. The Ministry of Finance and the Ministry of Infrastructure and Water Management concluded a framework agreement (*kaderovereenkomst 2004 and 2012*) setting out the framework for cooperation between Customs and the ILT. The annexes to the agreement set out in detail how to carry out said cooperation. One of the annexes (Annex 1) concerns the transport of waste to and from third countries. Based on the agreement, Customs carries out inspections and, if necessary, enforcement interventions relating to violations of environmental law; it does not have an independent role in combating environmental crime.

Each year, the ILT and Customs plan the operational activities to be performed the following year. ILT provides input on the risks, whereas Customs specifies the inspection capacity available. If agreement is reached, the agreed activities are inserted in the Customs Enforcement Plan (*Handhavingsplan Douane*). The priorities and emphases in the enforcement plan are determined by the Ministry of Infrastructure and Water Management and the ILT, while Customs determines how to integrate and implement priorities and emphases in its operations. After each year, the results and functioning of the cooperation are evaluated. It has to be mentioned that Customs disposes of a specialised Environmental Unit and their own experts, which represents a very successful approach.

#### *Police*

- National Police multiannual programme 2015-2018 – Combating Environmental Crime (*Meerjarenplan 2015-2018 Nationale Politie - Aanpak Milieucriminaliteit*)

#### *Police and Prosecutor's Office*

- Agreement on results in environmental investigations between the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation and the police, 2017  
(*Resultaatafspraken milieuopsporing FP-politie 2017*)

#### *Public Prosecutor's Office*

- Strategic view on environmental crime  
(*Strategische blik op milieucriminaliteit, Functioneel Parket*) Copy provided
- Strategy note 2020 of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation  
(*Strategie 2020 Functioneel Parket, Openbaar Ministerie*)



*Regional and local licencing, supervision and enforcement authorities (provinces, municipalities, environmental agencies and water boards)*

Supervision and Enforcement Policy Plan of the individual authority  
(*Beleidsplan Toezicht en Handhaving*)

Every regional and local competent authority, including the environmental agencies, has to have a supervision and enforcement policy, a supervision and enforcement plan and a supervision and enforcement programme based on risk analysis (Article 5.7 of the General Provisions of Environmental Law Act (Wabo) and paragraph 7.2 of the Environmental Law Decree (Bor)).

For example, the Supervision and Enforcement Policy Plan of the Brabantse Delta Water Board (*Waterschap Brabantse Delta*):

[http://decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/Historie/Waterschap%20Brabantse%20Delta/352372/352372\\_1.html](http://decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/Historie/Waterschap%20Brabantse%20Delta/352372/352372_1.html) or the Supervision and Enforcement Policy Plan of

Rijkswaterstaat (an organisation responsible for the design, construction, management and maintenance of the main infrastructure facilities in the Netherlands RWS):

<https://zoek.officielebekendmakingen.nl/stcrt-2016-33546.pdf>

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

#### Prevention

There are different national programmes on the prevention of waste crime, such as the National Waste Management Plan (*Landelijk afvalbeheerplan 2017-2029*) and the National Programme for the safe and responsible management of spent fuel and radioactive waste (*Nationaal programma voor het beheer van radioactief afval en verbruikte splijtstoffen, juni 2016*).

## Public awareness

There is no specific programme to create awareness of waste crime, but provinces, municipalities, environmental agencies and the Ministry of Infrastructure and Water Management provide general information on rules and legislation on their websites for the target groups (such as chemical industries, waste processors, farmers, etc.). If rules change or the majority of the members of the target group are non-compliant, the provinces, municipalities, environmental agencies and the Ministry of Infrastructure and Water Management will inform the targets groups and their interest associations (e.g. rubber and plastic industries association, paint, ink and coating industries association, and other associations representing a specific industry) about the rules and legislation. Inspectors will also provide information during inspections.

## Legislation

The environmental legislation is being renewed. Environmental legislation currently consists of dozens of different laws and hundreds of decrees on the environment, nature and wildlife, water, infrastructure and housing. They all have their own principles, methods and requirements. The legislation has become too complicated for the people who work with it. With the Environment and Planning Act, the government wants to simplify and harmonise the rules.

The Environment and Planning Act will change the current legislation:

- from 26 laws to one
- from 5 000 law articles to 350
- from 120 regulations (*algemene maatregelen van bestuur*) to four.
- from 75 ministerial decrees to ten
- introducing one law for the whole environment
- making it possible to solve local problems locally
- from multiple 'land use plans' (*bestemmingsplan*) to one for each municipality

The Ministry of Infrastructure and Water Management is coordinating different national implementation programmes and projects intended to support the authorities in preparing for the new legislation (provinces, regional environmental agencies, police, supervising authorities, special investigative service, etc.) and provide information to the public, target groups (such as companies), etc.

#### Training and capacity building

There are several national education and training programmes on aspects of environmental crime. The Public Prosecution Service, judges and the police have their own national education curriculum with courses on environmental crime. The Police Academy for training, knowledge and research (*Politieacademie*) offers courses on environmental crime for investigative officers with the police and the special investigative services. More specifically, waste crime is part of the curriculum of the training provided by the Police Academy for the environmental police agent, the environmental inspector/police officer and environmental information detective.

Public prosecutors and judges are trained by the Training and Study Centre for the Judiciary (*Studiecentrum Rechtspleging, SSR*) and specific courses on environmental crime are included in the curriculum, such as a course on the waste shipment regulation (WSR).

#### International programmes

The Netherlands participates in the European Union Network for the Implementation and Enforcement of Environmental Law and the transfrontier shipment of waste cluster (IMPEL-TFS). It is also a member of the European Network of Prosecutors for the Environment (ENPE). ENPE has developed a work programme and also a database in which EU Member States can upload information on verdicts, fines, etc. to share with other EU Member States. NVWA and ILT are also active in various working groups. The Netherlands has also a position in the Advisory Board of Interpol on Environmental Crime.

### 3.3. Statistics

#### 3.3.1. Main trends in waste crime

Due to the fact that there are no comprehensive statistics on waste crime, it is impossible to assess the percentage of total crimes represented by waste crimes.

The main trends in environmental crime are described in the National Threat Assessment on Environmental Crime 2016 (*Dreigingsbeeld milieucriminaliteit 2016*). Regarding waste crime, we have identified the main threats and trends in illegal shipment of (general) waste abroad, shipment of hazardous materials and hazardous waste, asbestos (demolition, transport and dumping), blending ship fuel oil, fraud regarding raw material for food and feed (recycling of by-products and waste to raw materials), crimes in cleaning and reusing contaminated soil, fraud regarding fertilisers (cattle manure) and non-compliance by high-risk companies in handling dangerous materials (including waste).

As statistics (number of cases, prosecutions, convictions and other sanctions) are not available, they could not be used for determining the main threats and trends in the National Threat Assessment on Environmental Crime 2016.

Furthermore, statistics are not a critical source for determining the main trends and threats in relation to environmental crime or waste crime. Environmental crime (and waste crime) consists of tens of thousands of different crimes in very different fields, and for each crime the perpetrator uses very different methods (blending of ships' fuel oil, non-compliance with rules, crimes of omission, etc.). The crimes are difficult to detect because they take place in legal companies in regular business operations. Their detection requires (proactive) inspections by governmental authorities, and it is even more complicated when materials are imported and exported. In short, the crimes are easy to commit, the risk of detection is low and the financial gains are high. Even if reliable statistics on detected crimes could be compiled, they would not give a reliable indication of the actual extent of waste crime.

The actual magnitude of environmental and waste crime is much greater. The threat assessment on environmental crimes therefore focuses on the criminogenic opportunities or factors that make crimes easy to commit but difficult for law enforcement officers to detect.

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

There are no published statistics on waste crime, and creating such statistics is not possible.

Environmental crimes, such as waste crimes, are in many cases prosecuted as crimes of falsification of official documents and data (*valsheid met geschriften*). In the existing data, it is not possible to see whether crimes labelled as document and data falsification crimes are waste crimes or other types of crime. If statistics were collected on offences that can be categorised as waste crime, they would be incorrect because many detected waste crimes would not be included.

The law enforcement agencies, the Public Prosecution Service and the Judicial Information Service (a service that keeps records on court decisions, sanctions and other judicial decisions) keep their own records. Every authority that imposes administrative decisions keeps its own records.

Statistics on the processing of waste in the Netherlands are published annually.

<http://www.rwsleefomgeving.nl/onderwerpen/afval/publicaties/downloads/afvalverwerking-6/>

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

There are no specific budgets or FTEs (full-time equivalents) that are solely focused on waste crime.

Personnel FTEs are dedicated to combating environmental crime. These FTEs may be converted into a financial budget.

Below is an overview of the FTEs dedicated to the prevention, detection and prosecution of environmental crime:

### Environmental agencies

The 29 environmental agencies employ about 4 000 highly specialised and skilled FTEs for licencing, inspections and law enforcement. The majority operate with an environmental focus. The amount of personnel fluctuates because of developments within the agencies, changes in the tasks assigned by individual provinces and municipalities to the agencies, stakeholders and their tasks, and the impact of new legislation.

### ILT

The Human Environment and Transport Inspectorate (*Inspectie Leefomgeving en Transport*, ILT) is the supervisory authority for the tasks of the Ministry of Infrastructure and Water Management. More than 1 100 employees work daily on security, certainty and trust in transport, infrastructure, environment and housing. The national supervisory authorities (ILT/IOD, NVWA/IOD, ISZW/IOD and FIOD) have their own criminal investigative service. These investigative services are called 'intelligence and investigative services' (*Inlichtingen- en Opsporingsdienst*, IOD). The criminal investigative services of the ILT (ILT/IOD) consists of approximately 70 FTEs. The ILT is funded by the national budget as an organisation, not in relation to specific tasks. Therefore, we cannot provide you with an overview of the number of FTE inspectors and criminal investigators dedicated to waste crime (or the related budget).

### NVWA

The Netherlands Food and Consumer Product Safety Authority (NVWA) has about 2 617 employees. For information on its tasks, see the answer to question 12. The NVWA consists of an inspectorate and a special investigative service for investigating crimes (NVWA/IOD). During inspections, employees may encounter environmental crimes. 115 FTEs work at the NVWA/IOD.

## National Police

Regarding criminal investigations and intelligence-gathering and analysis:

National Unit:

- 8 FTE experts at the National Environmental Expertise Centre
- 25 FTE criminal investigators at the National Unit
- 22 FTE intelligence employees (5 tactical intelligence investigators, 11 intelligence analysts and 6 runners criminal informants)

Regional Units:

- 25 FTE tactical information investigators at the 10 regional units
- 326 FTE tactical criminal investigators at the 10 regional units

These positions are not yet all filled.

Regarding patrolling and crime detection:

- one environmental crime officer in every district team in the regional units (spending at least 0.2 FTE of his or her work dealing with environmental crime).
- approximately 1 300 FTEs at the Infrastructure Service of the National Unit (*Dienst Infrastructuur*, DINFRA). DINFRA is a service which consists of police officers that carry out national tasks regarding the enforcement of rules on road traffic, rail, water and air which cannot be performed by regional units. The Infrastructure Service houses the Environment and Transport Control Team (*Team Milieu en Transportcontrole*, TMC). The police officers that work at the TMC are tasked with patrolling and enforcing environmental law (including risk-based detection) and catching perpetrators of small crimes in the act.

## Public Prosecution Service

About 100 FTEs are dedicated to the fight against environmental crime at the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation.

## Judges and courts

Judges do not work full-time on environmental cases, because the caseload is limited. A number of judges have been appointed to deal with environmental issues in addition to regular cases. The courts also make use of 'judges alternate' who are specialists in environmental law from their own professional practice. We cannot provide a precise number of environmental crime judges in FTE terms.

## EU funding to tackle waste crime

The Netherlands does not receive EU funding for projects tackling waste crime. It is, however, a member of European networks that receive EU funding, such as the European Network of Prosecutors for the Environment (ENPE), which benefits from the support of the EU LIFE Programme.

### 3.5. Prevention of waste crime

To answer this question thoroughly, an explanation of the Dutch state administration is first necessary.

#### *State administration (bestuurlijke indeling)*

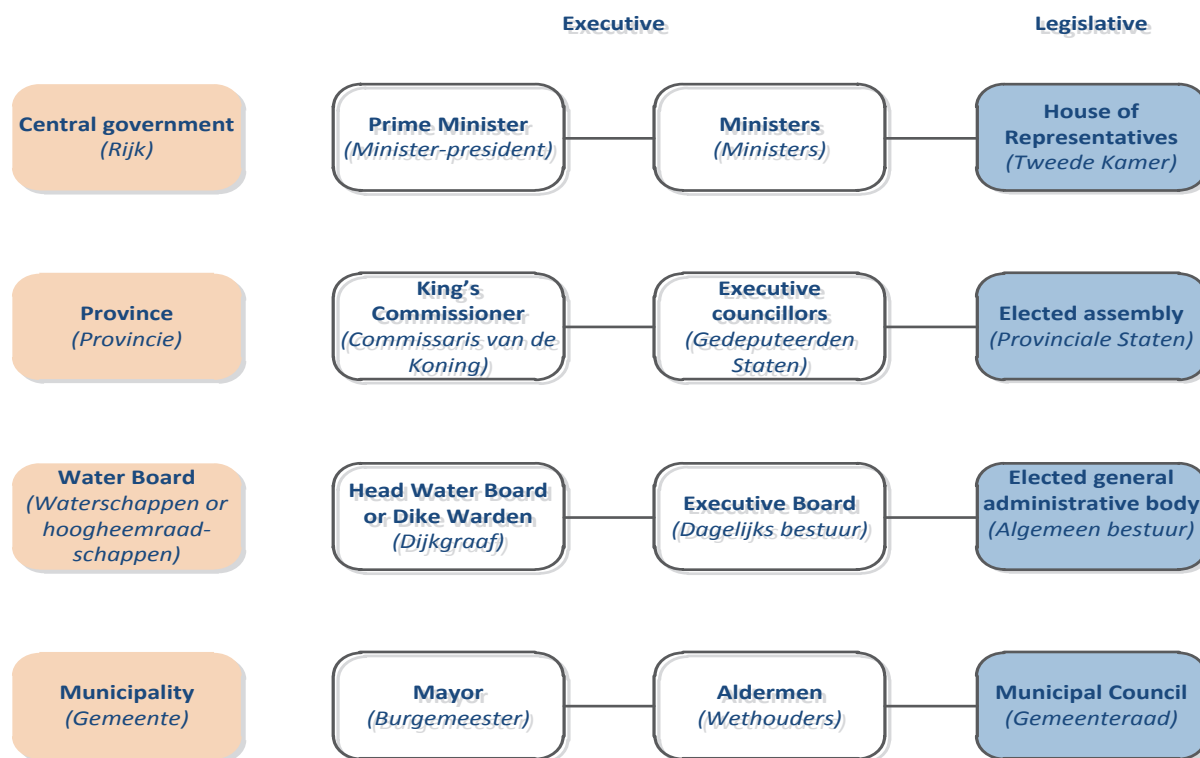
The Netherlands (population: 17 million) is a unitary state. The state is governed as a single power (one state administration). The central government is ultimately supreme. The central government can delegate duties to the regional and local administrative divisions.

In the Netherlands there are three governing bodies: the central government (*Rijk*), the provinces (*provincies*) and the municipalities (*gemeenten*). Every level of government is elected by its constituents. In addition, water boards form a separate governing body for water management tasks. Water boards are also elected bodies.

The general rule is that duties are decentralised to municipalities (or water boards, in the case of water management tasks) unless the activities can only be done at regional level or it is necessary to keep the tasks at central level (the 'decentralised, unless' rule).



→ Figure State administration in the Netherlands



The 'decentralised, unless' rule also applies to duties relating to the 'physical living environment' (*fysieke leefomgeving*), which include waste-related tasks. Municipalities are the competent authority for activities that (may) have an impact on the physical living environment, unless there is a reason to empower another level of government. The exceptions to this rule are determined by law and decrees. In general, municipalities are responsible for all tasks, except for activities that pose a high risk for the environment and safety. The provinces are the competent authority for such high-risk activities.

Municipalities:

Primary competent authority.

Exceptions:

- Provinces:

- All companies that work with dangerous materials and have to comply with the Dutch BRZO Decree.

(The BRZO Decree is the implementation of the EU Seveso III Directive; BRZO is an abbreviation of *Besluit Risico's Zware Ongevallen 2015* – in English, the 'Risks of Major Incidents Decree 2015').

- All companies with an IPPC category 4 installation. IPPC category 4 installations are the installations for industrial (chemical) activities listed under category 4 of Annex I to Directive 2010/75/EU on industrial emissions (in Dutch, *Richtlijn industriële emissies*, RIE).

- All companies with an IPPC installation (but which are not a BRZO company or an RIE-4 company) and for which the province is designated as competent authority in Annex I to the Environmental Law Decree (Bor). Both conditions must be met. An IPPC installation is a stationary technical unit where one or more activities listed in Annex I to the European Industrial Emissions Directive are carried out. That Annex used to be part of the IPPC Directive.

(Therefore the municipalities, not the provinces, are the competent authority for companies with IPPC installations that are not listed in Annex I, such as IPPC cattle farms, and for companies that are listed in Annex I but do not have an IPPC installation).

- Activities in, on, under or over a closed landfill
- Minister for Infrastructure and Water Management
- Certain defence installations
- Installations that are situated in the sea of the territory of the Netherlands but are not part of a municipality or province
- The supervisory authority for nuclear installations and transport of radioactive materials including radioactive waste (the Supervisory Authority for Nuclear Safety and Radiation Protection – *Autoriteit Nucleaire Veiligheid en Stralingsbescherming*, ANVS)
- Minister for Economic Affairs
- Installations for mining

*Categorising companies by environmental impact*

Companies that impact the environment must apply for an environmental licence or submit an 'Environment and Planning Activities Decree Notification' (*melding Activiteitenbesluit milieubeheer*). Companies that have little or no impact on the environment need not apply for a licence or submit a notification. These companies must, however, comply with the general environmental rules (general rules of the Environment and Planning Activities Decree). Those rules apply to every company.

Companies can use the 'Activity Decree Internet Module' (*Activiteitenbesluit Internet Module*, AIM) to determine whether an environmental licence is required or a notification must be made. The module also provides insights into environmental rules and measures. A company can also submit the Environment and Planning Activities Decree Notification online via the module. The notification or the request for an environmental licence/permit is sent to the competent authority (province or municipality).

In the Environment and Planning Activities Decree, companies are subdivided into three different categories, in which type-A companies impact the environment the least and type-C companies impact it the most.

Type-A companies:

- have little or no impact on the environment
- include, for example, offices, banks and pre-school playgroups
  - no environmental licence or Environment and Planning Activities Decree Notification required

Type-B companies:

- significantly impact the environment
- include, for example, printing companies, car repair companies and dental laboratories
  - Environment and Planning Activities Decree Notification required before carrying out business activities

Certain company's activities require an Environment and Planning Activities Decree Notification and a Limited Test Environmental Licence (*Omgevingsvergunning Beperkte Milieutoets*, OBM). The 'Activity Decree Internet Module' (*Activiteitenbesluit Internet Module*, AIM) determines whether the notification or test applies to the company. An OBM can be requested through the online Environment Kiosk (*Omgevingsloket*).

Type-C companies:

- have a large-scale impact on the environment
- include, for example, large metal processing companies, chemical industries, motorcycle areas. BRZO companies and companies with IPPC category 4 installations or other IPPC installations are type-C companies and need a licence
  - environmental permit required before carrying out business activities

An environmental licence can be requested via the online Environment Kiosk (*Omgevingsloket*).

*Prevention of waste crime: the system of licencing, supervision and enforcement (VTH-stelsel)*

Prevention of waste crime is primarily the responsibility of the municipalities and provinces. Prevention of waste crime starts with creating awareness of the rules and legislation among the target groups, e.g. by providing information about the rules as explained above and specific targeted information to target groups such as interest groups for chemical industries, waste processors, farmers, etc.

The system of licencing is also very important in preventing waste crimes. As explained above, before the company may start its business activities, it has to determine if it has to request an environmental licence, submit an Environment and Planning Activities Decree Notification or simply comply with the general environmental rules. Companies that impact the environment on a large scale (Type-C companies and in some cases also Type-B companies) will need to apply for a licence. In many cases, the provinces are the competent authority for licencing, supervision and enforcement. The province (or in some cases the municipalities) will assess if the company can perform the tasks within the strict rules, analyse if the company may present a risk, etc. If the application is accepted, the company will receive its licence. The licence is an agreement between the province or municipality and the company: the agreement allows the company to process materials but only if it complies with the specific rules of the licence and the general rules of national environmental legislation. If the company does not comply, the provinces, municipality and regional environmental agencies may impose sanctions and can revoke the licence (fully or partly and conditionally).

Another important aspect of prevention is the supervision of compliance with licences. Provinces, municipalities and regional environmental agencies (and national supervisory authorities) monitor whether companies comply with the rules of their licence. The supervisory authorities may also inspect companies that do not have a licence for processing materials, for example where there are indications that they are illegally carrying out activities that impact the environment on a large scale.

The ILT is responsible for licencing, supervision and enforcement of the provisions of the Waste Shipment Regulation.

During the inspection, the focus is on increasing compliance with the licence's rules and the general environmental legislation, and – in case of an offence – to prevent repetition of offences in the future. Officers explain rules to the company's employees (again) and give extra information. The supervisory authority determines its supervision programme (*handhavingsuitvoeringsprogramma*). The supervision programme lists the companies or industries selected for inspection in the coming year and how many times they will be inspected. The choices of companies and the frequency of inspections is determined by two factors: the risks the company's activities pose for the environment, and 'compliance behaviour'. Compliance behaviour may differ, ranging from companies that are conscientious compliers to companies that are deliberate and calculating violators.

If companies do not comply with their licence or do not have a licence to process the specific materials, the supervisory authorities may apply sanctions. The National Enforcement Strategy (*Landelijke Handhavingstrategie*) provides guidance on what sanctions to impose in specific situations.

- *National legislation: Licencing, Supervision and Enforcement Act*

The above system of licencing, supervision and enforcement – including the existence of the 29 environmental agencies (and six specialised environmental agencies) – is regulated by law by the Licencing, Supervision and Enforcement Act (*Wet Vergunningverlening, Toezicht en Handhaving* or 'VTH Act') and the related Licencing, Supervision and Enforcement Decree (*Besluit Vergunningverlening, Toezicht en Handhaving* or 'VTH Decree'). The VTH Act replaced Title 5.2 of the General Provisions of Environmental Law Act (*Wet algemene bepalingen omgevingsrecht, Wabo*) and the VTH Decree replaced Chapter 7 of the Environmental Law Decree (*Besluit omgevingsrecht, Bor*). The VTH Law and VTH Decree also regulate a system of information exchange between competent authorities, environmental agencies and the public prosecutor and police (via the 'Inspection View Environment' system).

- *Prevention of environmental crime through BRZO+ cooperation*

Additional legislation and a cooperation arrangement are in place for the licencing, supervision and enforcement of companies that process dangerous materials (the 'BRZO' companies and companies with IPPC category 4 installations or other IPPC category installations). The cooperation arrangement involves the ISZW, environmental agencies, the safety regions, water boards, the ILT and the Public Prosecution Service. These organisations work together to carry out licencing, supervision and enforcement (VTH tasks) for companies that process dangerous materials. Such companies have to comply with the BRZO Decree, which is the Dutch implementation of the EU Seveso III directive (BRZO is an abbreviation of *Besluit Risico's Zware Ongevallen* – in English, the 'Risks of Major Incidents Decree'). The cooperation arrangement is therefore known as 'BRZO+ cooperation'.

BRZO+ cooperation entails a coordinated cross-sectoral approach (an integrated approach) regarding planning, administration, inspection and monitoring of BRZO companies and sharing compliance information between the organisations. The primary aim is to prevent major incidents at high-risk BRZO companies and companies with IPPC category 4 installations or other IPPC installations. If an incident occurs, the BRZO+ cooperation arrangement coordinates who investigates the incident and when.

The integrated approach between the BRZO+ organisations started in 1999 with the then-new Dutch BRZO Decree. The BRZO Decree is based on the Working Conditions Act (*Arbowet*), the Safety Regions Act (*Wet veiligheidsregio's*, WVR) and the General Provisions of Environmental Law Act (*Wet algemene bepalingen omgevingsrecht*, Wabo). ISZW, safety regions and provinces (through environmental agencies) are the administrative bodies designated as the competent authorities under the three laws. They are responsible for monitoring and inspecting BRZO companies, enforcing the law and sanctioning violations. They perform these tasks based on the BRZO Decree but using the powers given to them under their respective laws.

The BRZO+ organisations develop a joint annual programme (*Jaarplan BRZO+*) which describes how they will jointly carry out the VTH tasks for BRZO companies. In addition, every year, the BRZO Companies Compliance and Enforcement Monitor (*Monitor naleving en handhaving Brzo-bedrijven*) is published as part of the BRZO+ cooperation arrangement, giving a description of compliance by BRZO companies with the BRZO Decree (based on the data of the BRZO+ organisations).

Since 1999, several improvement programmes have been created to develop better cooperation and coordination between the BRZO+ organisations. The programmes have resulted in a substantial improvement in coordinated inspections and monitoring. The integrated approach now raises the need for further harmonisation and uniformity of the organisations' enforcement strategies. In 2013, a joint national enforcement strategy was developed specifically for monitoring BRZO companies (National BRZO Enforcement Strategy – in Dutch the '*Landelijke Handhavingsstrategie BRZO*').

#### **Environment Council (*Bestuurlijk Omgevingsberaad*)**

The organisations that have tasks and responsibilities within the system of licencing, supervision and enforcement and the system of criminal investigation and prosecution coordinate their activities with each other and conclude agreements. Coordination takes place at all management levels. The Environment Council is a high-level consultative forum responsible for issues regarding the system of licencing, supervision and enforcement, cooperation between all organisations and connections with the system of criminal investigation and prosecution. The organisations must implement its decisions. Such decisions may be practical in nature, for example agreeing on joint standards for information exchange, or they may be more strategic, such as the decision to develop the 29 regional environmental agencies and the National Enforcement Strategy. The Minister for Infrastructure and Water Management can decide to codify the decisions in a ministerial decree.

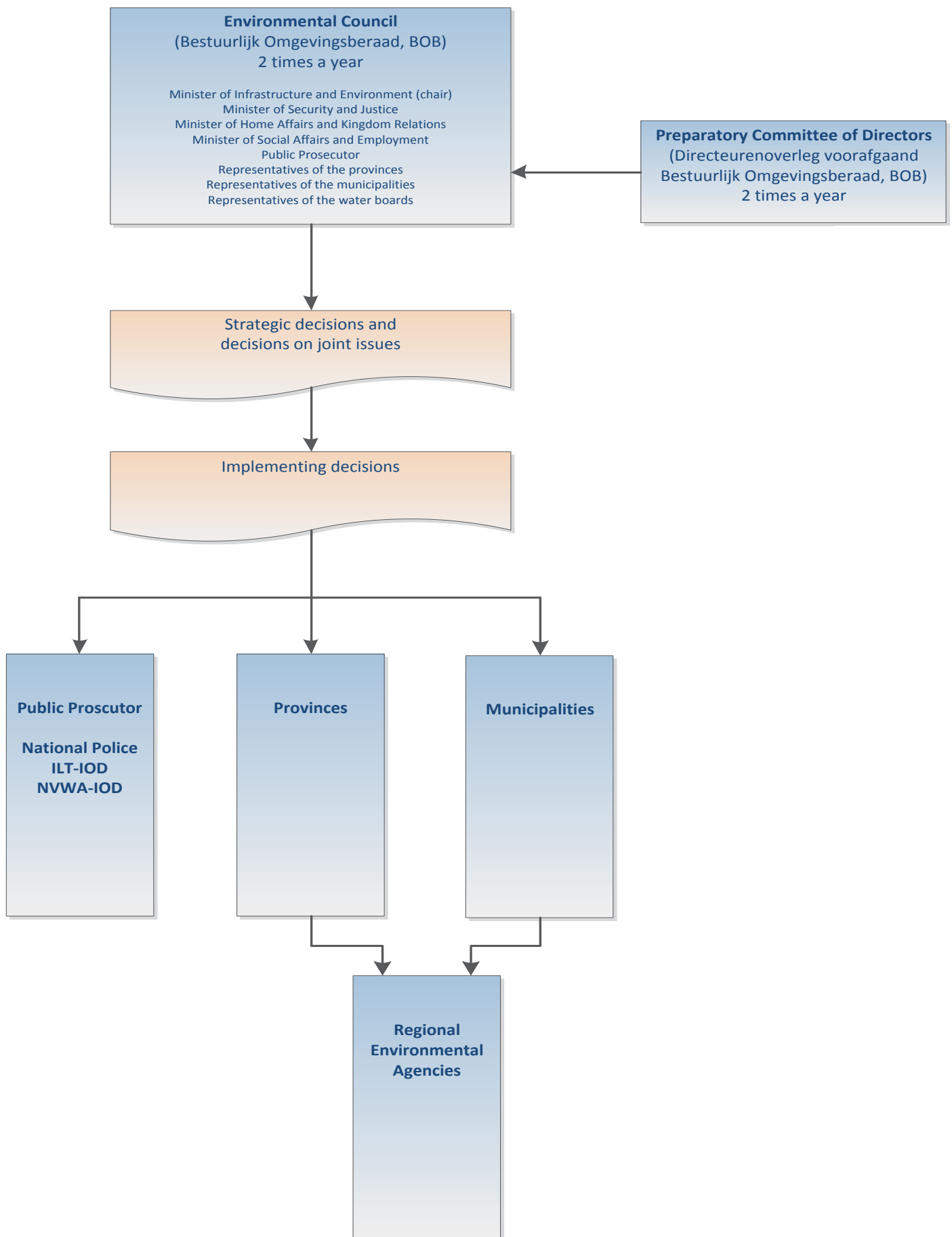


The Council is chaired by the Minister for Infrastructure and Water Management. Eight organisations participate in the Environmental Council, including the chair (the Minister for Infrastructure and Water Management). The others are the Minister for Justice and Security, the Minister for Home Affairs and Kingdom Relations, the Minister for Social Affairs and Employment, the Public Prosecutor and the representatives of the provinces, municipalities and water boards.

#### *Committee of directors*

A committee of directors from these organisations prepares the Council meetings. The committee of directors meeting is not only a preparatory meeting for the Environmental Council; it also discusses (policy) issues and resolves problems autonomously.

Cooperation and coordination on such a high level is necessary because the establishment and operation of the system of licencing, supervision and enforcement is, first of all, a joint responsibility of municipalities, provinces and the central government, but final responsibility for the system lies with the central government. In addition, the high-level council is necessary to improve cooperation between administrative authorities (provinces, municipalities) and the criminal investigative authorities (criminal investigation agencies and the Public Prosecution Service).



### **3.6. Conclusions**

- **The fight against waste crime has high priority in the Netherlands.**
- **The National Enforcement Strategy, as a set of policy guidelines for all administrative and law enforcement organisations dealing with environmental crime, provides guidance on appropriate enforcement interventions.**
- **The National Threat Assessment on Organised Crime, which includes a threat assessment on environmental crime written by a team of analysts and the police, is published every four years. It provides the basis for joint strategies and action plans.**
- **The Action Programme of the Strategic Environmental Chamber will determine the priorities and goals for specific subjects and phenomena relating to the fight against environmental crime.**
- **In addition, the organisations involved in combating environmental crime develop their own strategic documents (e.g. the National Police's multiannual plan for Combating Environmental Crime).**
- **An agreement on exchange of data and cooperation between the REAs, the National Public Prosecutor's Office and the national police serves as a basis for cooperation among these different authorities in the fight against environmental crime.**
- **It can be said that the Netherlands' national action plan and programmes for dealing with environmental crime provide a solid basis for combating environmental crime for all authorities involved. The Netherlands is also engaged at international level.**
- **The Netherlands plays an active role in IMPEL-TFS, the European Network of Prosecutors for the Environment, ENVICRIME NET and the EU Policy Cycle.**
- **The domestic budget allocated to preventing and fighting against waste crime seems to be highly sufficient, even if there is no specific budget solely focused on waste crime and the disposal of waste of which the producer cannot be identified.**

- **The LMK is an excellent forum for contact and feedback on the strategic documents and the practical reality. What is missing, and where there is room for improvement, is a clearer evaluation of the outcome of the work. There is no compilation or evaluation of reliable statistics about cases reported to the public prosecutors, e.g. annual summaries about how many cases are initiated, how many cases are under investigation and how many offences lead to a final conviction. For continued development of the system, comprehensive statistics are a necessity. However, each agency has its own statistics on its cases, and these could be very useful if combined.**
- **Cooperation at operational level by the Strategic Environmental Chamber (SMK) and the National Environmental Chamber (LMK) with different authorities seems to be an appropriate working method. The LMK and its decision-making on conducting investigations appear to function well. However, due to the role of Customs in controlling the movement of goods, it is recommended that it be involved at the strategic level (SMK) and in the activities of the National Environmental Chamber (LMK).**
- **There is no specific waste-crime awareness programme in the Netherlands.**

## 4. NATIONAL STRUCTURES

### 4.1. Judiciary (prosecution and courts)

#### 4.1.1. Internal structure

##### *Public Prosecution Service*

The Public Prosecution Service is a national organisation. All criminal investigations are conducted under the direction of the Public Prosecution Service. The Public Prosecution Service has ten regional districts that are identical to the regional units of the National Police.

The Public Prosecution Service has an office in every district, the Public Prosecutor's Office (*Arrondissementparket*). Each of these offices is under the authority of a chief public prosecutor, who ensures that the policy of the Public Prosecution Service is implemented in his or her district. The Public Prosecution Service has two central units: the National Public Prosecutor's Office for combating (international) organised crime (*het Landelijk Parket*, LP) and the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation (*het Functioneel Parket*, FP). See the figure 'Organisation Chart – Regional Districts Public Prosecution Service'. For further information, see: <https://www.om.nl/algemeen/english/about-the-public/organisation-the/> (in English).

Regarding environmental crime, small waste crimes, such as littering, are dealt with by one of the 10 regional districts, but other waste crime cases are dealt with by the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation.

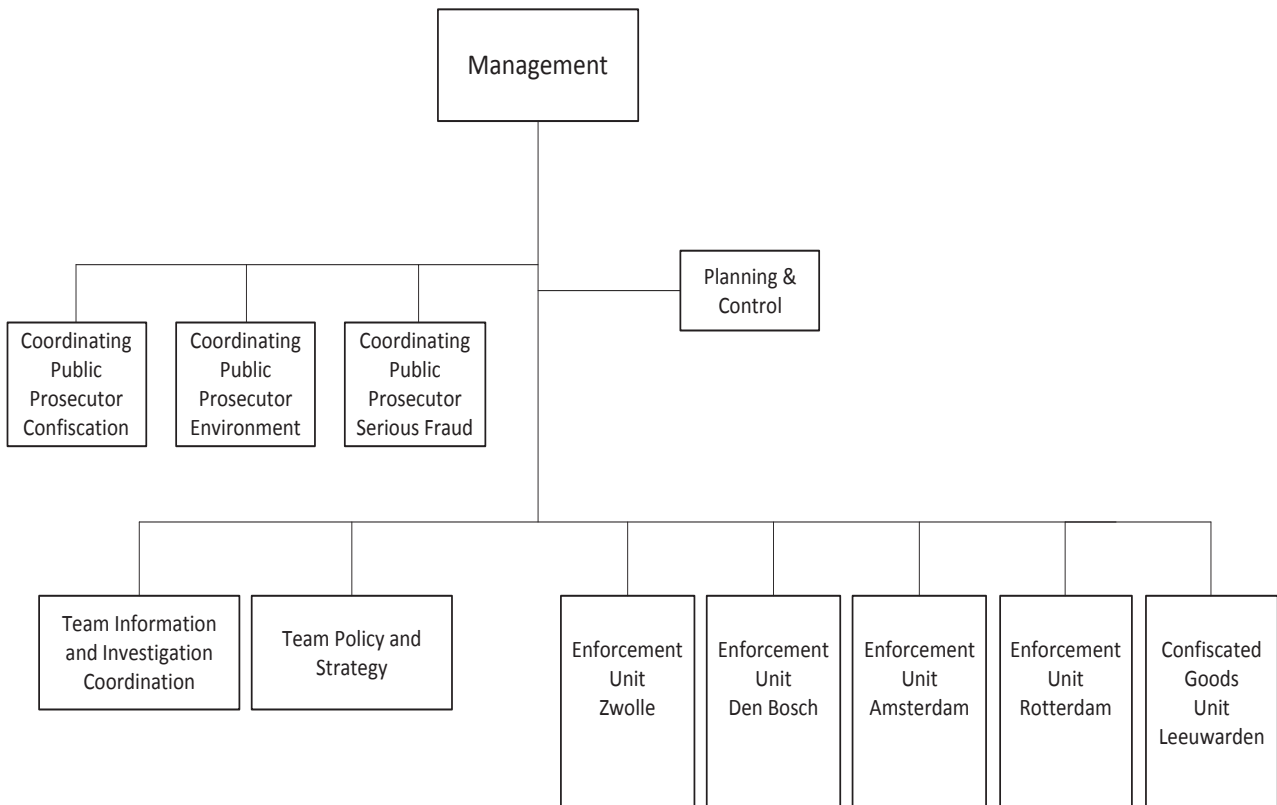
The Public Prosecution Service is the hierarchical authority when it comes to criminal investigations conducted by the police, the special investigative services and other investigative bodies and officials, including the investigating officers of the municipalities, provinces, regional environmental agencies and private entities (private parties, such as owners of large estates, may employ forest rangers which are extraordinary investigating officers). All criminal investigators can send their official report of findings (*proces-verbaal*) directly to the Public Prosecution Service. Criminal investigators employed by municipalities, provinces, the regional environmental agencies and private entities may also choose to send their official report to the police, which submits it to the Public Prosecution Service. Criminal investigators employed by the State Forestry Service (*Staatsbosbeheer*) or the Association for the Conservation of Natural Monuments (*Natuurmonumenten*) may choose to send the report in via the NVWA/IOD. In individual cases, the Public Prosecution Service determines whether to open a criminal investigation. A public prosecutor leads the investigation and determines how the investigation will be conducted (which tools to use, etc.). On a more strategic level, the Public Prosecution Service determines the focus for the investigation of crimes in the coming year, the number of cases that will be investigated, etc. In the so-called 'agreement on results' (*Resultaatafspraken*), the Public Prosecution Service provides the strategic and tactical outlines for certain types of crime, and the police commits to providing resources to achieve the desired results and outcomes (such as the number of cases that will be investigated).

### *Centralisation and specialisation for the investigation of environmental crimes*

Crimes that are detected within the territory of a regional district of the police are investigated by that regional district (under the direction of a prosecutor) and suspects are prosecuted by the equivalent regional district (Arrondissementparket) of the Public Prosecution Service. The steering committee of that region will decide on the arrangements for opening the investigation. See the answer to question 14 for more information on the tasks and roles of a steering committee.

For environmental crimes, there is a different process. Decisions regarding the opening of an investigation are made at national level in a special national steering committee for environmental crimes, the National Environmental Chamber. One national prosecutor's office, the Prosecutor's Office for Financial, Economic and Environmental Offences (Functioneel Parket, FP), is responsible for prosecuting all kinds of environmental crime cases (except for small cases). The FP is not only assigned to police cases but to cases brought by all the various criminal investigative bodies (the ILT/IOD, NVWA/IOD, ISZW/IOD and FIOD and the criminal investigation officers of the regional environmental agencies). The centralisation in decision-making allows for specialisation in complex criminal investigations, greater ability to execute the tasks of the steering committee since all investigative bodies are part of the decision-making, and better strategic decision-making by all investigative bodies. For the Public Prosecution Service in particular the centralisation in the FP allows for a great number of specialised prosecutors and a stronger position for the Public Prosecution Service in relation to the police, the other four investigative bodies and other investigative officers for environmental crime. The national tasks of the National Public Prosecution Office for Serious Fraud, Environmental Crime and Asset Confiscation are executed by four branches, situated in the cities of Zwolle, Amsterdam, Den Bosch and Rotterdam. In addition to these four branches, there is one branch in the city of Leeuwarden which primarily focuses on the management of seized goods. The office is managed from Amsterdam. See the figure 'Organisation Chart – National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation'.

4.1.1.1. Figure: Organisation Chart – National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation





### *Other organisations in specialised areas*

Other organisations also have duties in preventing waste crimes in certain specialised areas. These include the Supervisory Authority for Nuclear Safety and Radiation Protection (Autoriteit Nucleaire Veiligheid en Stralingsbescherming, ANVS), which is the supervisory authority for nuclear installations and the transport of radioactive materials, including radioactive waste, and the State Supervision of Mines (Staatstoezicht op de mijnen, SodM), which is the supervisory authority for mining.

Different specialised bodies detect and investigate waste crime. The regional environmental agencies of the regional and local authorities (provinces and municipalities) monitor the rules, investigate infringements and can impose administrative and criminal sanctions. The specialised environmental teams of the police can investigate waste crime. And the special investigative services investigate waste crime cases, primarily the investigative service of the Human Environment and Transport Inspectorate (ILT/IOD).

The ILT/IOD focuses on persons and companies which systematically and seriously violate regulations in the area of the environment. Furthermore, the ILT/IOD focuses on organised crime of a subversive nature and often concerning international (financial) structures and trade flows. Special attention is given to intermediaries, facilitators and certifying institutions. The ILT/IOD employs investigators, analysts, technical and legal experts, forensic accountants, computer forensic examiners, strategic advisers and experts in the area of obtaining and processing data and information. Priorities in criminal investigations cover waste, soil and hazardous substances. The ILT's tasks also relate to transport and housing associations. See the answer to question 12 for a more detailed description of the ILT/IOD.

Small waste crimes are dealt by one of the 10 regional districts of the Public Prosecution Service (Arrondissementparket), but other waste crime cases are dealt with by a specialised prosecutor's office, the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation (Functioneel Parket, FP), with units in the cities of Amsterdam, Rotterdam, Den Bosch and Zwolle. See the previous answers to questions 12-14 about organisation, tasks and responsibilities.

The courts are organised in a similar way to the Public Prosecution Service. 'Economic judges' (*Economische Politie Rechter*) deal with small waste crimes (environmental crimes are categorised as 'economic offences'). These judges are present in every regional court. Complex cases are decided by the Multiple Economic Chamber (*Meervoudige Economische Kamer*), with environmental crimes being dealt with by four specialised courts (*concentratierechtbanken*) for Amsterdam, Rotterdam, Oost-Brabant (Den Bosch is the capital of this province) and Overijssel (Zwolle is the capital of this province).

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

The Netherlands strengthened its capacity to prosecute environmental crime (including waste crime) through the specialisation and centralisation of decision-making in investigations and prosecution. This includes the following:

- A structure for joint decision-making:
  - o SMK (joint decision-making on priorities);
  - o LMK (joint decision-making on conducting investigations);
  - o LMO (*Landelijk Milieu Informatie Overleg*), the national environment information meeting;
  - o NIA on environmental crime.
- The National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation

Since 2005 one National Public Prosecutor's Office has been responsible for dealing with the information provided by the various investigative authorities and coordinating criminal investigations into and prosecution of all kinds of environmental crime.

- Regional environmental agencies

The regional environmental agencies are new organisations. The larger municipalities had already had environmental agencies for several decades, but the smaller ones did not. Several years ago, the central government, provinces and municipalities decided to create a nationwide network of environmental agencies. Since 2014, there have been 29 regional environmental agencies in operation, covering all regions in the country.

Provinces and municipalities are usually the licencing authorities in the Netherlands and therefore primarily responsible for monitoring compliance with environmental legislation. Because of the specialised nature of these monitoring tasks, some of them (the so-called 'basic tasks') are executed by the regional environmental agencies. Provinces and municipalities are obligated to transfer the execution of some of these basic tasks (mainly as regards high-risk installations) to the regional authorities and may choose to transfer other tasks as well.

The formation of the regional environmental agency and the obligation for municipalities and provinces to transfer certain tasks was codified in national law in April 2017. See also the answer to question 12.

- Criminal sanctioning by regional environmental agencies and national supervisory agencies

Since 2012, the directors of the regional environmental agencies and the inspector general of the national supervisory agencies have been able to impose criminal sanctions autonomously by means of a punishment order (*strafbeschikking*).

- Appeals against criminal sanction decisions in environmental crime cases by the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation

Appeals against criminal sanction decisions used to be processed by a special appeals unit at the National Public Prosecutor's Office. Because of the specialised nature of the crimes, the processing of the appeals has been transferred to the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation. This will shorten the time required to process the appeals before reaching court, and improve the quality of the review and feedback to the officer.

The stages of a criminal case may differ between Member States. Therefore, it is worth first explaining the different stages.

Criminal investigations are always led by a prosecutor. The decision to open a criminal investigation is a joint decision taken by the organisations involved. In the case of environmental crimes, such a decision is usually taken by the members of the National Environmental Chamber (*Landelijke Milieukamer*). After this decision is taken, a prosecutor is assigned to lead the criminal investigation. See the answer to question 17 regarding challenges and obstacles during the criminal investigation.

The criminal prosecution starts when the Prosecutor's Office decides to prosecute the natural or legal person by sending the case for trial by a judge. This decision is based on the evidence gathered during the criminal investigation. The Prosecutor's Office may also decide to impose a sanction, which is usually a punishment order (*strafbeschikking*) or in some cases a transaction. Depending on the offence, a punishment order may also be issued by a criminal investigator and, in the case of environmental crimes, a director of the regional environmental agencies, the inspector generals of the ILT and NVWA, and others that are designated by decree.

A punishment order is a form of criminal prosecution. If a natural or legal person objects to the punishment order, the case is taken to a judge. The objection may also give the Public Prosecutor's Office grounds to change the initial decision of the Prosecutor's Office and the punishment order may be withdrawn (cancelled or amended).

## Challenges for prosecution

The challenges and obstacles when deciding whether or not to prosecute (by trial or punishment order) are as follows:

- Finding evidence can be a challenge, because evidence is mostly found in business administrations but covered up using falsified declarations and/or lab analysis.
- Finding sufficient and adequate resources is sometimes difficult, because the expertise is not always available or there is a problem where capacity is needed.

## Challenges for punishment orders

Regarding punishment orders for waste crime (*bestuurlijke strafbeschikking*) which are imposed by the supervising authorities (*het bestuur*), the challenges and obstacles are:

- the inflexibility of the financial sanctions;
- discussions with municipalities and provinces about the revenue relating to financial sanctions.

In the view of the prosecutors, it is difficult to get a punishment that is effective, proportionate and dissuasive, because the court does not always recognise the seriousness of the violation.

## Challenges for the courts

Only a limited number of environmental crime cases come to court. The reason for this limited number is already explained above. The limited number of environmental crime cases may explain why environmental crimes are sometimes perceived as less serious crimes than other crimes. Environmental crimes also receive little attention compared to other crimes, including from the public, which undoubtedly affects the assessment and perceived severity of such crimes. For some criminal judges, an offence that directly violates the body and life of a person is considered a more serious offence than an environmental crime. Another aspect is that the prosecutors lay emphasis on evidence in the case file and during the trial and not so much on the harmful effects of the offence.

Although prosecutors do note the harmful aspects in the indictment (*requisitor*) so that the charge can be determined, they do not give a great amount of detail.

The discrepancy between the charges (by the prosecution) and the decisions (by the judges) can partly be explained by the fact that often not all charges are proven or the crimes were committed a long time ago and judges take this into account in their decision (moderating effect)

In many cases, the public prosecutor requests a fine. The judge may or may not follow such a request. In particular in cases where administrative mistakes have been made or there are defects in the required forms, the judge often decides to impose a lower fine than requested. In cases in which the environment was directly damaged, there are few discrepancies between the charges and the imposed punishment, and if there are any, they are not the result of a difference in the perceived seriousness of the crimes.

The prosecutor may request other additional penalties and measures referred to in Articles 7 and 8 of the Economic Crimes Act (*Wet op de Economische Delicten*, WED), but this occurs only in a few cases. This is regrettable because these additional penalties and measures are effective, such as the (temporary) full or partial termination of the company, a (temporary) retraction of a licence or an obligation to remedy the damage done. One of the reasons for such a limited number of requests may be a lack of information about the suspect (legal person). In many cases, the case file provides insufficient insights into the financial position of the company, its business operations, the number of employees, etc. Consequently, judges are reluctant to impose severe sanctions because they cannot assess the effects of these sanctions on the suspect and determine whether the sanctions are appropriate.

Another challenge for the judges is the often very complex nature of the legislation as well as the cases themselves. This poses the problem that even relatively small cases can impose a considerable workload on judges, let alone the time needed to study and come to a verdict in a more substantial case.

## 4.2. Law enforcement authorities

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

#### *Investigative authorities*

##### - *Special investigative services*

The ILT, NVWA, ISZW and the Tax and Customs Administration have their own investigative services. They have named these services the 'intelligence and investigative service' (*Inlichtingen- en Opsporingsdienst*, IOD), hence ILT/IOD, NVWA/IOD, ISZW/IOD and FIOD (fiscal intelligence and investigative service). These four services combined comprise the special investigative services (*Bijzondere Opsporingsdiensten*, BOD). The special investigative services (ILT/IOD, NVWA/IOD, ISZW/IOD and FIOD) have a dual management structure: their ministry for priorities in substantive policy areas and the Public Prosecution Service for specific investigations and priorities in this area.

##### - *ILT/IOD*

*(Intelligence and investigative service of the Human Environment and Transport Inspectorate)*

The ILT/IOD focuses on persons and companies that systematically and seriously violate regulations in the area of the environment. Furthermore, the ILT/IOD focuses on organised crime of a subversive nature and often concerning international (financial) structures and trade flows. Special attention is given to intermediaries, facilitators and certifying institutions. The ILT/IOD employs investigators, analysts, technical and legal experts, forensic accountants, computer forensic examiners, strategic advisers and experts in the area of obtaining and processing data and information. Priorities in criminal investigations include waste, soil and hazardous substances. The ILT's tasks also relate to transport and housing associations.

Other supervisors and law enforcement organisations are also competent in the fields of ILT.

The powers of the other organisations differ from the powers of the ILT and their supervisory area is different. These other organisations include Inspection SZW (*Inspectie SZW*), the Dutch Food and Safety Authority (*de Nederlandse Voedsel en Warenautoriteit*, NVWA), the Justice and Security Inspectorate (*Inspectie Veiligheid en Justitie*, I-VenJ), customs (*de Douane*), the Tax Administration (*de Belastingdienst*), the Royal Marechaussee (*de Koninklijke Marechaussee*, KMar), the Hazardous Substances Military Control Corps (*Korps Militaire Controleurs Gevaarlijke Stoffen*, KMCGS), the police, the State Supervision of Mines (*het Staatstoezicht op de Mijnen*, SodM), harbour/airport managers (*de (lucht)havenmeesters*), the *Rijkswaterstaat* (organisation responsible for the design, construction, management and maintenance of the main infrastructure facilities in the Netherlands, RWS), the regional environmental agencies (*omgevingsdiensten*, ODs), the water authorities (*de waterschappen*), the Vehicle Authority (*Rijksdienst voor Wegverkeer*, RDW) and the Authority for Consumers and Markets (*Autoriteit Consument en Markt*, ACM). The ILT cooperates with these organisations on monitoring and enforcement. Sharing information with other organisations allows for a better overview of those companies that comply with the rules and those companies that do not. This prevents the supervisory authorities from making unnecessary visits to companies that show that they are complying with the rules and obligations. The resources of the supervisory authority can be targeted to inspecting companies that fail to comply with the rules and encouraging compliance. The regional and local authorities (provinces and municipalities) grant licences to companies and are therefore responsible for supervising the companies' compliance with these licences. The ILT is tasked with overseeing the entire chain, from production to application. The ILT receives reports of possible violations of, for example, soil regulations (*bodemregelgeving*) or building materials regulations (*bouwstoffenregelgeving*) from law enforcement organisations, stakeholder organisations and citizens that contact the Soil Monitoring Contact Point (*Toezichtloket Bodem*).



- *NVWA/IOD*  
(*Intelligence and investigative service of the Netherlands Food and Consumer Product Safety Authority*)

The tasks of the special investigative service (*bijzondere opsporingsdienst, BOD*) of the Ministry of Economic Affairs and the Ministry of Health, Welfare and Sport are undertaken by the intelligence and investigative service (IOD) of the Netherlands Food and Consumer Product Safety Authority (*Nederlandse Voedsel- en Warenautoriteit, NVWA*). The NVWA/IOD works in all of the NVWA's domains and is deployed in the event of serious or systematic infringements of the law in the NVWA's area of enforcement. When deployed, the NVWA/IOD focuses primarily on complex, chain-related, organised and international crime. The core tasks of the NVWA/IOD are:

- collecting and refining intelligence;
- carrying out analyses to improve insights into the nature and extent of compliance and non-compliance;
- conducting investigations on the basis of a wide range of powers.

In 2015, the investigations addressed subjects such as:

- fraud involving meat or meat products;
- fraud involving baby formula;
- fraud involving the disposal of manure;
- illegal (online) trade in protected animals and/or plants;
- trade in unauthorised plant protection products;
- fraud involving raw materials for animal feed;
- fraud involving EU subsidies for greenhouse horticulture.

In areas relating to environmental crime investigation, the NVWA/IOD cooperates intensively with the police and the intelligence and investigative service of the Human Environment and Transport Inspectorate (ILT/IOD). This cooperation is formalised in the Strategic Environmental Chamber (*Strategische Milieukamer*, SMK) and the National Environmental Chamber (*Landelijke Milieukamer*, LMK). The NVWA/IOD also cooperates with other special investigative services in the Special Investigative Services Cooperation Platform.

- *Regional and local investigation officers*

As described above, the 29 environmental agencies employ criminal investigation officers who can investigate offences and take certain actions as provided for in criminal law if the rules are violated and may even propose financial penalties as prescribed in criminal law. These officers work under the authority of the Public Prosecution Service when investigating crimes. Certain provinces and municipalities also employ criminal investigation officers to detect environmental crimes.

- *Police*

The police is a national organisation. The police consists of 11 units: 10 regional units and one national unit (*Landelijke Eenheid*). See the figure 'Organisation Chart – Police'. Every police unit has one environmental team that deals with environmental crime. In addition to these 11 environmental teams, there are also police officers within the basic teams of the national police who are responsible for combating environmental crimes.

In the case of environmental crimes, all organisations cooperate closely on all levels, all organisations are involved in the decision-making process, and the outcomes are implemented in the respective programmes of the organisations. Customs play a main role in supervisions and reporting on international waste crime cases.

## Strategic-level decision-making

### *Strategic Environmental Chamber (Strategische Milieukamer, SMK)*

The criminal-law approach to environmental crime operates under the authority and leadership of the specialised National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation, which, apart from environmental crime, also deals with fraud. Due to the complex institutional context – with the involvement of various ministries, inspection services and investigative services – a coordinating body has been set up: the Strategic Environmental Chamber (*Strategische Milieu Kamer, SMK*). The SMK is chaired by the chief public prosecutor of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation. The SMK sets policy and priorities in the criminal-law approach to environmental crime. The SMK meets three times a year.

The Strategic Environmental Chamber comprises:

- the chief public prosecutor of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation (chair);
- the inspector general of the Human Environment and Transport Inspectorate (ILT);
- the inspector general of the Netherlands Food and Consumer Product Safety Authority (NVWA);
- the environmental crime portfolio holder on behalf of the national police of the Netherlands;
- the member of the South Holland Provincial Executive responsible for the environment on behalf of the provinces and municipalities (and the regional environmental agencies);
- the inspector general of the Social Affairs and Employment Inspectorate (ISZW), in respect of working conditions in industries that handle dangerous materials (above a certain threshold for those materials).

## **The decision to open a criminal investigation**

### *Steering committee (Stuurploeg)*

When a crime is committed and detected and the law enforcement agencies have been informed of it (or detected it themselves), the next step is to decide how and with what resources the crime will be investigated. As is the case in all crimes, the public prosecutor can request that an investigative unit analyse the criminal complaint (*aangifte*) and produce a so-called 'prior deliberation document' (*preweeg document*). This prior deliberation document gives an initial outline of the potential case. On the basis of that document, a steering committee (*stuurploeg*) decides whether the case involves sufficient severity and suspicion. If that is the case, a project proposal will be commissioned. The preparation of this project proposal takes place under the guidance of a prosecutor. The steering committee decides on the basis of the project proposal whether a criminal investigation should be opened under the direction of a case prosecutor. The required resources for the investigation will be made available on the basis of a plan of approach.

### *National Environmental Chamber (Landelijke Milieukamer, LMK)*

The tasks of the steering committee for environmental crime are executed by the National Environmental Chamber. The National Environmental Chamber is responsible for day-to-day management, including decisions to open investigations. This chamber is therefore sometimes also referred to as the 'Tactical Environmental Chamber'. The National Environmental Chamber is chaired by the coordinating public prosecutor for environmental crime of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation. The National Environmental Chamber meets every two weeks.

The National Environmental Chamber comprises:

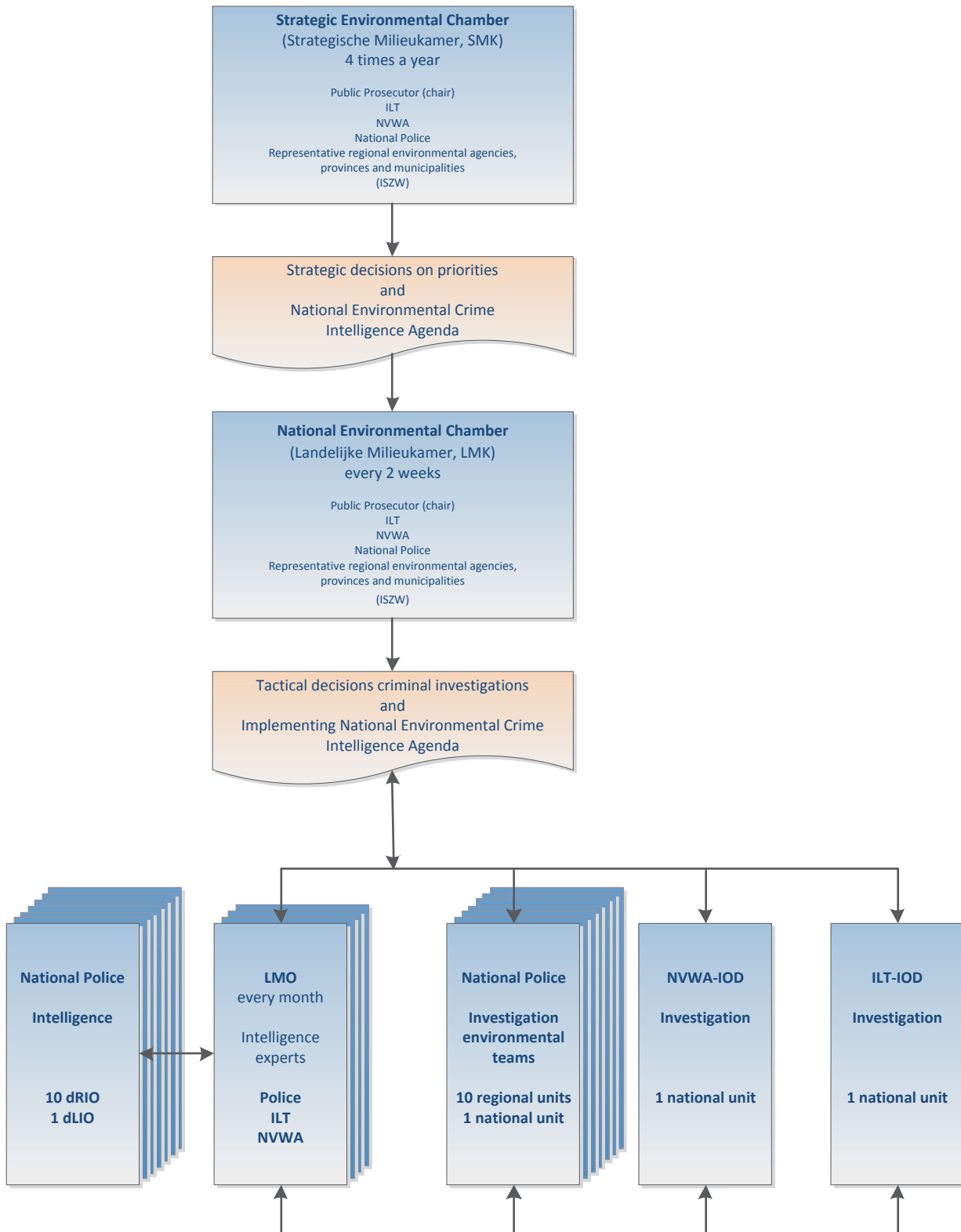
- the coordinating public prosecutor for environmental crime of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation (chair);
- the director of the special intelligence and investigation service of the Human Environment and Transport Inspectorate (ILT);
- the director of the special intelligence and investigation service of the Netherlands Food and Consumer Product Safety Authority (NVWA);
- the chief environmental crime portfolio holder for criminal investigations on behalf of the national police of the Netherlands;
- the Dutch Environmental Agency on behalf of the environmental agencies of the regional and local authorities.

*National environment information meeting (Landelijk Milieu Informatie Overleg, LMO)*

The national environment information meeting (*Landelijk Milieu Informatie Overleg, LMO*) is a monthly committee meeting in which all law enforcement agencies participate. The purpose of the LMO is to collect and analyse all reports that have the potential to become a criminal investigation.

The LMO is chaired by the 'information prosecutor' of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation (FP). The LMO reports to the National Environmental Chamber (*Landelijke Milieukamer, LMK*). If a report indicates that consideration should be given to opening criminal investigation, a 'prior deliberation document' (*preweeg document*), containing a summary of the facts, circumstances and the origin of the information, is drafted. The 'prior deliberation document' is presented to the National Environmental Chamber, as described above. Several thematic working groups have been established by the LMO. The thematic working groups implement the working plan for intelligence gathering and analysis (*inwinplan*). For more information see the paragraph on the National Intelligence Programme (*Nationale Intelligence Agenda, NIA*) below.

Figure Strategic and tactical decision-making with regard to environmental crime



### *Strategic Environmental Chamber action programme (Uitvoeringsagenda SMK)*

Currently, the Strategic Environmental Chamber is determining its first action programme. All organisations that are part of the SMK will commit to this programme. The programme will determine the priorities and goals in specific areas of the fight against environmental crime. The priorities are derived from the threats identified in the environmental crime threat assessment. The priorities and goals will focus on the process for deciding which cases should be investigated and on the areas in which intelligence needs to be gathered.

### *Environmental crime threat assessment 2016 (Dreigingsbeeld Milieucriminaliteit)*

The environmental crime threat assessment for 2016 (*Dreigingsbeeld Milieucriminaliteit*) is a joint research project by the police, ILT/IOD and NVWA/IOD, Public Prosecution Service and regional environmental agencies. The threat assessment is produced every four years and is part of the national threat assessment on organised crime. The threat assessment report on environmental crime is drafted in consultation with the Strategic Environmental Chamber (SMK).

### *National Intelligence Programme (Nationale Intelligence Agenda, NIA)*

The National Intelligence Programme (NIA) is part of the National Intelligence Model (*Nationaal Intelligence Model*, NIM). The NIM is an international standardised approach for gathering, coordinating and disseminating intelligence which is integrated across all forces and law enforcement agencies. It is used for formulating strategic directions, making tactical decisions on investigations and managing resources and risks.

The National Intelligence Programme (NIA) is the working plan for intelligence-gathering and analysis. The NIAs consist of a list of specific subjects on which it is necessary to gather and analyse intelligence. At national, regional and local levels individual intelligence programmes are developed. Intelligence is only gathered on predetermined priorities. Combating serious environmental crime is a priority. At national level a National Intelligence Programme is developed for serious environmental crime (*Nationale Intelligence Agenda: thema's zware milieucriminaliteit*).

#### *Other strategic instruments for cooperation*

#### *FP-police agreement on results in environmental investigations (Resultaatafspraken milieuopsporing FP-politie 2017)*

Every year the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation and the police conclude an agreement in which the police commits to carrying out certain actions and providing investigative and analytical capacity. For certain actions it may also include a commitment by the special investigative services to provide resources. This agreement is called the 'FP-police agreement on results in environmental investigations' (*Resultaatafspraken milieuopsporing FP-Politie*). As described in the answers about the law enforcement authorities, when it comes to criminal investigations the Public Prosecution Service has a hierarchical authority over the police and other investigative bodies, both at tactical case level and at strategic level.

The agreement is based on:

- the guidelines and priorities that are determined by the Strategic Environmental Chamber;
- the environmental crime threat assessment (*Dreigingsbeeld Milieucriminaliteit*);
- the current threat assessments (*het actuele dreigingsbeeld*);
- the Strategic Environmental Chamber's action programme (*Uitvoeringsagenda SMK*), which is currently in development;
- major incidents and current large-scale and complex criminal cases.



### *National Enforcement Strategy*

*(Landelijke Handhavingstrategie, LHS)*

The National Enforcement Strategy is a document which gives guidance on sanctions. All organisations involved have implemented the LHS or have policies which are in line with the strategy. The LHS provides guidelines on determining the frequency of inspections for companies and determining the type of sanctions that should be imposed in specific situations (based on specific factors such as the severity) or if the case should be sent for trial by a judge. The National Enforcement Strategy is a policy guideline for all administrative and law enforcement organisations working on environmental crime and the Public Prosecution Service. The strategy is not codified in legislation. The joint National Enforcement Strategy improves cooperation between different organisations, because the working methods, procedures and factors for making decisions on supervision and sanctions are similar.

*2016 agreement on data exchange and cooperation between the regional environmental agencies, National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation and the national police*

*(Convenant gegevensuitwisseling en samenwerking 2016 tussen omgevingsdiensten, Functioneel Parket en de Nationale Politie)*

This agreement is a legal document which describes the legal basis for the exchange of information between the organisations and commits the organisations to proactive cooperation on exchanging information (description of situations for which information has to be provided to the other organisations, regular meetings to exchange information, etc.). The regional environmental agencies are separate entities and each of the 29 agencies has to sign an agreement.

## *Inspection View Environment*

### *(Inspectie View Milieu)*

Inspection View is a system by means of which information on inspections and enforcement can be exchanged between governmental organisations. Currently, there are three different versions of Inspection View: Inspection View Companies, Inspection View Environment and Inspection View Inland Waterway Vessels.

The ILT is the manager and owner of these systems and officers of other organisations may make use of these systems. Information access and information exchange is vital for the organisation involved to organise supervision and enforcement jointly and in a coordinated manner. It is also a guiding principle that inspections should be conducted as 'one government', avoiding multiple successive visits by different supervising organisations.

Inspection View Environment provides information on inspections (if and when entities will be inspected by inspectors) and offences (if offences were detected during earlier inspections). Officers cannot access documents (such as inspection reports or letters regarding interventions) via Inspection View Environment, but must request these documents from the respective authority directly. In April 2017, the Licencing, Supervision and Enforcement Decree (*Besluit Vergunningverlening, Toezicht en Handhaving* or *Besluit VTH*) was published, instructing the police, the Public Prosecution Service, the NVWA and other partners to connect to Inspection View Environment.

Besides the ILT, the NVWA is also connected to Inspection View Environment and the police and the Prosecutor's Office will connect in the near future. The manner in which the information is provided and the nature of the information is left to the individual parties. For example, the police will provide the information in a fixed data set and other organisations will have hit/no hit access. If there is a hit, the requesting party must contact the owner of the data (a unit of the police).

*Security agenda 2015-2018 of the Ministry of Justice and Security  
(Veiligheidsagenda 2015-2018)*

Combating environmental crime is a priority, because it constitutes 'undermining crime' (*ondermijnende criminaliteit*). Undermining crime is crime that damages social structures or people's trust in them. This kind of crime is often organised crime.

<https://www.rijksoverheid.nl/documenten/rapporten/2014/09/17/bijlage-veiligheidsagenda-2015-2018>

*Special Investigative Services Platform  
(Platform Bijzondere Opsporingsdiensten)*

Besides environmental crime, the special investigative services also work together on general topics. The four special investigative services (FIOD, ILT/IOD, ISZW/IOD, NVWA/IOD), the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation (FP), the national investigative service of the police (*Dienst Landelijke Recherche*), the Royal Marechaussee (*Koninklijke Marechaussee*) and the investigative service for crimes by governmental officials (*Rijksrecherche*) have created a platform, the Special Investigative Services Platform (*Platform Bijzondere Opsporingsdiensten*). The purpose of the platform is to cooperate on combating undermining crime (including environmental crime) by exchanging information between the organisations about cases and reports.

*Examples of joint task forces*

There are many examples of cooperation between organisations on criminal investigations. Most environmental investigations, and certainly those conducted under the auspices of the National Environmental Chamber (*Landelijke Milieukamer*), transcend individual organisations and are joint efforts. The level of cooperation depends on such factors as the number and type of authorities that are competent in a specific subject, and specific aspects of certain environmental issues and policies. For example, asbestos crime is an environmental crime but in many cases it is also a violation of working conditions if employees (e.g. builders) have not been sufficiently protected. The Social Affairs and Employment Inspectorate (*Inspectie Sociale Zaken en Werkgelegenheid*, ISZW) is the competent authority for violations of working conditions and therefore would also participate in the criminal investigation.

The special investigative services (NVWA/IOD, ILT/IOD, etc.) and the police work together on multiple investigations across different domains. Such cooperation may, for example, consist of the NVWA/IOD supporting the police in investigations into manure fraud or the illegal trade in protected species. In a large-scale investigation, the NVWA/IOD, ILT and environmental teams of the police cooperate together. Such investigations could relate, for example, to (international) fraud involving the production of biodiesel (co-fermentation, or *covergisting* in Dutch) or the use of unauthorised waste in the production of animal feed.

The organisations also cooperate with each other and with foreign partners in other lines of work, such as inspections and licencing. The ILT regularly carries out joint transport controls with foreign enforcement agencies. This is especially the case in the border regions with the German authorities in Osnabruck, Munster, Detmold, Dusseldorf and Arnsberg, but also in non-border regions such as Vienna (Austria), Bavaria (Germany) and Wallonia (Belgium).

Cooperation is especially strong between the organisations that have tasks and duties relating to licencing, inspections and enforcement. These tasks and duties are primarily the responsibility of the local and regional governments. The local and regional organisations also cooperate with national organisations, such as the ISZW. An example is the analyses of so-called BRZO companies (BRZO is the abbreviation for the Risks of Major Incidents Decree, which is the Dutch implementation of the EU Seveso III Directive). In a BRZO analysis, multiple organisations are involved (provinces, the ISZW, etc.), each with their own specialisms and interests. The multidisciplinary BRZO analyses not only result in a good analysis, but also give organisations a better understanding of each other's duties and, as a result, the organisations take better account of each other's interests.

Cooperation can transcend the regional boundaries of provinces in individual cases, but also in policymaking, the implementation of legislation, priority subject areas, etc. Such trans-regional cooperation can be motivated by certain trans-regional issues, but nationally set priorities may also be a reason to seek cooperation on a trans-regional level.

#### 4.2.2. Investigative techniques/tools

As in any criminal investigation, all investigative techniques and tools may be used if allowed by the Code of Criminal Procedure. In our Code of Criminal Procedure these investigative techniques are called 'special investigative powers' (*bijzondere opsporingsbevoegdheden*). Special investigative powers in most cases require consent from the public prosecutor, and some powers require a court order from a criminal judge (e.g. wire tapping, covert listening).

We do not have an overview of the number of times the special investigative powers (*bijzondere opsporingsbevoegdheden*) have been used in waste crime investigations.

A difficulty encountered in the current system is that the officers of the special investigative services do not necessarily have the competence to execute special investigative powers. A bill to amend the Code of Criminal Procedure was recently sent to parliament to give the officers of the special investigative services the same competences as police officers executing specific special investigative powers. Currently, the public prosecutor can decide to exercise special investigative powers in a criminal investigation by a special investigative service, but must ask police officers to execute these powers as the investigators cannot execute the power themselves. These competences include placing a covert listening device and making recordings, criminal infiltration (undercover operations) and the systematic gathering of information (primarily used for internet research by a specialised investigative analyst to find all relevant information online about a person, including continuous systematic internet surveillance). With the amendment, the investigators will no longer be dependent on the capacity of the police and investigations will no longer be delayed as a result. The special investigative services have already trained officers in covert listening and information technology skills (searching digital files and searching the internet using the Internet Research Network (IRN) for research and detection on the internet).

In addition, the General Administrative Law Act provides for certain powers which are used during inspections. The inspectors have a general power from the General Administrative Law Act to request data and documents (in any form) from companies and any other (private or public) entities and those companies or entities are obligated to provide the data. In many cases, the data consists of the administrative information of the company that is under inspection. The data may be used for different purposes. Comparison of different databases may provide evidence of non-compliance with legislation or of offences. In addition, during inspections, samples can be taken of materials which may also provide evidence of certain offences.

When an offence is detected, the supervisory authority may decide on a sanction (administrative sanctions or in some cases also sanctions based on criminal law) or – if it is a serious crime involving serious circumstances – the authority will ask the public prosecutor to prosecute. The data and the data analysis, the samples and the sample analysis, and any other relevant documents that were collected during the inspection are used in the criminal investigation.

Different capabilities and equipment are used in investigating environmental crime.

The services of the National Forensic Institute are used for analysing samples, as described before, but the National Forensic Institute can also analyse devices such as smartphones and hard drives, encrypted and secured data and other relevant evidence (DNA analysis, etc.). All investigative agencies request the services of the National Forensic Institute for their criminal investigations, including investigations into waste crimes.

In addition, the investigative agencies also have their own experts. For example, the ILT/IOD employs analysts, technical and legal experts, forensic accountants, computer forensic examiners, strategic advisers and experts in the area of obtaining and processing data and information. If it is required, the inspection or criminal investigation team will also include experts on the WSR, asbestos or other specialised areas.

### *Playing field method (speelveldmodel)*

The teams consist primarily of environmental crime investigators, but usually have multidisciplinary expertise. The investigators originate from different environment teams and are added to the investigation team based on the knowledge, experience and expertise required.

In addition, the investigation may require specialist expertise (financial expertise, information technology skills, etc.) and specialist support (observation team, teams for arresting subjects, etc.). Expertise and support for a criminal investigation is gathered according to the so-called playing field method. In essence, the method simply means that the leading investigator or manager of the investigation unit contacts the management of the relevant departments to arrange the expertise or support.

If extra criminal investigators are necessary for an investigation into 'special' crimes (economic and financial crimes, environmental crimes, etc.), investigators employed to deal with generic crimes can also be requested by contacting the management of the respective department. In some cases, officers that are normally tasked with surveillance and enforcement in environmental crime cases may also be added to the criminal investigation.

The playing field method also applies to the environmental crime investigators. These environmental investigators may be required to join a criminal investigation into other, non-environmental crimes, but these investigations will usually have some environmental aspects (e.g. an XTC laboratory and the dumping of drugs waste). However, in some cases the environmental crime investigators may be required to join criminal investigations (e.g. terrorist offences) which need immediate investigative capacity on a large scale and do not have environmental aspects, but such deployment should only take place in exceptional cases. Environmental crime investigators and enforcement officers will also provide their assistance for short-term (non-environmental) operations such as specific enforcement relating to other crimes, arrests, house searches, etc. Vice versa, criminal investigators and enforcement officers working on other crimes will do the same for environmental criminal investigation teams in the event of large-scale operations.

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

The challenges and obstacles involved in investigating domestic and cross-border cases of waste crime are mainly caused by the characteristics of waste crime and environmental crime, which are similar to those of economic and financial crimes. In general, waste crimes are difficult to detect because they take place in legal companies as part of regular business operations, and because detection depends on (proactive) inspections by governmental authorities and is even more complicated when materials are imported. In short, the crimes are easy to commit, there is little risk of detection and they offer high financial gains.

If waste crimes are detected and the case is deemed important by the LMK, it is a challenge to find the resources (criminal investigators, experts in waste crime, accounting, finance) to start a criminal investigation into the crimes. An investigation may require a variety of expertise, but also the involvement of multiple organisations. Resources in an investigation always have to come from the Prosecutor's Office and (multiple) law enforcement agencies.

Another challenge is the position of the different organisations in terms of information on licencing, supervision, enforcement and criminal investigations. The inspectorates and law enforcement agencies are intelligence-led organisations, which means that intelligence analysis serves as a guide for their operations. Especially in environmental crime, the offences have to be detected proactively.

Therefore, risk assessment based on intelligence analysis is one of the elements in deciding which companies to inspect. For criminal investigations, reports of possible illegal disposal of waste, for example, trigger the need to gather intelligence on that activity. Unfortunately, the data systems of the inspection organisations and of law enforcement are not connected. Of course, they can exchange data but that occurs primarily in individual cases. This is an obstacle for intelligence-led supervision and policing.



Another challenge is the transition from a linear to a circular economy and the definition of waste. Regarding cross-border cases, an additional challenge is the categorisation of violations. In some countries violations are punishable by criminal law; in other countries the violations are not crimes but are an administrative violation (or not a violation). If it is vital for the criminal investigation in the Netherlands to request information from another Member State, the Netherlands will send a request for mutual assistance in criminal matters (or investigation order). However, if the violation is not a criminal offence in the other Member State, the Netherlands will not receive the requested information.

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

Besides the law enforcement authorities and judiciary, the following licencing authorities and supervising authorities are also involved in preventing and fighting waste crime:

- regional environmental agencies;
- municipalities, and especially provinces, for tasks relating to waste crime that have not been transferred to the regional environmental agencies;
- the national supervising authorities, the ILT and NVWA.

These organisations are both licencing and supervising authorities and may as part of these tasks impose administrative and criminal sanctions (enforcement).

In addition, the ILT and NVWA also have a criminal investigations department (IOD). These IODs are law enforcement agencies.

Other organisations also contribute to preventing and fighting waste crime. One example is the National Waste Disposal Contact Point (*Landelijk Meldpunt Afvalstoffen*, LMA).

Anyone who processes hazardous waste, industrial waste or shipment waste in the Netherlands must report this to the National Waste Disposal Contact Point. This contact point has been registering and managing all reports since 1993 and makes these reports available to authorities for the purposes of licencing, supervision and inspections, enforcement and policy decisions. The LMA can support the regional environmental agencies in setting their priorities for waste (crime) by providing them with data. The LMA is part of the *Rijkswaterstaat*, an organisation that is part of the Ministry of Infrastructure and Water Management and is responsible for the design, construction, management and maintenance of the main infrastructure facilities in the Netherlands. This includes the main road network, the main waterway network and water systems.

#### Sanctions for waste crimes by administrative authorities

In the event of an offence, the supervising authority may impose an administrative sanction or an 'administrative' criminal punishment order for many environmental crimes (*bestuurlijke strafbeschikking milieu- en keurfeiten*). This 'administrative' criminal punishment order is part of the criminal procedure and can be imposed by the directors of the regional environmental agencies, the inspector general of the ILT, the inspector general of the NVWA, and other organisations that have been designated. See below for an explanation of this type of punishment order.

#### Relationship between the criminal and administrative sanctioning regimes

Waste crime laws and environmental laws are mainly regulatory law. This 'order law' (*ordeningsrecht*) imposes rules and restrictions on the public, as well as laws for taxation and the allocation or reallocation of income and capital, and concerns a wide range of areas such as housing, public healthcare, work, education, road traffic, air traffic, water traffic, the environment, markets and competition, taxation, subsidies, social security, security and telecommunications. Regulatory laws are enforced by punitive criminal and administrative sanctions.

To give an indication of the relationship between the criminal and administrative sanctioning regimes, about 15 regulatory laws are enforced solely by criminal sanctions and approximately 36 laws only by administrative penalties. About 54 regulatory laws are enforced 'dually', which means that offences can be punished with both administrative or criminal sanctions (dual enforcement).

Dual enforcement means that the administrative authority will punish the offence by means of an administrative penalty, but if there are aggravating circumstances, the violation can be dealt with by the public prosecutor and a judge by bringing a criminal charge (indictment) before a court. See also the answers about the National Enforcement Strategy (*Landelijke Handhavingstrategie*), a document that provides guidance on the sanctions that should be imposed in specific situations.

For smaller offences, minor fines are imposed easily and quickly by the designated authority. Both administrative law and criminal law provide for such lighter penalties that are quick and easy to impose. The criminal penalties for smaller crimes are usually 'punishment orders' (*strafbeschikkingen*) that can be imposed by authorities other than a judge (*buitengerechtelijke afdoening*).

#### 'Administrative' criminal punishment order

A special type of criminal fine is an 'administrative' criminal punishment order, which is imposed by certain administrative authorities (*bestuurlijke strafbeschikking milieu*, BSBm). These criminal punishment orders are issued by a designated office within the administrative authorities, such as the director of a regional environmental agency, the inspector general of the ILT or the inspector general of the NVWA. The 'administrative' criminal punishment orders are always financial sanctions. These criminal fines are based on the criminal investigation conducted by an (extraordinary) investigating officer (*buitengewoon opsporingsambtenaar*, BOA). This investigating officer must write the official report of the crime and submit it to the designated office of the administrative authority. The designated office of the administrative authority decides if an 'administrative' criminal punishment order should be imposed. The investigating officer is employed by the administrative authority. Currently, these 'administrative' criminal punishments can only be issued for certain environmental crimes.

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

### 4.4.1. Cooperation and coordination

Cooperation between administrative and law enforcement authorities can be of paramount importance in combating environmental crimes and fraud, and in other activities in the field of law enforcement and crime prevention. Currently, there are some legal obstacles to exchanging information between law enforcement agencies and supervisory (administrative) organisations. The legal obstacles primarily concern the confidentiality provisions in the various laws. The current rules about sharing information are not optimal for the organisations and they are therefore reluctant to exchange information about inspection investigations (in the case of supervisory authorities) and criminal investigations (in the case of law enforcement agencies).

If necessary, the organisation can always rely on the overarching procedure in the Code of Criminal Procedure for requesting information from administrative organisations for a criminal investigation into a suspect, but this procedure is not adequate for the efficient manner of information exchange that the organisations seek. These legal obstacles hinder cooperation between administrative organisations and law enforcement.

To improve the exchange of information a model agreement on data exchange and cooperation was developed in 2016 (*Convenant gegevensuitwisseling en samenwerking 2016 tussen omgevingsdiensten, Functioneel Parket en de Nationale Politie*). This model agreement is a legal document which describes the legal basis for the exchange of information between the regional environmental agencies, the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation and the national police. The agreement also commits the organisations to proactive cooperation on exchanging information (description of situations in which information must be provided to the other organisations, regular meetings to exchange information, etc.). The regional environmental agencies are separate entities and each of the 29 agencies has to sign an agreement. The agreement has not been signed by all agencies yet.

Also, there are cultural differences between the organisations which can sometimes make cooperation difficult.

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

Inspectors (supervision) have access to 'Inspection View Environment' (*Inspectie View Milieu*). Inspection View is a system by means of which information on inspections and enforcement can be exchanged between governmental organisations. Currently, there are three different versions of Inspection View: Inspection View Companies, Inspection View Environment and Inspection View Inland Waterway Vessels.

The ILT is the manager and owner of these systems and officers of other organisations may make use of these systems. Information access and information exchange is vital for the organisation involved to organise supervision and enforcement jointly and in a coordinated manner. It is also a guiding principle that inspections should be conducted as 'one government', avoiding multiple successive visits by different supervising organisations.

Inspection View Environment provides information on inspections (if and when entities will be inspected by inspectors) and offences (if offences were detected during earlier inspections). Officers cannot access documents (such as inspection reports or letters regarding interventions) via Inspection View Environment, but must request these documents from the respective authority directly. The NVWA is connected to Inspection View Environment and the police and Public Prosecution Service will have access in the near future. See the answer to question 14. The police also has access to the other versions of Inspection View (Companies and Waterway Vessels).

The criminal investigators of the special investigative services (ILT/IOD, NVWA/IOD) have access to the most important police databases and to judicial databases. The main judicial database is the Criminal Law Chain Database (*Strafrechtketen DataBase*) and, after obtaining prior approval from the public prosecutor or deputy public prosecutor, criminal investigators can also access the Criminal Records Database (*Justitieel Documentatie Systeem, JDS*).

Investigators and inspectors also have access to specific databases, such as the system for registering waste streams (Amice; recipients of waste are obligated to report the waste to the LMA), the system for registering waste transport and licences (Terra Evoa by Senternovem), databases on ship tracking, the land register database, the business register of the Chamber of Commerce (registration in the business register is compulsory for every company and almost every legal entity), international information on finances, credit and trade (Dun & Bradstreet by LexisNexis), the population register, etc.

The legislation allows for information sharing between law enforcement agencies and inspection agencies (e.g. regional environmental agencies), but individual officers are still wary about providing information.

There is no specific national focal point for intelligence on waste crime. See the previous answers to questions 12-14 on the subject of gathering intelligence on waste crime and environmental crime for national information analysis. The national unit of the police is a national focal point for national intelligence and expertise. This unit also develops the four-yearly national threat assessment in cooperation with all the relevant organisations. The national environment information meeting (*Landelijk Milieu Informatie Overleg*, LMO) is another focal point for environment intelligence. The LMO is a meeting of a committee that collects and analyses all reports (intelligence) that have the potential to become a criminal investigation. The LMO takes place every month. See the answer to question 14 for a further explanation of the LMO.

In the Netherlands, the confidential information from informants is called 'criminal intelligence'. If the question refers to this type of intelligence, there are different contact points for informants. Every law enforcement agency has a team for confidential information from criminal informants (*Team Criminele Inlichtingen*, TCI). The police, ILT and NVWA have TCIs. Persons can also provide confidential information anonymously via 'M.', the contact point for reporting crime anonymously (*Meldpunt Meld Misdaad Anoniem*), at <https://www.meldmisdaadanoniem.nl/english/> or by phone on 0800-7000.

## 4.5. Training

### *ILT/IOD*

New ILT/IOD employees who have a general investigation officer's competence (criminal investigator) have to follow basic training in which various aspects of the investigative work are taught. In this basic training, which takes about six months, officers will also receive training in the fields of financial research (basic course on the confiscation of unlawfully obtained gains – 33 study hours) and money laundering (24 study hours), and in information technology skills (24 study hours on searching digital files and searching the internet using the Internet Research Network (IRN) for research and detection on the internet).

A course on the Economic Crimes Act (this law is primarily used in criminal investigations into environmental crime) is included in the basic training package.

In addition, there are several specialist training classes that the officer can take, depending on his or her duties, such as:

- a 60-hour course on writing an effective benefit report (*effectieve voordeelrapportage*);
- a 36-hour IRN plus course for IRN specialists;
- a 14-hour course on internet technology (*internettechniek*);
- an 18-hour course on web technology (*webtechniek*);
- a 40-hour course on bankruptcy fraud (*faillissementsfraude*).

Special training on environmental crime or waste crime is not included in the ILT/IOD basic training package. Officers can be provided with specialist training on environmental aspects (legislation, investigative skills, etc.) and take part in conferences and workshops on waste crime.

## *Police*

Training for police officers involved in detecting or investigating environmental crime (including intelligence analysts) consists of basic training of about 30 hours, which includes the following:

- Training for police officers on environmental crime.

The training consists of five modules for environmental police officers:

- o a module on environmental law;
- o a module on waste;
- o a module on soil;
- o a module on water;
- o a module on wildlife.

- Training on environmental crime for investigators.

The trainees learn specific skills that are typically needed in environmental criminal investigations, such as specific investigative skills, the building of case files, information technology skills for detecting and investigating crimes with digital means, skills for detecting undermining environmental crime, and financial investigation skills.

- Training for environmental criminal investigation experts (*Recherchekundige Master Milieu*) and on collecting evidence in complex environmental criminal investigations (*Bewijswaarde in complexe milieuonderzoeken*).
- Environmental criminal investigation expert training for non-experienced officers (*Recherchekundige Master Milieu zij-instroom*). Similar training to the above.
- Training on detecting, enforcing and investigating animal crimes.
- Training on basic aspects of the WSR.
- Training on small-scale trade in fireworks.
- Further training for extraordinary criminal officers (*buitengewone opsporingsambtenaar, BOA*).



### *Public Prosecution Service and courts*

The Training and Study Centre for the Judiciary (*Studiecentrum Rechtspleging, SSR*) is responsible for the education of the officers of the Public Prosecution Service and the courts. Law enforcement agencies (the police, ILT/IOD, etc.) may also follow training and courses. The SSR provides courses relevant to environmental crime, as set out below.

Basic training relevant to environmental crime:

- Enforcement in administrative law for criminal law specialists

The participant will be given an introduction to administrative law, an explanation of the various administrative restorative sanctions (such as orders subject to a penalty, administrative enforcement orders and revocation of licences) and punitive administrative actions (such as administrative penalties, publication of the judgement and subversion of the company), as well as details of the investigative powers of administrative governing bodies, the practice of supervision from the perspective of different supervisors, the exchange of information, and various subjects in administrative law that are relevant for criminal law (such as intent and negligence).

- Defence in environmental law

During the course, the following topics are discussed: recognition of defence, assessment of defence, decisions on defence and motivation.

- Animals Act

This course teaches participants about the legislation and regulations, enforcement and criminal procedure, and analysis of cases.

- Transport of hazardous substances

The training concerns the laws, decrees and regulations, the official report of findings (*process-verbaal*), criminal investigation, and analysis of cases.

Advanced training relevant to environmental crime:

- Risks of Major Incidents Decree (*Besluit risico zware ongevallen*)

The laws and decree of the Risk of Major Incidents Decree are dealt with in this course, including the changes in legislation from 1 June 2015, which revised the BRZO legislation in line with the SEVESO III Directive. The course also addresses the interpretation of specific aspects of Article 173a Sr ('danger') and the Risks of Major Incidents Decree ('major incident' and 'uncontrollable developments') and the need for an expert with technical expertise and the deployment of other experts.

- Waste materials

The course covers the following subjects: national and European developments in the area of waste, the European waste list, the Environmental Management Act (Chapter 10), and the connection between waste and building materials.

- Waste Shipment Regulation

The following topics are addressed: the main features of the WSR, problems with the use of the WSR in general, problems with the application of the WSR to foreign offenders and case analysis. The focus is on criminal law.

- Activities Decree (*Activiteitenbesluit*)

In this course, the aspects of the Activities Decision are explained and case-law analysed. Also, a visit to a company is included. During the visit, specific attention is given to the environmental aspects of the legislation that the company has to deal with.

- Asbestos

This course deals with legislation, jurisprudence and cooperation with organisations during the criminal investigation. The complex aspects of asbestos are clarified, such as the licencing systems and international aspects.

- Nature Conservation Act/CITES (Convention on International Trade in Endangered Species)

The new Nature Conservation Act came into force in 2017, merging the previous three 'green laws' (the former Flora and Fauna Act, the Nature Conservation Act and the Forest Act). This course focuses on the part dealing with the protection of species, including both indigenous and exotic plant and animal species. The legislation is explained (national legislation, international treaties, EU legislation), particularly CITES and the European Birds and Habitats Directives.

- Flora and Fauna/CITES practice day

In order to be able to determine quickly whether CITES regulations have been violated, a quick-scan method can be used. In six steps, an analysis is made to determine whether there has been a breach of regulations in a particular case and, if so, the severity of the infringement. During the course, the theory of the quick-scan method can be put into practice by using case-law and cases that are relevant, such as the import and transit of ivory, wood, parrots, etc. The participants also have to use their own examples from their experience.

- Technical evidence in environmental criminal cases

Following a brief introduction to criminal evidence, emphasising the importance of technical evidence, the technical and legal aspects of using experts in assessing relevant evidence are discussed. Attention is paid to technical evidence (sampling and analysis), harmfulness and pollution, substances and waste, and calamities.

- Fireworks

The following topics are addressed: approaches to combating firework crimes, the guidelines of the Public Prosecution Service, expert statements, classification, requirements for an official report of findings (*proces-verbaal*), the handling of seizures, experiences from investigations, and current developments.

- European environmental law

This course introduces the participants to European environmental law, emphasising its implementation in the national legal order by directly applicable regulations and the implementation of directives, aspects relating to interpretation and civil liability. The possibility (or obligation) to submit questions to the Court of Justice of the EU for a preliminary ruling is also discussed.

- Environmental current affairs (*capita selecta*)

Advanced training regarding current affairs. The courses are developed in cooperation with the courts' national expertise centre for the environment and health.

These courses are primarily designed for the courts and Public Prosecution Service, based on the needs of the judges and prosecutors. The training is often not mandatory, but strongly recommended by the courts. Judges are obliged to spend a minimum amount of hours per year on maintaining and expanding their knowledge.

Complex environmental cases are brought to four specialised courts (*concentratierichtbanken*). Within each court, exchange of knowledge takes place through periodic consultations between the judges and assistants on environmental law. Recent case-law is discussed, experiences shared and relevant publications distributed and discussed. Exchange of knowledge between the courts could, however, be improved. The initiatives of the knowledge centre for the environment and health (see below), such as conferences and workshops, help to bring the judges of the four specialised courts together.

### *Knowledge and expertise centres of the courts*

In addition, the courts have six national knowledge and expertise centres on specific areas of law: fraud, cybercrime, financial and economic law, insurance law, tax law, and the environment and health. These expertise centres furnish the courts (judges and their legal assistants) with the necessary expertise to administer justice under the law.

The tasks of the knowledge centres are:

- assembling, managing and distributing knowledge in the specific area of law;
- coordinating knowledge in the specific area of law, by cooperating with the Training and Study Centre for the Judiciary (*Studiecentrum Rechtspleging*, SSR; see the answer to question 45) and universities to develop courses;
- coordinating the collection and information services with the law libraries of the courts;
- sharing knowledge in the specific area of law, and making and maintaining contacts with judges and other staff at the courts.

The knowledge centres organise conferences and workshops for the magistrates and their legal staff. In addition, they regularly publish newsletters and articles on Wiki Juridica (the digital information system of the courts).

### *Police academy for training, knowledge and research (Politieacademie)*

The police academy for training, knowledge and research (*Politieacademie*) provides courses on environmental crime for investigative officers of the police and the special investigative services. The police academy is responsible for training all police officers in all police tasks (basic training, patrolling, initial response incidents, dealing with crises, leadership, enforcement, investigation, etc.).

### *Training and Study Centre for the Judiciary*

The Training and Study Centre for the Judiciary (*Studiecentrum Rechtspleging, SSR*) is responsible for the education of the officers of the Public Prosecution Service and the courts. Law enforcement agencies (the police, ILT/IOD, etc.) may also follow training and courses. The SSR provides courses on environmental crime.

### *SpecialCriminalLaw.nl academy*

The SpecialCriminalLaw.nl academy (*BijzonderStrafrecht.nl Academy*) organises training and educational programs for professionals with a specific interest in criminal (procedural) law. The educational programme is focused on niche courses in the area of white-collar crime, and the intersection of criminal law, environmental law, insolvency law, privacy, labour law and other areas of law.

### *CEPOL training*

Officers of the ILT/IOD and the police give training at CEPOL and have participated in several CEPOL conferences.

#### 4.6. Conclusions

- **The capacities for prosecuting and sanctioning waste crime are sufficient. However, the obstacles to prosecuting and sanctioning waste crime seem to be the same as in other Member States of the EU: the complexity of the crimes on the one hand, and the low number of cases compared with other crimes on the other hand.**
- **An example of good practice is the judiciary knowledge centre, the 'knowledge centre for the environment and health' (criminal, civil and administrative law), which is attached to the Hertogenbosch Court of Appeal and cooperates with the administrative law department of the Oost Brabant District Court. The knowledge centre functions as a digital information system for the judiciary. It includes a helpdesk providing support on the interpretation of both national and European legislation. It also organises one or more theme days on topical issues every year.**
- **The training offered to inspectors, police officers and prosecutors, and also the special training available for judges, in the field of environmental crime is comprehensive and constitutes a solid basis for professionals dealing with such cases. The existence of one specialised police officer in every police unit should be also mentioned in this context as good practice.**
- **The specialised administrative structure encompassing environmental issues on the one hand and the education and specialisation of police, prosecutors and judges in the field of waste crime on the other hand ensure a stable basis for dealing with environmental crime in all its aspects.**
- **The fact that the Strategic Environmental Chamber is responsible for strategic decisions and priorities and the National Environmental Chamber is responsible for tactical decisions concerning criminal investigations ensures nationwide consistency in the handling of cases of environmental crime. It must be mentioned that issues that arise during ongoing investigations can be addressed at this level.**

- **The Strategic Environmental Chamber as well as the National Environmental Chamber also ensure cooperation and coordination between the different authorities concerned.**
- **The investigative techniques/tools used for the purpose of investigations into waste crime are sufficient and allow proper investigations to be conducted.**
- **Customs should be involved in the strategic planning phase insofar as they are responsible for clearing goods and waste for export and import. Therefore their background knowledge and their involvement are essential for an efficient inspection system. Where appropriate and according to national law, the possibility of granting them access to the relevant databases could be assessed.**
- **Basic training should also be provided to customs officials dealing with customs clarification to enable them to detect illegal shipments of waste.**
- **An important factor in reducing the risk of waste crimes is to have good supervision on a regular basis of waste management companies. The establishment and development of the 29 regional environmental agencies (REAs) has been an important step. There is a systematic way of recruiting, introducing and continually training staff within the REAs, which ensures a high level of competence among the staff.**
- **The close cooperation between the administrative inspection officers and the criminal investigation officers at the REAs is an important factor in prevention, and can facilitate detection at an early stage.**
- **The 29 REAs work under different conditions. Some of them work in a well-developed way and some seem to function less well, due to different reasons. It is important that a company licensed for a specific process receives equal treatment no matter where in the country it is located. Thus, there is potential for improvement by increasing cooperation between the 29 REAs and allowing them to share useful information.**



- **It is worth emphasising the existence of specialised prosecutors and judges and the existence of one specialised police officer in every police unit. There are 11 units within the National Police: 10 regional units and one national unit. Every unit has an environmental crime investigation team. Apart from that there are police officers specialised in environmental crime active in each of the 167 basic teams. Each basic team has one such specialised environmental crime officer per 60 police officers. These specialised officers cooperate closely with their counterparts in the chain and their priorities are determined on the basis of information and problems identified. Environmental crime is a component of the integral police tasks within the police. It is also very useful that the each of the 29 regional environmental services has criminal investigation officers. There are also special investigative services within the Netherlands Food and Consumer Product Safety Authority and within the Human Environment and Transport Inspectorate. These services are empowered to carry out criminal intelligence activities and also criminal investigations.**

## 5. LEGAL ASPECTS

### 5.1. Substantive criminal law

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

##### Legislation

The environmental legislation is being renewed. It currently consists of dozens of different laws and hundreds decrees on the environment, nature and wildlife, water, infrastructure and housing. They all have their own principles, methods and requirements. The legislation has become too complicated for the people who work with it. With the Environment and Planning Act, the government aims to simplify and harmonise the rules.

#### 5.1.2. Other rules or judiciary instructions

### **Administrative restorative sanctions:**

#### **Take-back when a shipment is illegal**

Offenders responsible for illegal transnational waste shipments are forced to take the waste back and transfer it to a licensed waste processor in the country of origin (Article 24 (2) of Regulation (EC) No 1013/2016 on shipments of waste).

#### **Calling to account / informing**

Calling to account / informing is an informal intervention (no legal basis), following an inspection, which should result in the party to which the standard applies complying, or being able to comply. Calling to account / informing is done orally, by providing written information or by referring the party concerned to websites. Calling to account / informing is mainly used with well-meaning parties to which a certain standard applies, when they have unintentionally failed to comply but are motivated to resolve the non-compliance as quickly as possible.

### **(Administrative) warning (bestuurlijke waarschuwing) and letter with recovery period**

‘Warning’ means that the party to which the standard applies receives a warning letter following an inspection. This letter will state which measures or precautions are to be observed, and within what reasonable time/limit this should be done. The letter also states that the enforcement authority will take further administrative actions (administrative enforcement order, or order subject to a penalty), if it appears that the measures or provisions set out in the warning letter have not been taken or met after the expiry of the deadline.

### **Administrative interview (bestuurlijk gesprek)**

An administrative interview with the relevant party to which the standard applies (or their management) is an additional escalating intervention on top of a warning.

### **Increased monitoring**

This intervention refers to increased monitoring of the party to which the standard applies, further to an inspection. This will often be preceded by an administrative interview. Increased monitoring must be announced, as well as the conditions on which the increased monitoring will be lifted again.

### **Order subject to a penalty (last onder dwangsom, LOD)**

An order subject to a penalty is a recovery-focused intervention aimed at remedying violations and/or preventing further and/or repeated infringements. A requirement (an ‘order’) is imposed on the party to which the standard applies to remedy the offence within a given period by taking, or refraining from, certain action, subject to a penalty if the order is not executed in time. The penalty payment to be imposed must be sufficiently high to stop the violation. An order subject to a penalty can only be imposed if there is legal basis for doing so.

An order subject to a penalty is imposed in accordance with a number of careful steps. Generally speaking, the following steps are carried out:

1. Administrative warning, i.e., announcing the intention to impose an order subject to a penalty with a recovery period and a time-limit within which to submit comments.

*If not remedied on time:*

2. Decision on the imposition of a sanction, that is: imposing an order subject to a penalty with a recovery period.

*If not remedied on time:*

3. Recovery and collection of penalty.

### **Administrative enforcement order (last onder bestuursdwang, LOB)**

An ‘administrative enforcement order’ is a recovery-focused intervention for the purpose of eliminating an offence whereby the enforcement agency, if the order is not complied with in time, puts an end to a violation by actually taking action itself, at the offender's expense. An administrative enforcement order can only be imposed if there is legal basis for doing so.

Exactly the same steps apply to the administrative enforcement order as to the order subject to a penalty. Here too, these steps can be deviated from, for example in emergency situations:

1. Administrative warning, i.e., announcing the intention to impose an administrative enforcement order, with a recovery period and a time-limit within which to submit comments.

*If not remedied on time:*

2. Decision on the imposition of a sanction, i.e.: imposing an administrative enforcement order with a recovery period.

*If not remedied on time:*

### 3. Administrative enforcement action.

In urgent situations and for serious offences, the administrative enforcement order is the most appropriate administrative intervention. The enforcement authority may request that the violation is put an end to immediately. If it appears that the party to which the standard applies is not prepared to comply with this request, the enforcement authority may act in an emergency and in urgent cases without prior order. However, the enforcement authority must issue a formal decision on the imposition of a sanction as soon as possible.

#### **Effecting a temporary stop of operations**

A temporary shutdown means that activities or vehicles are temporarily suspended as a result of the violation, until the violation has been remedied and compliance achieved. There may be grounds for notifying policymakers and/or the government in the event of a temporary shutdown. Temporary shutdown may fall under the administrative enforcement order (LOB).

#### **Punitive administrative action:**

##### **Administrative penalty**

An administrative penalty is a government-imposed punitive sanction that can be imposed by a competent government service without the intervention of the Public Prosecution Service or a judge. The Central Fine Collection Agency (Centraal Justitiele Incassobureau, CJIB) takes care of the recovery and collection of administrative penalties imposed by various government departments, including the IODs of the Netherlands Food and Consumer Product Safety Authority (NVWA), the Inspectorate SZW and the Human Environment and Transport Inspectorate (ILT).

An administrative penalty imposes the unconditional obligation to pay a sum of money, and may be imposed in addition to an order subject to a penalty or an administrative enforcement order. The penalty report is prepared by the monitoring body / enforcer, but the warning, order and collection are carried out by the penalty service (among others, the Central Fine Collection Agency). The maximums and ranges of the penalty amounts are often laid down in legislation. An important difference with the BSBm is that objection and appeal must be lodged with the governing body, while the party to which the standard applies may contest the BSBm via the Public Prosecution Service.

### **Suspension or revocation of licences, certificates or recognition**

If the party to which the standard applies is the holder of a beneficiary decision (authorisation or waiver), the total or partial withdrawal of that decision may be an appropriate intervention. This intervention is especially appropriate if the party to which the standard applies fails to act following previous correctional interventions, such as an order subject to a penalty. The complete or partial withdrawal of a beneficiary decision is a far-reaching intervention that needs careful preparation.

### **Operating ban, closure**

For parties to which/whom a certain standard applies but are not required to have a permit, the option exists to have the company closed or its operations halted, based on the Law on Fraud (Fraudewet). These too are far-reaching interventions that need to be planned carefully, and where policymakers and the government must be informed.

## **Criminal law**

### **Administrative punishment order for environmental offences (Bestuurlijke strafbeschikking milieu, BSBm)**

The administrative punishment order for environmental offences (Bestuurlijke strafbeschikking milieu, BSBm) is a criminal-law based intervention (under Section 257ba of the Dutch Code of Criminal Procedure), which competent administrative bodies may impose without the intervention of the Public Prosecution Service. The Public Prosecution Service, however, determines the guidelines as to the cases and circumstances in which the BSBm can be imposed (see ‘Guideline of the Public Prosecution Service regarding environmental crimes for which certain designated authorities can impose a financial penalty (‘Richtlijn bestuurlijke strafbeschikkingbevoegdheid milieu- en keurfeiten’)). The BSBm is intended for relatively simple offences, where there is no doubt about guilt.

The offences that can be sanctioned by a BSBm are described in the Public Prosecutor’s Handbook of Offences - Administrative Punishment Order for Environmental Offences and Offences in accordance with Water Authority Byelaws’ (‘Feitenboekje Bestuurlijke strafbeschikking milieu- en keurfeiten’). Every offence in this Handbook has a certain code and the penalty is a fixed sum. Offences other than environmental offences, such as traffic offences, are also categorised with codes and carry a fixed penalty. When such ‘coded offences’ (feitgecodeerde) offences are detected by an officer, the findings are reported in a digital form (combibon). In the case of the BSBm the director of the regional environmental imposes the fine. Therefore, the officer proposes a fine and if the director decides to impose such a fine, the combibon is directly sent to the Central Fine Collection Agency for settlement. The BSBm can be imposed in parallel with administrative restorative interventions. Consultation with the Public Prosecution Service will often be needed if a BSBm cannot be issued (see section 2.8 of the Guideline for the contraindications).

## **Official report of findings ('proces-verbaal')**

All investigative officers who suspect or detect a criminal offence can draw up an official report (proces-verbaal). A 'proces-verbaal' is the basis for further action by the Public Prosecution Service that could lead to sanctions such as: a fine, a community punishment order, a jail sentence, confiscation of unlawfully obtained gains, publication of the verdict, the closing down of the company and forfeiture.

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

#### Economic Crimes Act (Wet op de Economische Delicten)

Dutch environmental criminal law is for a large part comprised in the Economic Offences Act. This is therefore also true for violations of legislation on waste and hazardous substances. The Economic Offences Act's distinction between crimes and misdemeanours is based on the presence of intent. A violation committed with intent is considered a crime, otherwise as a misdemeanour. Since the interpretation of intent is very broad (it regards only the act as such, not the illegality of the act), violations of environmental law are more often than not a crime. Most crimes in the Economic Offences Act are punishable by six years imprisonment, which means that special investigative methods such as wiretapping or custody may be applied. Finally, it must be mentioned that the Economic Offences Act allows for some penalties and orders specifically applicable for enterprises.

#### Sentencing guidelines: National Enforcement Strategy (Landelijke Handhavingstrategie)

Sanctions are determined not only by judges but also by the Public Prosecution Service, the directors of the regional environmental agencies, the inspector general of the ILT, the inspector general of the NVWA, investigative officers of the municipalities and police in some cases (e.g. litter waste), and others. The guidelines of the National Enforcement Strategy (Landelijke Handhavingstrategie) determine what type of sanction should be imposed in specific situations (based on gravity factors) or if the case should be referred for (criminal) trial by a judge (by bringing a criminal charge (indictment) before a court).



The National Enforcement Strategy is a policy guideline for all administrative and law enforcement organisations dealing with environmental crime and the Public Prosecution Service. The strategy is not codified in legislation. Some administrative and law enforcement organisations have copied the National Enforcement Strategy verbatim in their instructions and programmes, while others have created their own intervention and enforcement strategy in line with the National Enforcement Strategy.

#### Sentencing guidelines and guidelines on gravity factors for judges

Besides the rules in legislation and various treaties, there are no any specific rules, guidelines or instructions in the area of waste crime or on gravity factors that apply to the judges. The so-called ‘orientation points’ (oriëntatiepunten) for punishment in ‘general’ criminal cases or decisions in similar cases may provide guidelines for judges. The Public Prosecution Service, however, does make use of instructions (richtlijnen) for bringing appropriate charges against offenders.

In determining the gravity of the offence, the judge generally takes into account at least the following factors: the nature of the pollution, the extent of the affected area, the danger, the effects on human and animal health and the duration of the violation.

#### Definition of ‘substantial damage’

As mentioned before, sanctions are determined not only by judges but also by the Public Prosecution Service, the directors of the regional environmental agencies, the inspector general of the ILT, the inspector general of the NVWA, et cetera. The investigating officer assesses the damage based on his expertise. The amount of damage (ranging from no damage or limited damage to serious damage) is also a factor in the National Enforcement Strategy. The officer makes his assessment independently, which means the decision is made independently of any other interests such as the economic interests of the municipality regarding a certain company. Depending on the type of crime, the investigating officer may need to take samples and other evidence that has to be analysed by an independent forensic laboratory (e.g. the National Forensic Institute). The laboratory will give an assessment of the damage in its analysis report (based on the extent to which limit values are exceeded). The criminal investigator will incorporate this analysis into his own assessment.

The term 'substantial damage' is not defined in law or in national jurisprudence, nor has the Public Prosecution Service defined 'substantial damage' in its guidelines. The term 'substantial damage' is not frequently used in legislation, but is primarily used by the Public Prosecution Service in jurisprudence. The question whether damage is substantial, as referred to in Article 3 of Directive 2008/99/EU, can be reflected in the verdict with regard to the sanction imposed.

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

Waste crime can in itself constitute organised crime (organisatie-criminaliteit) or corporate-related crime, in which the crime takes place in the processes of the company, such as the collection of waste, transport, recovery, disposal and after-care of disposal sites and waste management. Waste crime usually co-exists with other forms of crime, primarily all types of fraud such as falsifying official documents, deceit, manipulations of sampling and in some cases money laundering. The perpetrator's focus is to deceive the governmental authorities by falsifying the documentation and make it appear that everything is in order.

There is also a link between crime in producing narcotics and illegal dumping of drug waste. In the Netherlands, dumping of chemical waste products from producing XTC is a major issue.

Disposal of waste is often seen as a major expense and companies may try to dispose their waste by means that are less costly. Illegal emissions, dumping of waste, etc. are a few of these means. We have found in our criminal investigations that not only do criminal organisations dump their waste, but legal companies also dispose of their waste illegally.

In addition, the Netherlands is in a transition phase from a linear economy to a circular economy. See answer to question 47 about the challenges of this transition for waste crime.

#### Corruption

National authorities have no knowledge of any corruption cases linked to waste crime.

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

A NGO can report a crime (aangifte doen). A NGO can also be a civil party in criminal proceedings. However, a NGO cannot be an interested party; e.g. Greenpeace cannot be a victim of climate change.

## 5.2. **Procedural, jurisdictional and administrative issues**

### 5.2.1. *Difficulties encountered with regard to evidence*

The new definition of waste makes it increasingly difficult to prove that a material is waste and not a product or by-product. The definition of waste is an open standard and not a clear-cut, unambiguous norm. Consequently, in almost every waste crime case the definition of waste presents problems with proving the facts in legal proceedings to determine whether the material is waste or not. In administrative proceedings, the definition of waste poses the same difficulties. The waste codes in the European system of waste coding (the European List of Waste, ELW; in Dutch: Europese afvalstoffenlijst, EURAL) are not sufficiently distinctive and therefore not adequate to distinguish one waste source from another. These problems with distinction even encourage waste crime. The inspectors and law enforcers have great difficulty in proving the crime and bringing a case to criminal or administrative proceedings. The purpose of many administrative proceedings is to encourage the companies to stop and restore the effect of the violations (restorative measures), but in practice these proceeding do not have this effect because of this indistinctiveness. When enforcement is difficult, as is the case with waste crimes, it may result in lack of interest or passivity on the part of inspectors and law enforcement officers.

Another challenge regarding evidence is the intertwining of legal trade and illegal trade. It is therefore often necessary to analyse the administration of companies in depth in order to prove illegal trade.

The confiscation of assets as evidence can also be difficult to execute. For example, confiscating money is problematic if the money has been spent or if the money is abroad.

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

Other measures that may be relevant for waste crimes:

Punishments (hoofdstraffen)

- jail sentence (vrijheidsbenemende straf, gevangenisstraf);
- detention (hechtenis)
- community punishment order (community service; taakstraf);
- fine (geldboete); e.g. a punishment order other than BSBm;

Additional punishments (bijkomende straffen; sanctions that can be imposed in parallel with other sanctions) - Article 7 Economic Crimes Act (Wet op de Economische Delicten).

- disqualification from certain rights (ontzetting van rechten)
- forfeiture (confiscation; verbeurdverklaring)
- publication of the judgement (openbaarmaking van de rechterlijke uitspraak);
- closing down of the company (stilleggen van de onderneming)
- disqualification from company rights and / or denial of benefits (ontzetting van ondernemingsrechten en/of ontzegging van voordelen)

Measures (maatregelen; restorative sanctions or sanctions for safety reasons) - Article 8 Economic Crimes Act (Wet op de Economische Delicten).

- withdrawal of seized objects from circulation (onttrekking aan het verkeer van in beslag genomen voorwerpen)
- confiscation of unlawfully obtained gains (ontneming wederrechtelijk vermogen)
- compensation (schadevergoeding)
- supervised administration of the company (onderbewindstelling van de onderneming)
- reparatio in integrum (restorative measure; herstelmaatregel)

Provisional measure (voorlopige maatregel) - Articles 28 and 29 Economic Crimes Act (Wet op de Economische Delicten).

The Prosecutor can impose provisional measures. The purpose of the provisional measure is that the suspect refrains from actions and/or takes actions to ensure that a certain object (which may be likely to be seized) will be kept in his possession and stored.

The judge may impose the following measures in serious cases:

- a. a total or partial cessation of production by the company in which the crime was (allegedly) committed;
- b. appointment of an administrator for the company to take over the operational management;
- c. a total or partial withholding of certain rights or benefits that the company would have received from the government;
- d. the suspect refrains from certain actions; and
- e. the suspect takes action to ensure that a certain object (that may be likely to be seized) will be kept in his possession and stored.

Special conditions (bijzondere voorwaarde) - Article 14c, paragraph 2, of the Criminal Code (Wetboek van Strafrecht).

The court may also set the following special conditions with which the convicted offender must comply during the probation period, or a part thereof, to be specified in the sentence, or within a period to be determined by the court, which may not exceed the probation period:

1. full or partial compensation of the damage or loss caused by the criminal offence;
2. full or partial repair of the damage or loss caused by the criminal offence;
3. payment of a sum of money by way of security, to be specified by the court, which shall be at least equal to the difference between the fine prescribed by law for the offence and the fine imposed;
4. payment of a sum of money, to be specified by the court, to the Criminal Injuries Compensation Fund (Schadefonds Geweldsmisdrijven) or to an organisation that aims to represent and advocate for the interests of victims of criminal offences. The amount may not exceed the maximum fine prescribed by law for the criminal offence;
5. a prohibition on contacting, directly or through a third party, specific persons or organisations;
6. a prohibition on being at or in the immediate surroundings of a specific location;
7. an obligation to be present at specific times at a specific location or during a specific period;
8. an obligation to report at specific times to a specific agency;
9. a prohibition on the use of drugs or alcohol and the obligation to cooperate with a blood or urine test for the purpose of verifying compliance with this prohibition;
10. admission of the convicted offender to a healthcare institution;
11. an obligation to receive treatment from a professional or healthcare institution;
12. residence in an institution for supervised accommodation or social shelter;
13. participation in a behavioural intervention;
14. other conditions pertaining to the convicted offender's conduct.

### 5.2.3. *Treatment of seized objects*

Seized assets can be dealt with in two ways:

- confiscation is declared: the assets are sold and the proceeds kept by the government; or
- assets are withdrawn from circulation: assets are destroyed by the government (costs borne by the government).

## 5.3. **Environmental restoration**

It is possible to make the offender responsible for restoring the environment and/or repairing damage, but in most cases the government restores the environment and/or repairs the damage.

## 5.4. **Jurisdiction**

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

Jurisdiction with regard to crimes committed partially or entirely outside the territory of the Netherlands is regulated in Part I, on the Scope of Application of Criminal Law, of Book One (General Provisions) of the Criminal Code.

The relevant provisions are:

- Article 3 of the Criminal Code: The criminal law of the Netherlands shall apply to any person who commits a criminal offence on board a Dutch vessel or aircraft outside the territory of the Netherlands.
- Article 7, paragraph 1, of the Criminal Code: The criminal law of the Netherlands shall apply to any Dutch national who commits, outside the territory of the Netherlands, an offence that is regarded as a serious offence under the criminal law of the Netherlands and is punishable under the law of the country where it was committed.

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

Apart from Council Framework Decision [2009/948/JHA](#) of 30 November 2009, as regards other mechanisms to resolve conflicts of jurisdiction with other Member States that specifically address cross-border waste crime cases, there are no other conflict-of-jurisdiction rules and there has been no need for other mechanisms.

## 5.5. Conclusions

- **Given the limited number of final convictions the evaluation teams wonders if the courts consider this type of crimes as serious as other crimes.**
- **The orders subject to a penalty seem to be a very efficient instrument to ensure environmental restoration or incentivise companies to operate facilities in line with the existing provisions.**
- **The Enforcement Strategy Model focuses on the use of legal means according to administrative and criminal laws. The different authorities cooperate and work with an intervention matrix as a basis for the choice of appropriate intervention (see Annex C). In simplified terms, the matrix consists of two axes - gravity of the offence (y) and the behaviour of the offender (x). Depending on the gravity of the offence and the behaviour of the offender the appropriate action is decided, i.e. administrative or criminal or a combination of both. The choice is made based on the established criteria. Of course, the competent authority also determines whether there are any mitigating or aggravating circumstances.**
- **The assessment of more difficult cases is made by the National Environmental Chamber (LMK). Resources can therefore be devoted, as a priority, to more difficult cases. This method constitutes the basis for a legal and uniform assessment of similar cases and is a good practice.**

**Taking the financial aspects into account systematically from the beginning of an investigation into waste crime is a very good practice. Economic issues are almost always important in relation to waste crime. Paying attention to financial aspects from the start of the investigation provides the conditions for a better result.**

- **It is worth mentioning, as a good example, that the National Enforcement Strategy established a police guideline for all law enforcement agencies and prosecutors.**
- **A legal procedure should be established to decide whether a material or substance is waste or not.**



## 6. COOPERATION

### 6.1. International Cooperation

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

Specific forms of cooperation in cross-border cases:

- Transfrontier Shipments of Waste network set up by the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL-TFS).
- European Network of Prosecutors for the Environment (ENPE), which facilitates operational contacts.
- Memorandum of understanding between the Netherlands, the UK, Belgium and Ireland.
- Specific cross border operations, such as ‘30 Days Action’ (carried out from 1 to 30 June 2017).

The ‘30 Days Action’ was a world-wide operation against the illegal disposal of and trade in hazardous waste. The operation was initiated and coordinated by Interpol in cooperation with the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL). Forty-three countries worked together to intercept and seize industrial, construction and demolition, household and medical waste. In all, 141 cargoes containing 14,000 tonnes of waste were concerned and another 85 locations where a total of 1 million tons of waste were dumped. During this world-wide operation over thirty days, more than 1.5 megatonnes of illegal waste was detected. Most of the illegal waste consisted of metal and electronics waste from the automotive industry.

- In the Netherlands, the ILT has intercepted 10,000 tonnes of waste, which was shipped between the Netherlands and other member states and which was to be transported to West Africa, Asia and the Caribbean.
- Tackling Environmental Crime Through Standardized Methodologies (TECUM Project).
- Cooperation with some German states (Länder).

- The National Contact Point for WSR (based on Article 50, paragraph 6 of the EU Waste Shipment Regulation) is located at the ILT (contact point for cooperation with other countries in order to facilitate the prevention and detection of illegal shipments and determine the focal points for physical checks on shipments, which include the inspection of documents, the confirmation of identity and, where appropriate, physical checking of the waste). The NCPs of the Member States meet periodically; urgent issues are discussed by email or phone.
- National Correspondents (based on Article 54 of the EU Waste Shipment Regulation) are located at the ILT. Correspondents are responsible for informing or advising persons or undertakings making enquiries and answering questions from the Commission. The Correspondents of the Member States meet periodically; urgent (policy) issues are discussed by email or phone.
- WSR agreements with the UK, BE (Flanders) and IE, the Police Osnabrück in Germany (Polizei Direction Osnabrück) and Belgium. (WSR is the abbreviation of Waste Shipment Regulation or Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of June 2006 on shipments of waste. The abbreviation in Dutch is EVOA: Europese Verordening Overbrenging Afvalstoffen).
- Cooperation regarding WSR cases with the designated judicial authorities, supervising administrative authorities and law enforcement authorities in other countries.
- Regular meetings about the practical matters in WSR cooperation with authorities from several EU Member States, such as the UK, Germany, Belgium, Austria, Bulgaria and Romania.
- Joint WSR transport surveillance operations with Dutch and foreign officers from supervisory authorities regarding the enforcement of the EU Waste Shipment Regulation.
- Participation in platforms for the exchange of knowledge and experience regarding the enforcement of the EU Waste Shipment Regulation via the European Union Network for the Implementation and Enforcement of Environmental Law.

- Participation in meetings of EU Waste Shipment Correspondents (regarding Regulation (EC) No. 1013/2006)
- The ILT cooperates with China based on a Memorandum of Understanding between the Dutch Ministry of Infrastructure and Water Management and the respective ministry in China.
- *Case example: contaminated paper waste*

Early in 2017, the ILT and Customs intercepted approximately 4,000 kilotonnes of contaminated old paper waste in the port of Rotterdam. The old paper bales were mixed with other waste such as diapers, plastic, cans and textiles. The export of such contaminated paper is prohibited.

The ILT warned the British paper trader and the company has taken measures to prevent repetition.

The British trader had bought the paper from an Irish producer but the trader is responsible for checking the quality of the bales. The ILT also contacted the Irish authorities to ensure that these polluted transports are detected and cannot be exported from Ireland in the future. At the request of the Irish authorities, part of the contaminated paper waste was processed in the Netherlands at the expense of the Irish producer.

The waste was bound for China via Rotterdam. A total of 475 containers were checked and in 160 containers contaminated paper waste was found. 107 containers with contaminated paper waste were returned to Ireland. The contents of the remaining 53 containers were processed in the Netherlands.

The export of this type of waste is governed by EU rules to prevent waste from ending up in Asia without checks on the processing of the waste. Within the framework of the EU Waste Shipment Regulation (WSR), inspections ensure that no waste is transported illegally to, from or within Europe. The WSR allows the inspection authorities of EU Member States to take measures to maintain, protect and improve the quality of the environment, and thus the protection of human health.

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

Information regarding criminal investigations is exchanged via one of the 11 International Mutual Assistance Centres at the National Police. The Police consists of 11 units: 10 Regional Units and one National Unit (Landelijke Eenheid). Every unit has an International Mutual Assistance Centre (Internationaal Rechtshulp Centrum, IRC). The Special Investigative Services, such as ILT/IOD and NVWA/IOD, usually make use of the International Mutual Assistance Centre at the National Unit of the Police (the National Centre for International Mutual Assistance; in Dutch: Landelijk Internationaal Rechtshulp Centrum, LIRC). The LIRC is the Single Point of Contact (SPoC) for international partners and operates 24/7.

The International Mutual Assistance Centres use the standard channels for information exchange with other countries, namely (1) Interpol, (2) Europol (SIENA), (3) Schengen (SIRENE), (4) the Dutch liaison officers abroad and (5) the foreign liaison officers in the Netherlands. The National Contact Points for these five channels are situated at the LIRC.

In addition, the WSR National Contact Point (based on Article 50(6) of the EU Waste Shipment Regulation) is the WSR National Correspondents (based on Article 54 of the EU Waste Shipment Regulation) who are located at the ILT.

Officers of the ILT are also designated as IMPEL Contact Officers for the EU Waste Shipment Regulation in general, as Contact Officers for specific projects and as Contact Officers for specific countries (country experts).

The Netherlands uses international databases in order to prevent, detect and combat cross-border cases of waste crime.

The most important information systems are the Europol Information System (EIS), the Secure Information Exchange Network Application (SIENA), the Europol Analysis System (EAS), the Schengen Information System II (SIS II) and the European Car and Driving Licence System (EUCARIS).

The Netherlands is one of the largest users of SIENA, but it is not yet fully utilized. SIENA was implemented in 2014/2015 in all the 11 International Mutual Assistance Centres of the Police.

Besides EU databases and EU information systems, information is shared with EU Member States via Interpol systems. The Interpol programme on environmental crime is currently setting up a data system (Illicit Markets Analysis File, ILM AF). The Illicit Markets Analysis File is a temporary database to facilitate analysis of intelligence on the illicit manufacturing, acquiring and distribution of: (1) illicit medical products, (2) counterfeit goods, and (3) endangered wildlife and natural resources products.

‘Watch-it’ is an international system being developed for law enforcement officers in the field of waste movements, and at a second stage, also in the field of chemicals. The App, called Watch-IT, aims at providing an accessible and easy-to-navigate electronic application on key international and regional provisions for trans-boundary movements of waste.

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

No major difficulties have been reported. If there are any problems in cooperation with another country, the Public Prosecution Service will contact its counterparts in the other country directly via phone or email to tackle any issues.

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

The Netherlands have not participated in JITs in cross-border waste crime cases. The current methods (such as criminal investigations that run parallel in both or multiple countries) are considered sufficient.

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

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

#### *Europol*

The Police have good relations with Europol. The Police are chairing EnviCrimeNet until 2017 (the secretariat is situated at Europol). As explained in the paragraph on Interpol, the environmental crime experts at the National Unit give advice on incoming requests concerning environmental crime and therefore act as the back office of the Europol Dutch Desk on this issue.

The law enforcement agencies participate in the development of the strategic plan EMPACT (European Multidisciplinary Platform Against Criminal Threats) and its action plans.

The ILT/ILT receives ad hoc questions from the liaison officers at the Europol Dutch Desk. The relations with the Dutch Desk may need some improvement.

#### *Eurojust*

The ILT/IOD is not involved in Eurojust projects or in cases involving Eurojust's assistance.

#### *General*

The ILT/IOD would like to expedite the exchange of information with EU Member States. The ILT/IOD contacts authorities in the other EU Member State via the National Contact Points for international information exchange, which are located at the National Unit of the Police. Even though cooperation with the National Unit is good, every extra administrative procedure creates delays and a hurdle for the criminal investigator of the ILT/IOD in contacting other foreign countries. The supervisory authority ILT, however, contacts colleagues in Member States directly. Awareness should also be increased in the Netherlands and EU Member States about the abundance of information available and the potential it has. The authorities in Member States possess a great deal of information about waste processing that could be analysed and used for criminal investigations.

The ILT-IOD is also using the IMPEL networks, such as the IMPEL TFS National Contact Points and follows the formal intelligence exchange channels. In case of information exchange outside the EU, the Dutch embassies have a role as well.

### *National Environmental Expertise and Knowledge Centre*

The National Environmental Expertise and Knowledge Centre (Landelijk Milieu Expertise Centrum, LMEC) is situated at the National Unit of the Police and – besides national expertise - holds all international expertise on environmental crime and the international cooperation networks. The centre gives assistance to international operations, advises the International Mutual Assistance Centres regarding mutual assistance requests and provides information to the representatives of the Netherlands in international organisations and meetings. The National Environmental Expertise and Knowledge Centre also assists the police chief constable who is responsible for environmental crime within the Police (the 'portfolio holder' for environmental crime).

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

The Netherlands is a member of the European Network of Prosecutors for the Environment (ENPE). The Dutch national prosecutor is one of the vice-presidents of ENPE.

The network is primarily aimed at the exchange of best practices, the development of training materials and the building of a database of environmental criminal law cases. Although ENPE does not focus on operational activities, we have found in several cases (involving the Netherlands and Ireland, the UK and Spain) that the network's contacts can very well facilitate operational exchanges.

The Netherlands is also member of the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL). A high official of the ILT was vice-chairperson of IMPEL and another ILT official was the national coordinator of IMPEL. ILT hosted the IMPEL meeting in May 2016. IMPEL is important for exchanging information with other countries about, for instance, inspections and administrative law issues.

The Environmental Crime Network (EnviCrimeNet). The Netherlands participates with two delegates: one from the Police and one from ILT.

The Netherlands has close ties with the EU Forum of Judges for the Environment (EUFJE). Several judges of the district courts, the courts of appeal and the Council of State attend EUFJE's annual conferences. In 2012, the Council of State hosted the EUFJE conference. We participate in workshops that are organised or promoted and respond to questionnaires. Above all, EUFJE is a network organisation which establishes the indispensable close contact between Dutch judges specialized in environmental law and judges in other EU countries and provides opportunities for gaining more knowledge of European environmental law.

### **6.3. Cooperation between the Netherlands and Interpol**

The Netherlands participates in the Environmental Compliance and Enforcement Committee (ECEC) of Interpol. The ECEC meets once every two years. The Netherlands is member of the Advisory Board of ECEC up to 2017.

The ILT (Edwin Lakerveld, Director Intelligence and Investigation Agency on Environmental Crime) is vice-chair of the Interpol Pollution Crime Working Group. This working group initiates and leads a number of projects to combat the transport, trade and disposal of waste and hazardous substances in contravention of national and international laws. The Police also participates in this working group.

The Police follows the activities of the Interpol Wildlife, Fishery and Forestry Working Groups but is not an active member.

The Police seconded an officer to the Environment Security Programme (ENS) of Interpol. The secondment will last until 2017.

The Interpol National Central Bureau (NCB) is located at the LIRC which is part of the National Unit of the Police. The National Unit also houses the national and international expertise on environmental crime (see below the paragraph on the National Environmental Expertise and Knowledge Centre). The environmental crime experts will give advice on how to handle incoming requests from other Interpol Member States and Interpol headquarters. In some cases the experts will respond to the requests themselves. Good cooperation has been established between ILT/IOD and NCB.



The Police is connected to SIENA and EIS. The Police is also connected to the Informal Information Communication System (EPE) and the use of this system has improved due to participation in EnviCrimeNet.

The ILT/IOD and NVWA/IOD are not directly connected to SIENA and other Europol systems, but request the information via their liaison officer at the Europol Dutch Desk.

The ILT/IOD and NVWA/IOD are familiar with the Europol tools and products and come into contact with information derived from them, for example via joint criminal investigations with the Police and communications from the Europol Dutch Desk. The ILT/IOD and NVWA/IOD also influence Europol's policies and priorities via intelligence. The Dutch national threat assessment on environmental crime is joint effort and a great deal of intelligence originates from ILT/IOD and NVWA/IOD. The Dutch national threat assessment is input for the Europol threat assessment.

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

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

In the Netherlands, both private entities and governmental organisations provide waste management services. Companies have therefore to compete with each other and with the government. The waste management sector is, however, dominated by private actors.

Municipalities do the tendering for waste management services themselves. The national government is responsible for maintaining the necessary landfill area in the Netherlands. If the dumping ground capacity is insufficient, the government will take steps to restore the situation.

## Green deals

The government encourages companies and governmental organisations to take part in 'Green Deals' (<http://www.greendeals.nl>). Green Deals are agreements between the national government and other parties. These other parties are companies, civil society organisations and other governments. The purpose of the Green Deals is to stimulate sustainable development in their organisations by eliminating any obstacles for these organisations. The national government can eliminate obstacles by reducing administrative burdens, by facilitating cooperation between different organisations or by creating a new market (e.g. abroad by organizing 'green trades missions'). In the Green Deal both parties commit to sustainable development and to reducing obstacles. Green Deals are used only for short term results (within three years).

<http://www.greendeals.nl>

Examples of Green Deals are Green Deal Sustainable Concrete Industries (Green Deal Verduurzaming Betonketen), Green Deal Bottom Ash Waste Incineration (Green Deal AEC-bodemas), Green Deal Waste-Free Festivals (Green Deal Afvalvrije Festivals), Green Deal Insects for Feed, Food and Pharma (Green Deal Insecten voor Feed, Food en Farma), Green Deal Take Back Chemicals and Green Deal Circular Purchasing (Green Deal Circulair Inkopen; circular purchasing means that the purchasing party ensures that the producer or the processor will use the products, components or commodities at the end of their useful life or use phase in a new cycle., while retaining as much value as possible).

## Knowledge

The national, regional and local governments provide information to companies and invest in knowledge development in the field of waste. Governments create the frameworks for waste processing industries (with policy and legislation) and give direction to the development of the sector. Foreign governments also determine the development of the Dutch waste sector by their need for knowledge, their priorities regarding waste and the extent to which they open their markets, which will greatly impact the opportunities of companies in the waste sector.

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

In terms of regulatory obligations, both the Accreditation Board (Raad van Accreditatie, RvA) and certification bodies (CI) could be obliged to inform the competent authority about specified relevant abnormalities. If they refuse, the competent authority can penalise them. This is, for example, the case with certain CIs and laboratories in some soil cases.

Furthermore, the ILT may, if necessary, force the organisation to provide information if there is a suspicion.

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

##### Law enforcement

The law enforcement agencies have good relations with private organisations which were formerly government entities such as the National and International Road Transport Organisation (Nationaal en Internationaal Wegvervoers Organisatie, NIWO). NIWO is responsible for providing and withdrawing transport licences.

Another aspect of the private sector is the self employed witness expert on environmental subjects. These expert witnesses are appointed by the judge hearing the criminal case. The Police may also hire such self-employed experts to provide the necessary expertise for a criminal case.

## Customs

The Dutch Customs and the private sector meet regularly in a periodic ‘Customs and Private Sector Meeting’ (Overleg Douane Bedrijfsleven). All major Dutch business representatives are represented in these meetings. Aspects regarding customs strategy, customs controls and related trade-facilitating ICT are discussed. The main goal of this cooperation with the private sector is to improve the facilitation of trade by Customs while adequately inspecting the cross border transport of goods, especially shipments which pose a high risk based on intelligence. Although ‘waste’ is not a specific subject in these meetings with the private sector, there are links with the non-fiscal tasks of Customs which are one of the subjects for discussion at these meetings.

Two studies have been conducted on cooperation with the private sector:

- Private compliance assurance of regulatory compliance in Environmental Law. (2013; Martin de Bree) (Summary available in English)
- Certification and public supervision. The role of certification of management systems with public supervision in environmental law. (2015; Martin de Bree) (only in Dutch)

The result of the first study is a decision tree. This tool supports decision-making by local authorities on when and how to make use of private compliance assurance. The second study is a comparison study of three different certification systems with regard to public supervision.

## **6.5. Conclusions**

- **The Netherlands is willing to engage in international cooperation to a considerable extent. It should be stressed that the Netherlands is a leading participant in EU networks, taking part in their projects and exchange programmes.**
- **Close cooperation with EUROPOL and EUROJUST is in place.**
- **The Netherlands is one of the largest users of SIENA, but it is not yet used to the fullest extent possible. SIENA has been implemented in all the 11 International Mutual Assistance Centres of the Police. The ILT/IOD and NVWA/IOD are not directly connected to SIENA and other Europol systems, but request information via their liaison officer at the Europol Dutch Desk. The national authorities could therefore consider connecting the other competent criminal investigations authorities to the SIENA network.**
- **Another aspect is how to increase the use of JITs, where appropriate. The need to set up a JIT could be taken into consideration from the very beginning of the investigations (as for the financial investigations referred to above).**

## 7. ILLEGAL TRAFFICKING OF WASTE

### 7.1. National structure

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

The Minister for Infrastructure and Water Management is responsible for monitoring companies' compliance with the Waste Shipment Regulation. These monitoring tasks are delegated by the Minister to the Inspector General of the ILT.

The Waste Enforcement Division (Afdeling Handhaving Afval) of the ILT provides for monitoring and inspection of companies regarding compliance with the Waste Shipment Regulation (WSR; Regulation (EC) No. 1013/2006). The Waste Enforcement Division imposes administrative sanctions in cases where offences are detected. The powers for administrative enforcement are described in Title 5.2 of the General Administrative Law Act (Articles 5:11 to 5:20). If an offence is punishable by criminal law, the Waste Enforcement Division can make an official report of findings (proces-verbaal) which is sent to the Public Prosecution Service for prosecution. All inspectors monitoring waste transports and waste processing companies are specialised in the Waste Shipment Regulation and have practical experience in inspecting compliance with the Regulation. Legal advisors specialised in WSR work in the ILT's Waste Enforcement Division.

The ILT cooperates with other organisations. Customs is a primary partner in monitoring WSR legislation. ILT and Customs have concluded a framework agreement for more efficient cooperation.

The following persons and services are involved in the procedures of the Waste Shipment Regulation (Regulation (EC) 1013/2006):

Notifier (kennisgever)

Any natural or legal person who intends to carry out a shipment of waste or intends to have a shipment of waste carried out and to whom the duty to notify is assigned. (Article 2 (15) of Regulation (EC) 1013/2006).

The initiator of a waste shipment is the natural or legal person who decides to transport waste to a foreign country. The initiator must first inform himself as to which rules the intended shipment has to comply with. If it is necessary for the intended shipment to follow a procedure, the initiator is required to comply, by means of the notification document and the transport document, with the notification procedure of the competent authority.

The notifier is one of the persons or bodies listed below, selected in accordance with the (mandatory) ranking established in this listing:

- (i) the original producer of the waste, or
- (ii) the licensed new producer who carries out operations prior to shipment, or
- (iii) a licensed collector who, from various small quantities of the same type of waste collected from a variety of sources, has assembled the shipment which is to start from a single notified location, or
- (iv) a registered dealer who has been authorised in writing by the original producer, new producer or licensed collector specified in (i), (ii) and (iii) to act on his/her behalf as notifier,
- (v) a registered broker who has been authorised in writing by the original producer, new producer or licensed collector specified in (i), (ii) and (iii) to act on his/her behalf as notifier,
- (vi) the holder (actual owner) of the waste, in the event that all the persons specified in (i), (ii), (iii), (iv) and (v) if applicable, are unknown or insolvent.

The notifier can be the producer, holder, collector or the broker of the waste. The notifier is required to inform the competent authorities of the intention to transfer waste by means of the notification document.

#### Producer (producent)

Anyone whose activities produce waste (original producer) and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste (new producer) as defined in Article 1(1)(b) of Directive 2006/12/EC (Article 2 (9) of Regulation (EC) 1013/2006).

#### Collector (inzamelaar)

Anyone carrying out waste collection as defined in Article 1(1)(g) of Directive 2006/12/EC (Article 2 (11) of Regulation (EC) 1013/2006).

#### Dealer (handelaar)

Anyone who acts in the role of principal to purchase and subsequently sell waste, including dealers who do not take physical possession of the waste as referred to in Article 12 of Directive 2006/12/EC (Article 2(12) of Regulation (EC) 1013/2006)

#### Broker (makelaar)

Anyone arranging the recovery or disposal of waste on behalf of others, including brokers who do not take physical possession of the waste, as referred to in Article 12 of Directive 2006/12/EC (Article 2 (13) of Regulation (EC) 1013/2006).

#### Holder (houder)

The producer of the waste or the natural or legal person who is in possession of it, as defined in Article 1(1)(c) of Directive 2006/12/EC (Article 2 (10) of Regulation (EC) 1013/2006).

#### Carrier (vervoerder)

The person or undertaking that transports waste, or has it transported. The carrier has to be registered.



### Consignee (ontvanger)

The person or undertaking under the jurisdiction of the country of destination to whom or to which the waste is shipped for recovery or disposal (Article 2 (14) of Regulation (EC) 1013/2006).

### Competent authority of dispatch

The competent authority for the area from which the shipment is planned to be initiated or is initiated (Article 2 (19) of Regulation (EC) 1013/2006). The Ministry of Infrastructure and Water Management is the competent authority of dispatch in the Netherlands.

### Competent authority of destination

The competent authority for the area to which the shipment is planned or takes place, or in which waste is loaded prior to recovery or disposal in an area not under the national jurisdiction of any country (Article 2 (20) of Regulation (EC) 1013/2006). The Ministry of Infrastructure and Water Management is the competent authority of destination in the Netherlands.

### Competent authority of transit

The competent authority for any country, other than that of the competent authority of dispatch or destination, through which the shipment is planned or takes place (Article 2 (21) of Regulation (EC) 1013/2006). In the Regulation, 'transit' also means transit through one or more countries within the European Union. The Ministry of Infrastructure and Water Management is the competent authority of transit in the Netherlands.

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

### Detection

The illegal shipment of waste is usually detected during regular inspections and inspection after receiving (anonymous) reports.

## Obstacles

In general, the obstacle is that it is easy to commit environmental crimes and it is easy not to be detected. Another obstacle is that cooperation between the various involved authorities involved, such as the environmental agencies, Customs and Police, is not yet a routine procedure. However, these authorities will undeniably need to call upon each other's skills and experience.

Sharing information between authorities at national and international levels is also a challenge. Obstacles are primarily caused by the difference in systems and legal restrictions on sharing information.

Some obstacles of a more specific nature are described below.

### Circumvent WSR by changing destination shipment

In the years to come, many old single-walled tanker ships will have to be demolished. According to the WSR, it is not allowed to bring them to countries such as India or Bangladesh for this purpose, because demolition in these countries has different standards from the EU and these standards harm the local environment and workers' health. However, it is very easy to circumvent these rules and the Customs authorities: the ship leaves for a trip to a random destination and during the voyage the captain changes the destination.

Besides changing the end destination, the obligation to include the final processor in the cargo documents is often circumvented by including several (transit) destinations where no waste processing takes place. The inclusion of several transit destinations is not a violation and therefore not a reason to stop the shipment.

### Definition of waste in jurisprudence

The Shell-Carens case concerns a Dutch holder that shipped contaminated oil to a foreign holder illegally. In its judgement (joined cases C-241/12 and C-242/12 of 12 December 2013), the Court of Justice of the European Union ruled that the foreign holder of contaminated oil cannot be regarded as a discarder, because the contaminated oil can still be bought "off-spec" after returning to the Netherlands. Therefore, the WSR does not apply.

This verdict may impact on other areas, such as electrical appliances which in principle could be repaired and thus are not waste.

#### Circular economy

Our government and the EU aspire to an economy in which all materials are reused. Such an economy will be more sustainable because of the limited use of raw materials and less waste. See also the EU Closing the Loop Action Plan. We are implementing measures to improve the entire economic cycle. At the start of a manufacturing process, efforts must be made to design the products so that the materials incorporated into it can be reused at the end of the product life cycle. As regards the processing of waste, it is even more important to recycle waste: waste should be minimized and, if possible, no longer generated. This new approach is accompanied by proposals to formulate 'end-of-waste criteria'. These criteria prescribe that materials that remain after industrial production and waste processing have to be considered again as a raw material or a by-product and not waste.

The inspectorates and the law enforcement agencies are, however, concerned that the current rules on waste management, and those aimed at protecting the environment, will not apply if a material is no longer considered to be waste. The ILT predicts that this development will make it more easy for companies to re-enter potentially hazardous residues into the cycle. Streams may be wrongly labelled as by-product and the inspectorate will lose its oversight on these streams. If a material is not waste, a company can process the material in any way possible.

An example of possible consequences are blends of oil for marine vessels. The last material that remains after the refining process is called Residual Fuel Oil (RFO). In the petrochemical industry, it has always been common for all substances coming from the plants to be labelled as 'product' or 'by-product'. According to the ILT, RFO is a residual substance, which in many cases should be destroyed because it includes bromine. The companies, however, have often considered RFO a "by-product" and shipped it, for example, to Nigeria as a blend product. When RFO is used in fuel oil there is a great risk of significant emissions of hazardous substances. West African countries where the blending takes place do not attempt to stop these activities. Attempts to stop these practices from Europe are likely to be hampered by the 'circular economy'. If substances are no longer classified as waste, there are few legal possibilities for preventing exports. Nevertheless, we still enforce an accurate registration of residual products throughout the chain and companies have to account accurately for which residual products are blended.

Another example is the co-fermentation (co-vergisting) industry and the biofuels industry. Already there is a lot of discussion on issues such as which materials are waste, which legislation is applicable and who is authorised to carry out checks on the composition of substances. For example, used cooking oils are used in biofuels but also in co-fermentation. If food containing meat is prepared, it can be considered an animal residual product and the waste legislation does not apply. In that case, the NVWA should be able to oversee the processing. These discussions create opportunities for companies which may be damaging to the environment, human health and the market. If there is uncertainty about the type of substance then there may also be a difference of interpretation as to which documents must be present with a shipment. These situations may even apply to hazardous substances, such as residues of products that are used for biofuels.

Similarly, in the implementation of the 'end-of-waste criteria' many aspects are still unclear. The legislation prescribed that a number of criteria must be met to justify end-of-waste status. Meanwhile, a development has been initiated to give end-of-waste status when only a few of the criteria are met, instead of all criteria. This development already has consequences, for example, for criminal investigations into the use of glycerin in co-fermentation. There are also clever operators who say that the material is not waste and therefore the WSR does not apply and avoid inspections. Relevant jurisprudence on this matter is scarce.

## Self-regulation: certification and accreditation

The Dutch government promotes a policy of deregulation and administrative burden reduction. As part of this policy, since 2003 the government has advocated certification and accreditation of companies regarding compliance with legislation, including environmental matters. Nowadays, there are many certification bodies (certificerende instellingen) within the environmental domain, which in turn are supervised by the Accreditation Board (Raad van Accreditatie, RvA).

A certification body first carries out an initial audit of the company. After the initial audit, the certification body issues a certificate specifying the requirements the company has to comply with and advises the company on how it can meet the requirements. The certification bodies are paid for by the companies. The Accreditation Board is there to ensure that the certificates are provided in a correct manner. It is anticipated that the private certification bodies will help the inspectorates in their supervision tasks and that fewer inspectors are needed.

The issue of regulating the behaviour of companies through self-regulation is a controversial topic. Advocates argue that self-regulation provides a good alternative to governmental supervision, is more effective, efficient and flexible, and less-time consuming than governmental supervision, increases compliance and stimulates the industry to take more responsibility in compliance with legislation. Opponents, however, state that self-regulation is weak, ineffective and serves private interests rather than public interests.

Self-regulation also forms an obstacle in environmental crime in general, including the shipment of waste. The ILT, ISZW, NVWA and the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation have found that having a certificate is not a guarantee that the company is compliant with the rules. Serious crimes have been committed in several sectors by certified companies. The supervision of certified companies by certification bodies is insufficient in some cases and the inspections are not always recorded well by the certification bodies. And when the certification bodies have detected an offence, in some cases they are reluctant to sanction the certified companies. For example, certain companies have repeatedly committed offences but continue to hold a certificate. Furthermore, the exchange of information with governmental supervisors is insufficient, according to the inspectorates. Violations of the rules are often not reported to the governmental supervisors.

According to the inspectorates, these findings may be explained by the competition between the private certification bodies and the fact that the certification bodies work for the companies they certify. The certification bodies are commercial companies which have to compete with other certification bodies for commissions from companies. The companies are looking for certification bodies that issue certificates at the lowest rates. The certification body will most likely not be very strict during the inspections, because the certification bodies must take into account the fact that the customer can always switch to another certification body if it is expected to be more flexible with the conditions. Therefore, the certification bodies cannot work as an independent supervisor. Independent governmental supervision is always necessary to stimulate compliance and prevent offences. Also, the purpose of certification is different from supervision. The aim of certification is to improve the industry while the purpose of government supervision is to sanction infringements of rules and legislation.

According to the inspectorates, self-regulation works well with companies that are willing to comply with the rules, but not with other companies. For many companies, the certifications' primary use is to attract customers but these companies do not make much effort to comply with the rules better than before.

According to the inspectorates, a number of conditions must be met in order to reduce governmental supervision for certified companies, which are:

- the certificates must be in accordance with the laws and regulations;
- the certification bodies have to check if the certified companies comply with the laws and regulation and, if necessary, take appropriate measures;
- the certification bodies share information with the inspectorates; and
- the certification bodies are obligated to report serious abnormalities.

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

#### Modus operandi

The general method of operation in illegal waste shipment is that the illegal shipment is transported by road, water, rail and air and these transports take place out in the open for anyone to see. Only with pro-active inspections can crimes be detected.

#### Trend: animal by-product to circumvent WSR obligations

There is a trend for a lot of waste to be wrongly classified as an 'animal by-product' (ABP) and transported to other countries. The WSR does not apply to animal by-products (Regulation (EC) No 1069/2009, Animal by-products Regulation) and, in most cases, the WSR notification procedure does not have to be followed. However, is difficult to recognise with the naked eye whether a cargo is of animal origin. It is also unclear whether certain waste streams can legally still be classified as an animal by-product or from animal-derived products within the meaning of Regulation No. 1069/2009. An example is the residual flows of biodiesel production.

Issues regarding interpretation: the definition of 'animal by-product' and consistency between EU law

If animal 'feed stock' (e.g. used cooking oils) was used for the production of biodiesel, the residual flows are also considered by the market as an animal by-product. It is unclear if this interpretation is correct. The complexity of legislation (on waste and animal by-products) and lack of clarity about applicable legislation at the interface between waste and animal by-product hinders effective enforcement. For example, animal by-products that are intended for fermenters fall within the scope of the waste legislation (Article 2 (2) (b) of Directive 2008/98/EC) but animal by-products that are transported to another country do not (the WSR does not contain that exception).

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

The Waste Directive (2006/12/EC) prescribes the guiding policy principles for achieving efficient and environmentally sound waste management. In the Netherlands, these principles have been implemented and further developed in the National Waste Management Plan (Landelijk Afvalbeheer Plan, LAP).

Considering the responsibility of waste producers for the environmentally sound management of waste, the notification forms and documents for waste shipments should, where practicable, be filled in by the waste producers.

The competent authority in the Netherlands (the ILT) examines the notification and in particular assesses if the notification is in line with the rules of the WSR, the National Waste Management Plan (including sectoral plans), jurisprudence and other applicable laws and decrees (such as the General Provisions Environmental Law Act; Wet algemene bepalingen omgevingsrecht, Wabo).



The ILT monitors shipments by means of regular checks. These checks include a check on compliance with the rules applicable to the transport of hazardous substances (for example, inspection of containers for seepages or gasification). The transport documents are also checked to verify whether the physical load, the manner of processing and the final destination are compliant with the documents.

Whether a shipment has a useful application in line with the EVOA, including the environmentally sound management of waste, is assessed on a case-by case basis. The ratio between the useful application and dumping is important in assessing whether the degree of useful application justifies the shipment. The degree of recycling may also influence the assessment to justify the shipment.

## **7.2. Inspections**

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

Supervision and inspection by the ILT focuses on the prevention of waste, sustainable production, useful application of waste materials, recycling of waste materials and the safe collection and processing of hazardous waste streams. The ILT checks manufacturers, importers, disposers, collectors (including brokers), transporters, processors and exporters of waste.

The government, provinces and municipalities and water board authorities all have supervisory tasks in the field of waste. When necessary, coordination and cooperation take place. The ILT takes developments in the circular economy into account.

#### Instruments and methods

Companies are obligated to report every waste shipment that is imported or exported to the ILT and the foreign authority. The companies can report the imports and exports in an ILT system, via fax or e-mail. The ILT, Police and Customs check if transporters have a copy of the mandatory shipment number.

Inspections are conducted throughout Dutch territory. The logistics checks mainly take place in the inbound and outbound seaports of Amsterdam and Rotterdam, and on road and shipping routes within the Netherlands.

The following information sources are used to select companies or locations which will be inspected:

- data system of notifications (datasysteem van kennisgevingen, TERRA)
- Customs declaration systems (douane aangifte systemen, AGS, ECS)
- domestic waste registration system (binnenlands afvalregistratiesysteem, AMICE)
- control systems of ILT (controle registratiesystemen, Holmes) and the police (tracopol)

As regards resources, each inspector receives the appropriate personal protective equipment, an official vehicle to carry out road or company inspections and appropriate measuring and recording equipment.

The organisations also use legal instruments for their inspections. The ILT has concluded an agreement with the Customs and police to improve cooperation, such as the exchange of enforcement information and sampling and the analysis of samples (the sampling of possible waste by the ILT sampling team and the analysis of possible waste samples by the customs laboratory).

Furthermore, the ILT participates in the IMPEL expert team waste and TFS'. Intensive cooperation by the ILT with China also takes place under a Memorandum of Understanding between the Dutch Ministry of Infrastructure and Water Management and the respective ministry in China.

The ILT may impose various interventions during the inspection when detecting an illegal transport or other violation. The nature of the intervention will depend on the facts and circumstances such as the gravity of the violation, the negative effects on the environment and the compliance behaviour of the (licensed) company. Both administrative and criminal interventions may be imposed.

Administrative interventions are for example:

- Administrative interview by ILT (bestuurlijk gesprek)
- (Administrative) warning by ILT (bestuurlijke waarschuwing) and letter with recovery period
- Increased monitoring by ILT
- Order subject to a penalty by ILT (last onder dwangsom, LOD)
- Administrative enforcement order by ILT (last onder bestuursdwang, LOB)
- Ordering take-back when a cross-border shipment is illegal.
- Revoke the licence (partially and conditionally).

Criminal law interventions are for example:

- Warning
- Administrative punishment order (minor offences)
- Official report of findings (process-verbaal) which may result in a sanction by the Public Prosecution Service or the case is sent to trial.

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

##### *Specific inspection activities and analysis on WEEE*

There are no projects at the ILT for the inspection or analysis of electrical waste and electronic equipment waste to identify illegal flows.

If an offence is detected during a WSR transport inspection, the ILT will enforce.

### *Actions to ensure the reporting of WEEE: Collection of disused electronic equipment*

ICT Environment (Stichting ICT Milieu) is part of the 'Netherlands ICT' (the trade association for more than 550 IT, telecom, internet and office companies in the Netherlands) and organizes, together with Wecycle, the collection and processing of disused ICT devices and equipment in the Netherlands.

WeCycle (Stichting WeCycle) is a non-profit organisation which coordinates the collection and recycling of e-waste in the Netherlands. Materials from waste electrical appliances and energy-efficient lightbulbs are recycled. WeCycle cooperates with 317 municipalities, 8,500 shops, 1,000 installation companies, 70 recyclers, 169 children's farms, 2,000 schools and a large number of consumers.

The collected electrical waste and electronic equipment waste via all routes is reported and action is taken to eliminate illegal shipment.

### *Preventing of illegal shipment of WEEE*

In January 2016, the ILT sent letters with information about the WEEE Directive and the obligations it lays down (Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment) to all (freight) forwarders in the export of used goods which may also export old electrical and electronic equipment.

Here too, there are no specific projects or activities for (illegal) transfers of WEEE. While performing the regular WSR transport and container checks, a WEEE offence may be detected and sanctioned. In areas other than illegal shipment we carry out activities, which mainly concern the obligations arising from the WEEE Directive and the Dutch Regulation on Electrical and Electronic Equipment Disposal. These activities are, for example, the appropriate processing of WEEE (according to the WEEELABEX standard) and activities regarding the collection of WEEE within the Netherlands.

<b>Role</b>	<b>Legitimate role</b>	<b>Illegal activities</b>	<b>Prevention (inspection)</b>
<b>Discarder</b>	<ul style="list-style-type: none"> <li>- Sending discarded devices to WeCycle/ICT Environment</li> </ul>	<ul style="list-style-type: none"> <li>- Selling discarded devices to non-licensed traders.</li> </ul>	<ul style="list-style-type: none"> <li>- Improve the inspection of discarders.</li> <li>- Create awareness by providing information about the rules to the discarders and their associations.</li> </ul>
<b>Collector</b>	<ul style="list-style-type: none"> <li>- Collection by WeCycle (the legitimate collector).</li> <li>- Exception: market for second-hand or used goods.</li> </ul>	<ul style="list-style-type: none"> <li>- Collection by non-licensed entities (other than WeCycle).</li> <li>- Removal of waste from streets on 'bulky waste days' by non-licensed entities.</li> </ul>	<ul style="list-style-type: none"> <li>- Impose administration requirements</li> <li>- Shorten the time period during which the waste lies out on the streets during 'bulky waste days' (early morning collection).</li> </ul>
<b>Trade / storing / processing</b>	<ul style="list-style-type: none"> <li>- Trade, storage and processing by specialised companies commissioned by WeCycle.</li> </ul>	<ul style="list-style-type: none"> <li>- Procuring waste from organisations other than WeCycle.</li> <li>- Working without licences.</li> <li>- Labelling e-waste as second-hand devices.</li> </ul>	<ul style="list-style-type: none"> <li>- Create awareness by provide information about rules.</li> <li>- Impose administration requirements for shops, municipal waste collection facilities (milieustraten) and shops specialized in recycled and second-hand goods (kringloopwinkels).</li> </ul>

<b>Role</b>	<b>Legitimate role</b>	<b>Illegal activities</b>	<b>Prevention (inspection)</b>
<b>Transport by roads</b>	- Transport by a licensed company that has a so-called VIHB* qualification (VHIB-lijst)	<ul style="list-style-type: none"> <li>- Cooperating with companies in illegal export.</li> <li>- Evading inspections.</li> </ul>	<ul style="list-style-type: none"> <li>- Improve inspection on shipments by road, water, rail and air.</li> <li>- Create awareness by providing information about the rules to the transporters and their associations.</li> </ul>
<b>(freight) forwarders</b>	- Taking care of documentation (for Customs) and arranging for transport by container.	<ul style="list-style-type: none"> <li>- Creating false documents.</li> <li>- Facilitating illegal export.</li> </ul>	<ul style="list-style-type: none"> <li>- Create awareness by providing information about the rules to the forwarders and their associations.</li> </ul>
<b>Advice / analysis agency</b>	- Determining the composition of the goods, etc.	<ul style="list-style-type: none"> <li>- Falsifying analyses to make them consistent with the illegal activities.</li> </ul>	<ul style="list-style-type: none"> <li>- Naming and shaming.</li> </ul>
<b>Export</b>	<ul style="list-style-type: none"> <li>- WSR: not sending dangerous materials to non OECD countries.</li> <li>- second-hand or used goods may be transported to developing countries.</li> </ul>	<ul style="list-style-type: none"> <li>- Deceiving inspection officials by mixing legally and illegally shipped goods.</li> <li>- Deceiving inspection officials by placing the legally shipped goods in front.</li> <li>- Labelling e-waste as second-hand devices (omkatten).</li> <li>- Falsifying data in documents.</li> </ul>	<ul style="list-style-type: none"> <li>- Improve inspections and controls (X-ray scan the containers).</li> <li>- Cooperate with countries of shipments' destination.</li> </ul>

\* VIHB is an abbreviation for Transporter, Collector, Trader/Dealer and Broker of waste (in Dutch: VIHB = Vervoerder, Inzamelaar, Handelaar en Bemiddelaar in afval) and refers to the VIHB list of qualified companies. See answer to question 59 for a more detailed explanation.

There are no projects at ILT focusing on at discarded vehicles. If an offence is detected during a WSR transport control (checks), the ILT will enforce.

Europe and the Netherlands aspire to a circular economy. The ILT monitors industry's compliance with the prescribed standards for the collection and recycling of waste for which the producer is responsible. To meet these standards, industry has to put together a sufficient collection and recycling processing structure as well as actually collect and recycle a certain volume of waste. These include waste streams such as electronics waste, packaging, car wrecks, car tires and batteries.

The Management of End-of-Life Vehicles Decree (Besluit beheer autowrakken, Bba) obliges manufacturers and importers of vehicles to set up a system for the collection, processing and registration of the vehicles they have brought to the Dutch market in the past which have now reached the waste stage. The manufacturers and importers must also report annually on the implementation of their obligations under Bba, including the reuse of products and materials from recycled wrecks. The ILT is the supervisory authority for the Bba and, among other things, checks whether the obligations regarding the reuse of products and materials from recycled wrecks have been met.

End-of-life vehicles are vehicles that no longer meet the Dutch requirements for vehicles (requirements based on EU legislation, such as Directive 2007/46/EC; Algemene Periodieke Keuring, APK) and have been removed from the register of the Netherlands Vehicle Authority (Rijksdienst voor Wegverkeer). In countries where there are no or few rules, these vehicles may still be driven on the public roads.

Waste from the Netherlands and the European Union, such as end-of-life vehicles, is exported to West Africa and Eastern Europe to be sold on the market. End-of-life vehicles are exported to be used for different purposes, such as to be disassembled for usable parts, to be restored for resale or to be used as a means to transport cargo and other wastes (for example, discarded devices). End-of-life vehicles are also exported to be dumped in these countries.

In many cases, persons from African countries come to the Netherlands with a tourist visa. These persons organise the purchase and export of waste, which has earned them the name ‘waste tourists’. They arrange for a container to be filled with waste and exported, and then return to their country of origin, often before the actual transport takes place.

If irregular or fraudulent operations are detected with regard to the cargo, the organiser of the transport is usually no longer traceable. This makes it difficult to act against perpetrators.

### *7.2.3. First inspection plan*

The 2017-2019 Netherlands Inspection Plan for the Waste Shipment Regulation is in place.

When irregularities are detected, an administrative measure is taken and, if the situation requires, criminal proceeding may also be initiated (sanctions, measures, investigation and trial). See also the answers to questions 3, 9 and 14 about the National Enforcement Strategy (Landelijke Handhavingstrategie).

Follow-up after detecting irregularities includes, for example:

Administrative law:

- Administrative interview by ILT (bestuurlijk gesprek)
- (Administrative) warning by ILT (bestuurlijke waarschuwing) and letter with recovery period
- Increased monitoring by ILT
- Order subject to a penalty by ILT (last onder dwangsom, LOD)
- Administrative enforcement order by ILT (last onder bestuursdwang, LOB)
- ILT orders take-back when a cross-border shipment is illegal. ILT always orders the natural or legal person to transport the waste to a licensed waste processor in the country of origin (Article 24 (2) WSR).



## Criminal law

- Warning by Police or Customs
- Official report of findings by Police or Customs ('proces-verbaal')

Please refer to the answer to question 28 for an explanation of these sanctions and measures.

ILT cooperates with the Police and Customs during inspections and criminal investigations.

Confiscation measures can be applied All objects that may serve to reveal the truth or demonstrate unlawfully obtained gains are liable for seizure. Furthermore, all objects whose confiscation or withdrawal from circulation may be ordered are liable to seizure. Objects may also be seized in order to preserve the right of recovery in respect of any fine to be imposed for that serious offence. Waste is only seized on the legal basis of the Code of Criminal Procedure if the seizure is not possible under administrative law.

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

Dutch traders buy waste abroad. If these Dutch traders ship the waste illegally from abroad to the Netherlands, the ILT can in some cases not enforce the take-back of the waste to the country of origin. In these cases, the country of origin declares the Dutch recipient trader as the WSR offender (and not the supplier). As a result, the country of origin does not have to take back the waste. This is a problem, because the offender in the country of origin is not punished (by enforcing a take-back).

Despite these issues, the Netherlands does regard take-back as an effective punishment (if take-back can be effected), because take-back is expensive for the offender. Take-back is a punishment that repairs the offence, effects retribution and is also a deterrent to prevent persons from offending.

Shipments of waste within the framework of the European Waste Shipment Regulation (Regulation (EC) 1013/2006) have to have a financial security vis-à-vis the authority of dispatch. The financial security is made up of 3 different costs: processing costs, storage costs and transport costs.

### 7.3. Conclusions

- **Taking into consideration the fact that Rotterdam is the biggest port in Europe, the export of waste should be the focus of the inspections. The Netherlands is an export and transit country for trans-boundary shipments of waste. As there exists a problem concerning illegal exports of WEEE and end-of life vehicles, but also concerning other types of waste, it is very important from a national but also from an international point of view to perform spot checks with a focus on the export of such waste streams, which are destined in many cases for countries in Western Africa and Asia.**
- **In this context it should be mentioned once again that the Customs are an important actor in this field, and Customs officials would need a training to a certain extent to enable them to detect suspicious shipments and to inform the inspectors responsible.**
- **In general, national guidelines or handbooks on differentiating between by-products and waste, or between used cars and end-of life vehicles, would be helpful for all authorities concerned, especially for police and customs, but also for the inspectors. This also applies to the distinction between animal by-products and waste.**
- **The inspections system should be reviewed in relation with Article 50 letter c) and d) of the Waste Shipment Regulation; since, with these new provisions in the WSR, the burden of proof has been changed, the work of the investigative authorities has been facilitated.**
- **It should be mentioned that the Netherlands is very active in the field of international cooperation concerning trans boundary-shipments of waste, especially in IMPEL-TFS.**
- **In the report, one obstacle mentioned is that the cooperation between the various involved authorities involved, such as the environmental agencies, Customs and Police, is not yet a routine procedure. Another challenge is sharing information between authorities at national and international levels. Obstacles are primarily caused by the difference in systems (databases) and legal restrictions on sharing information.**
- **The authorities emphasised that there is a tendency for a lot of waste to be incorrectly classified as animal by-products (ABPs) and transported to other countries. The WSR does not apply to animal by-products (Regulation (EC) No 1069/2009) and in the most cases, the WSR notification procedure does not have to be followed. One example is residual flows from biodiesel production.**

## 8. MANAGEMENT OF HAZARDOUS WASTE

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

The ILT monitors the management and processing of waste. The monitoring begins with the issuance of licences to companies which want to transport their waste abroad. The ILT inspects companies (targeted inspections) to ensure that dangerous materials are safely transported and transshipped (*overgeladen*) in ports.

The ILT also verifies companies' compliance with rules on electronic waste, for example by checking whether the electronic waste is recycled to its full potential and whether precautions have been taken to prevent hazardous substances from electronic waste getting into the environment.

The ILT/IOD conducted three criminal investigations on waste crime in 2016, of which two criminal cases were submitted to the Public Prosecutor for prosecution.

The Dutch authorities encounter many cases of misclassification of waste.

A lot of waste is wrongly classified as 'green' list waste and transported abroad. Often it is a type of waste that is not classified in any WSR annex (such as mixed waste or contaminated waste) and cannot therefore be considered as 'green'. In these cases, the waste may be hazardous or non-hazardous.

Violations of the WSR rules often lead to discussions with industry. This is due partly to the complexity of the waste and partly to the lack of clarity of the WSR. The Regulation provides for a broad definition of waste. In practice, inspectors often find themselves discussing materials with company representatives and debating whether these materials are waste or not. The burden of proof lies with the inspectors. The difficulty is that, although various categories are distinguished, the boundaries between them are often difficult to delineate in practice. One striking example is the category of oil products. It is not clear when oil products are waste and when they can be considered a product (such as fuel oil blends).

The WSR leaves a wide margin for interpretation in the classification of waste. First of all, it is not always clear what certain waste codes mean. For example, it is clear what is meant by GC020 (electronic residues). However, for cable waste, the definitions of 'hazardous' (A1190) and 'harmless' (B1115) are not always clear. The same is true of waste from catalysts ('harmless' B1120 / 'hazardous' A2030). In addition, it is uncertain whether contaminated green list waste can still be considered green list waste. To what extent may green list waste be contaminated with other materials before it is considered a mixture (and therefore not subject to the notification obligation)? In other words, what is the boundary between green list waste and mixtures?

Because the Regulation is unclear, the ILT has to formulate additional rules (policy rules) to act as standards. The ILT may also push for cases to be taken before a judge to obtain a court judgement on the interpretation of unclear rules. In order to avoid unnecessary discussions with industry, it is recommended that EU standards be agreed to clarify the EU legislation.

In the Environmental Management Act (*Wet milieubeheer*), Annex VII violations (i.e. missing, incorrect or incomplete accompanying documentation) are implemented in two different ways, namely via Article 10.60(2) of the Environmental Management Act (in reference to Article 2(35)(g)(iii) WSR) and by Article 10.60(5) (in reference to Article 18 WSR). In the first case, the transfer is illegal and the penalty is more severe. These duplicate prohibitions in the Environmental Management Act lead to discussions with industry and legal proceedings and must therefore be removed.

Case example: Judgement of the Administrative Jurisdiction Division of the Council of State dated 22 February 2017 (ECLI:NL:RVS:2017:483). The judgement concerns the transfer of energy pallets from the Netherlands to Sweden. The company in question repeatedly falsified documents by writing incorrect waste names and codes on forms, thus deceiving the authorities into believing that the waste was non-hazardous.

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

Several supervising authorities are responsible for carrying out periodic inspections regarding hazardous waste.

### ILT

More than 1 100 ILT employees work daily to ensure secure and reliable transport, infrastructure, environment and housing in the Netherlands. The ILT enforces compliance with national laws and EU regulations in various ways: by providing services (information, etc.) and, when offences are detected, by carrying out interventions and criminal investigations. The ILT monitors the target groups using risk indicators.

In 2016, the ILT developed a methodology for determining the greatest risks of non-compliance, known as the Inspective Broad Risk Analysis (IBRA) method. This analysis was performed for the first time in early 2017, to get an idea of the greatest risks in the ILT's field of work. The risk analysis distinguishes between physical safety, health, the environment, transport network damage, the economy and damage to trust in institutions. These social damages are expressed in euros per year, allowing them to be compared. The analysis is based on well-respected scientific methods and resources.

The ILT has a wide range of enforcement instruments under both criminal and administrative law. Each of these instruments has its own distinct characteristics, which means that in each situation the most effective tool can be selected. Not all instruments can be used in any situation, because the use of the instruments is determined by laws and decrees and, in addition, the ILT will use the instrument only if it is expected to have the desired effect.

To determine where to focus its inspection resources, the ILT uses various techniques. It is, however, not just a question of determining risks and choosing between more or fewer inspections, because inspections may not always be an effective means of supervision. Depending on the situation, the supervisor can use various methods. The supervisor's standard tools are carrying out inspections of objects and of the administration of companies, performing digital inspection audits and imposing administrative and criminal interventions. But other tools may also be able to compel compliance, such as providing information, communication, concluding cooperation agreements, looking for signs of problems and reflection.

Companies with a history of good compliance can sign a contract (known as an enforcement contract; *handhavingsconvenant*) with the ILT in which the company agrees to certain activities in exchange for fewer inspection visits by the ILT. These activities include signing a declaration of intent, a thorough inspection with positive outcomes (a baseline measurement (zero measurement), a self-assessment, a review of inspections by other authorities), an agreement to implement improvements (which is usually a follow-up to the thorough inspection; in some cases a separate contract is agreed for the implementation of improvements) and the signing of the contract itself. The ILT continues to supervise these companies but using tools other than inspection visits, such as audits and checks of the administration. The contractual period is two to five years.

#### Regional environmental agencies

The 29 environmental agencies employ about 4 000 FTEs of highly specialised and skilled personnel for licensing, inspections and law enforcement. The majority operate with an environmental focus. Among their number are also specialists on specific subjects who provide expertise and knowledge to the provinces and municipalities. The regional environmental agencies inform the provinces and municipalities periodically about the risks of non-compliant companies. This information is based on intelligence gathered not only during licensing, inspection and law enforcement operations, but also from incidents, from sharing information with law enforcement partners and in the context of national priorities. The intelligence provides for a methodical risk-based approach to licensing and inspections by all regional environmental agencies. This ensures that the (limited) budget for inspections is spent as efficiently as possible.

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

Processors of hazardous waste must comply with certain rules. For example, they must use special packages and labels. The minimum requirements for processing waste streams are included in the sector plans of the National Waste Management Plan (*Landelijk afvalbeheerplan*, LAP). Where waste streams are not covered by a sector plan, the rules of the policy framework of the National Waste Management Plan apply.

Companies which collect or transport waste (industrial or hazardous) on a professional basis or which arrange for the disposal or recovery of waste (industrial or hazardous) for others are required to hold a 'TCTB' qualification. TCTB is an abbreviation for transporter, collector, trader/dealer or broker of waste (in Dutch: *Vervoerder, Inzamelaar, Handelaar en Bemiddelaar in afval*, VIHB). Companies must apply to the National and International Road Transport Organisation (*Nationaal en Internationaal Wegvervoers Organisatie*, NIWO) to obtain the TCTB qualification. NIWO is responsible for providing and withdrawing licences. Only companies that meet certain conditions are provided with the TCTB qualification. NIWO checks that the employees are skilled (based on certificates of educational and professional qualifications), do not have a criminal record, and so on. Foreign companies also have to apply to NIWO for a TCTB qualification if they want to do business in the Netherlands. Companies that have a 'Euro licence' do not have to register, because these companies already meet the conditions.

The registry of companies holding the TCTB qualification is published on the NIWO website ([www.niwo.nl/vihblijst](http://www.niwo.nl/vihblijst)). The registry is called the TCTB list (VIHB-list) and anyone can check whether a company is a registered collector, transporter, dealer or broker of waste.

The ILT inspects shipments during the transport of hazardous substances, and also inspects the organisations involved in the shipments, such as the organisation that sent the shipment and the recipient. The sender is responsible for the proper classification, packaging and labelling of hazardous substances.

Companies need to keep records of any activities involving waste. Who has to register what information depends on the role the company plays in the waste chain, such as, for example, waste recipient or waste collector. In addition, it is important to consider whether the company carries out waste activities requiring an environmental licence. Discarders, collectors, transporters, recipients, dealers and brokers of waste are obliged to keep a record of waste. The basis for the registration obligation is the Environmental Management Act (*Wet milieubeheer*). The Environmental Protection Decree (*Besluit Omgevingrecht*) and the Regulation on industrial waste and hazardous waste reporting give further details on the registration requirements in various situations.

The national waste disposal contact point (*Landelijk Meldpunt Afvalstoffen*, LMA)

Anyone who processes hazardous waste, industrial waste or shipment waste in the Netherlands must report this to the national waste disposal contact point (*Landelijk Meldpunt Afvalstoffen*, LMA). The contact point registers and manages all notifications and makes these notifications available to authorities for licensing, supervision, inspections, enforcement and policy decisions.

The LMA was founded in 1993 as a joint organisation of provinces. The provinces designated the LMA as the organisation which manages the notifications and is also responsible for the quality of these reports (in cooperation with the provinces). The tasks of the LMA with regard to hazardous waste are described in the Environmental Management Act (*Wet milieubeheer*) and the Decision on industrial waste and hazardous waste reporting (*Besluit melden bedrijfsafvalstoffen en gevaarlijke afvalstoffen*). This Decision entered into force on 1 January 2005. The Ministry of Infrastructure and Water Management designated the LMA as the body to which companies must report, as referred to in Articles 10.40(1) and 10.38(3) of the Environmental Management Act. The automated system in which all reports are recorded is the domestic waste registration system (called the Waste Notifications Electronic Information and Communication or *Afval Meldingen Informatie en Communicatie Electronisch* – AMICE).



Until 31 December 2016, the LMA was designated as the national reporting agency for commercial and hazardous waste. From 1 January 2017, the State Secretary of the Ministry of Infrastructure and Water Management appointed the *Rijkswaterstaat* as the national reporting authority. The *Rijkswaterstaat* is an organisation that is part of the Ministry of Infrastructure and Water Management and is responsible for the design, construction, management and maintenance of the main infrastructure facilities in the Netherlands. This includes the main road network and the main waterway network and water systems. This organisational change does not affect the users of the LMA. The name 'LMA' remains and the method of reporting stays the same.

Environmental licence (*omgevingsvergunning milieu*) required for waste activities

Companies that carry out activities involving waste may require an environmental licence (*omgevingsvergunning milieu*). For these companies, the licensor must include in the licence the obligations to record the following data:

1. certain specified waste materials which are used or disposed of in the installation (by quantity, nature and origin)
2. materials that are used or exhausted for the useful application (or disposal) of those waste materials (by nature and quantity)
3. materials, preparations and products, including waste, that are created during the useful application or disposal of the waste materials (by nature and quantity)
4. the manner in which the waste materials referred to in paragraph 3 are used or disposed of
5. materials, preparations and products leaving the installation insofar as they were created during the useful application or disposal of the waste materials (by nature and quantity).

Also, the licensor must specify in the environmental licence that the installation is required to store the recorded data for at least five years.

In addition to the items referred to under paragraphs 1 to 5, the installations also have to comply with general registration obligations. It depends on the company's role which general registration obligations apply. The licensor does not need to include the general registration obligations in the environmental licence, because every company must abide by these obligations.

General registration obligations according to the role performed by the company in the waste chain

The roles in the waste chain are:

- discarder (primary or secondary)
- receiver
- collector
- transporter, dealer or broker.

The registration requirements described in the following paragraphs apply to all companies carrying out activities with waste. These companies include, for example:

- companies with no installations (such as collectors which collect waste on site)
- installations with an environmental licence for activities involving waste materials (such as waste incinerators)
- installations without an environmental licence for activities involving waste materials (such as recycling companies).

Discarders of waste (primary or secondary)

A primary discarder is someone who discards waste materials which were created by the company.

A secondary discarder is a company which has received waste materials from a discarder and subsequently discards some of these (waste) materials itself.

A discarder which supplies waste materials to another has to register the following data:

1. date of issue
2. name and address of the person to whom the waste is supplied
3. customary name of the waste and quantity of waste
4. location and manner of disposal of the waste
5. intended management of the waste
6. if the delivery is made by a transporter, the name and address of the transporter and the name and address of the person who has ordered the transport
7. information on the nature and properties of the waste materials.

The registered data must be kept by the discarder for a minimum of five years. Upon request, the discarder must make the data available to the inspector within a reasonable period of time.

#### Recipients of waste

A recipient is someone who receives waste delivered by a primary or secondary discarder.

All recipients which receive waste from another have to register the following information:

- A. date of issue
- B. name and address of the person from whom the waste originates
- C. customary name and amount of waste
- D. location and manner of receiving the waste
- E. manner in which the waste is applied in a useful manner or disposed of
- F. if the delivery is made by a transporter, name and address of the transporter and name and address of the person who has ordered the transport.

Some recipients are required to provide a notification of the received waste by sending the data referred to in points A to F to the LMA. The categories of recipients to which this notification obligation applies are specified in the Decision on industrial waste and hazardous waste reporting (*Besluit melden bedrijfsafvalstoffen en gevaarlijke afvalstoffen*). See the above paragraph about the LMA. These recipients are not required to keep their own records (for this purpose). Recipients to which the notification obligation does not apply have to keep their own records of the data referred to in points A to F. The registered data must be kept by the recipient for a minimum of five years. Upon request, the recipient must make the data available to the inspector within a reasonable period of time.

#### Collectors of waste

A collector is someone who collects waste from a person who is discarding waste materials by delivering them to the collector. The collector becomes the owner of the waste.

A collector fulfils two roles: the role of recipient (with no notification obligation) and the role of discarder. Therefore, the same requirements apply for registration and record-keeping as for discarders and recipients. In its records, the collector must always be able to connect the waste stream number and the primary discarder.

These obligations only apply to 'route collection' or in cases where a 'collectors' agreement' applies.

Route collection means that a collector collects the same kind of waste at various addresses along a route. During the ride, the collector combines the waste. An example of route collection is house-to-house collection of household waste. For this form of collection, collectors use one waste stream number for all the addresses at which they collect waste.

The collectors' agreement refers to the situation in which the company that receives the waste gives a waste stream number to the collector. The collector then collects the same type of waste from various companies, using only one waste stream number. Such a collectors' agreement applies only when the collector collects certain types of waste (a list of these waste materials is available online) and does not combine the waste.

In other cases, the collector has the same obligations as a transporter (see below).

#### Transporters, traders and brokers

A transporter is someone who transports waste on behalf of third parties. The transporter does not own the waste. A trader is someone who purchases waste for resale. The waste is owned by the trader, but the trader does not physically possess it.

A broker is someone who negotiates between the supplier (discarder or collector) and the recipient of the waste.

The transporter, trader or broker must record the following data:

1. name and address of the person from whom the waste originates
2. name and address of the person to whom the waste is supplied
3. customary name and quantity of waste.

The registered data must be kept by the transporter, trader or broker for a minimum of five years.

Upon request, the transporter, trader or broker must make the data available to the inspector within a reasonable period of time.

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

#### Common modus operandi

Modus operandi for the illegal management of hazardous waste include:

- falsifying official documents and data (*valsheid met geschriften*)
- blending of hazardous waste into fuel oil
- mixing of waste in animal feeds
- mixing of contaminated biofuel into co-fermenters.

## Blending hazardous waste into fuel oil

Andante is a team of police officers which focuses on fighting crimes related to the blending of hazardous waste into fuel oil. The illegal blending of hazardous waste not only causes damage to the environment due to the emission of particulate matter (*fijnstof*), dioxins and heavy metals, but also causes additional risks to the health of the people who work with the fuel oil. In addition, blended fuel oil can damage ships' engines and cause the captain to lose control over the ship, which may lead to disasters. Rogue companies make millions of euros by blending hazardous waste with fuel oil, because these companies circumvent the costs of waste processing and also create larger quantities of 'fuel oil' to sell by adding the hazardous waste.

The Andante team is situated within the Infrastructure Service of the National Unit of the Police (*Dienst Infrastructuur*, DINFRA) which consists of police officers who carry out tasks at national level involving the enforcement of rules on road, rail, water and air transport which cannot be performed by regional units. Several criminal investigations are being carried out by the Andante team or have already gone to trial. These criminal investigations are led by the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation. The investigation team consists primarily of police officers, but the team cooperates with the ILT and foreign authorities. The criminal cases are complex, require specialist knowledge and take a lot of time to investigate and prosecute.

## Trends

Little has changed in waste streams to Africa and China in recent years, except that the economic crisis has caused some reduction in waste streams for recycling to China. We cannot verify if this has led to a corresponding reduction in the illegal practices within these streams, but this is to be expected.

Also, not much has changed in the detection of the effects of illegal exports of waste streams. The market is disturbed by the illegal exports and the illegal activities undermine the codes of ethics (*normbesef*) and confidence in the government. The most serious consequences often occur in countries outside the EU's external borders. The environment and public health are affected in those countries by these illegal activities; it was in order to prevent this that the Basel Convention was concluded.

It is not easy to predict the future of the waste stream industry. The industry is highly dependent on the economic cycle (economic crises and growth). In addition, enforcement is of great importance. However, it is impossible to inspect all activities in the waste industry. Furthermore, there are some developments which may make enforcement more difficult.

These developments include the focus on self-regulation through certification, but in particular the development of the 'circular economy', which further obscures the definition of what is to be regarded as waste and what not, and what should be considered as a raw material or by-product. The new Environment and Planning Act (*Omgevingswet*) does not significantly affect the enforcement of the WSR, but the obligation to apply for a licence for installations will partly cease to exist, which may make it more difficult to carry out inspections.

## 8.5. Conclusions

- It should be stressed again that it would be helpful to draw up national guidelines on the differentiation between waste and (by-)products, waste and used materials, used cars and end-of life vehicles, and waste and animal by-products, to facilitate the work of all the authorities and administrative bodies involved. Oil products, such as fuel oil blends, are one example of a category where this would be useful. Guidance on when waste ceases to be waste and is instead classified as a product needs to be clarified. The introduction of additional national end-of-waste criteria for some specific types of waste should also be considered (Article 6 of Directive 2008/98/EC). The Waste Framework Directive (WFD) 2008/98/EC includes the option of setting end-of-waste (EoW) criteria under which specified waste fractions cease to be waste. If these criteria are fulfilled, the material will no longer be classified as waste but will instead become a product subject to free trade and use.
- One problem is that a lot of waste is incorrectly classified as 'green' list waste and transported abroad. In these cases, the waste may be hazardous or non-hazardous. To address this, more information is needed for stakeholders, along with targeted supervision from the competent authorities.
- A good example of a useful database is the LMA. Anyone who processes hazardous waste, industrial waste or shipment waste in the Netherlands must report this to the national waste disposal contact point (*Landelijk Meldpunt Afvalstoffen*, LMA). The contact point registers and manages all notifications and makes these notifications available to authorities for licensing, supervision, inspections, enforcement and policy decisions. This simplifies the traceability of hazardous waste.



- **As a good example, it is necessary to mention the system of law enforcement agencies. The Human Environment and Transport Inspectorate has more than 1 100 employees working daily to ensure secure and reliable transport, infrastructure and housing in the Netherlands. The ILT monitors the target groups by risk indicators. The ILT developed a methodology in 2016 to determine the greatest risks of non-compliance, known as the Inspective Broad Risk Analysis (IBRA) method. The analysis was performed for the first time in early 2017 to get an idea of the greatest risks in the ILT's field of work. The risk analysis distinguishes between physical safety, health, the environment, transport network damage, the economy and damage to trust in institutions.**

## 9. ILLEGAL PRODUCTION OR HANDLING OF DANGEROUS MATERIALS

### 9.1. The concept of dangerous materials

Hazardous substances can be classified in various ways. The most commonly used categorisation is based on the hazardous characteristics of a substance. This may include the flash point, toxicity, explosion hazard, radioactivity, and so on. Based on these hazardous properties, substances are divided into nine classes:

- Class 1 : explosive substances
- Class 2 : compressed, liquefied or pressurised dissolved gases
- Class 3 : flammable liquids
- Class 4.1 : flammable solids
- Class 4.2 : self-combustible substances
- Class 4.3 : substances that develop flammable gases on contact with water
- Class 5.1 : oxidising agents
- Class 5.2 : organic peroxides
- Class 6.1 : toxic gases
- Class 6.2 : infectious substances
- Class 7 : radioactive materials
- Class 8 : corrosive substances
- Class 9 : other dangerous substances, including materials that are hazardous for the environment.

Overview of systems and regulations for hazard classification of materials

Classification    Area of application

## CLP

European classification for hazardous substances based on the United Nations' Globally Harmonised System of Classification and Labelling of Chemicals (GHS, a set of criteria for the classification of hazardous properties of substances and mixtures).

## ADR

European road transport classification which is also used for the storage of hazardous substances (PGS-15).

ADN European Inland Waterway Transport Classification

RID European Rail Transport Classification

IMDG and IMSBC codes Worldwide IMO classification for transport (including loading, unloading and trimming) by sea (merchant shipping).

Dutch aviation regulations The Dutch Aviation Act and the Decree on the Transport of Dangerous Substances by Air.

PGS-15 National directives on fire safety, occupational safety and environmental safety in the context of the (temporary) storage of packaged hazardous substances. These directives are called the Hazardous Materials Publication Series (*Publicatiereeks Gevaarlijke Stoffen*, PGS).

Most Dutch legislation uses the EU substance information (Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the registration, evaluation, authorisation and restriction of chemicals (REACH) and Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and mixtures (CLP)) as a starting point for the requirements that the Dutch legislation imposes on materials. Detailed rules specify the maximum percentages of a particular substance in the material. This applies to the environmental legislation, decrees and regulations (primarily the Environmental Management Act and its decrees and regulations, *Wet milieubeheer*), the Working Conditions Act (*Arbowet*) and its decrees and regulations, the Transport Act (*Transportwet*) and its decrees and regulations as well as the Dutch 'Dangerous Substances Policy' (*'Zeer zorgwekkende stoffenbeleid'*) and the Dutch technical directives and standard documentation for storage and/or processing.

All these rules aim to protect human health and the environment against dangerous effects. Knowledge of what constitute 'safe' or 'hazardous' substances for humans or the environment is greatly increased by the REACH registration dossiers. The CLP classification system helps to classify the substances into hazard classes. Based on the risks, we can determine if a material is 'safe' (in the broadest sense of the word) and may therefore be allowed for (re)use.

## **9.2. Types of illegal activity related to the illegal production and handling of dangerous materials and current trends in this area**

Substances can have hazardous properties. To protect the population and the environment from danger, the substances and products must be handled carefully during production, storage, transportation, use and disposal. To be able to assess whether these substances are handled carefully, the company has to carry out a risk assessment for each substance. The risks are assessed with regard to environmental factors, the substance's properties, the amount of human intake and the sensitivity of species or individuals to these substances. The risk is determined by comparing data on the effects of a substance with the measured or calculated exposure. Based on these risk assessments, certain measures have to be taken to prevent or limit the damage to the population and the environment.

Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the registration, evaluation, authorisation and restriction of chemicals (REACH), establishing a European Chemicals Agency (the REACH Regulation) specifies obligations for companies that produce, use, process and trade certain substances. REACH also applies to products, mixtures and articles containing these substances. Producers and importers must register their substances. In addition, they must demonstrate that the substances are used safely.

Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants (the POP Regulation) details substances that break down very poorly in the environment and can spread around the world.

For many of these substances, the following apply (worldwide):

- a ban on all activities and handling
- a general prohibition, with the exception of specific exemptions
- restrictions on production, trade and use.

Substances and products are classified into groups based on their application. Specific legislation applies to these groups, setting out rules for responsible handling of these substances and products and managing specific risks.

The Working Conditions Decree and the Working Conditions Regulations introduced new provisions to clarify the measures which employers should take to protect workers when working with hazardous substances. The changes became effective on 1 July 2017.

In the Netherlands, there are no legal limit values for most substances. Employers are required to set a limit value in cases where an employee has to work with a substance for which there is no legal limit. This limit must be low enough to ensure that the employee's health cannot be affected. Employers are responsible for protecting the health of their employees. Therefore, employers have to set limit values for most hazardous substances themselves.

The government sets legal limits only for specific substances or in specific situations. Substances are, for example, legally limited when the European Union prescribes the legal limit. Also, substances that are not produced but created during processing, such as carbon monoxide, are legally limited. The government also sets limits on carcinogenic substances, although it is not possible to set a limit value that will exclude any health risk. Therefore, replacement of the substances, if technically possible, is always preferable. If such replacement is not possible, the exposure to the substance must be as low as possible. For carcinogens for which there is no legal limit, employers must determine the limit themselves.

The approach of letting employers set limit values themselves is in line with the policies and legislation on working conditions. The 2007 Working Conditions Law determines the goals for occupational safety and health. Businesses are largely free to select the methods by which they achieve these goals.

Limit values are used in practice by government and industry in the assessment of exposure levels for hazardous substances and in the assessment of working conditions. The greater the health risks of exposure in the workplace, the stricter (lower) the exposure limit values.

Illegal activities related to the illegal production or handling of dangerous materials

We have observed the following illegal activities:

- blending of dangerous materials in large non-hazardous (waste) streams
- document fraud
- labelling hazardous substances as non-hazardous
- labelling dangerous waste materials as dangerous materials
- illegal transport of mercury.

Specific provisions related to criminal activities involving dangerous materials such as chemical, biological, radiological and nuclear materials

Several offences involving chemical, biological, radiological and nuclear materials are described in national and underlying decrees and rules and EU regulations, such as in the Nuclear Energy Act (*Kernenergiewet*), the Radioactive Substances Decree (*Radioactieve stoffenbesluit*), the Decree on the Detection of Radioactive Contaminated Scrap (*Besluit detectie radioactief besmet schroot*) and the Decree on the Transport of Fissile Materials, Ores and Radioactive Substances (*Besluit vervoer splijtstoffen, ertsen en radioactieve stoffen*). These offences are punishable under criminal law because they are listed in the Economic Crimes Act (*Wet op de Economische Delicten*). Offences prescribed in EU regulations on waste are also punishable under the Economic Crimes Act. The Economic Crimes Act determines the penalties for the offences.

### 9.3. Procedural aspects

#### 9.3.1. Methods for collecting evidence and handling dangerous materials

##### Case documentation for inspections

Holmes is a case-supporting system in which inspectors can record all data and documents related to the Human Environment and Transport Inspectorate's inspection procedures. Holmes also allows inspectors to generate data (for analysis). The data and documents are collected, for example, during checks on vehicles that transport waste or during supervision of laboratories that work with genetically modified materials. In order to support the wide variety of supervision processes in one ICT system, Holmes was developed to be able to facilitate the following general processes: (1) preparation, (2) collection of facts, (3) judgement, (4) reporting, (5) intervention and (6) follow-up. If environmental rules are violated, an official report (*proces-verbaal*) may be drawn up (a '*proces-verbaal*' is the basis for further action by the Public Prosecution Service, and can lead to sanctions).

The general processes provided by Holmes can also be used for other tasks carried out by the Inspectorate, such as licensing: (1) preparation (of licence application), (2) collection of facts (to determine whether the application complies with the requirements), (3) judgement (granting or rejecting a licence), (4) reporting (granting a document with the licence), (5) intervention (not applicable in the case of licensing) and (6) follow-up (e.g. determining if additional conditions of the licence have been met). Holmes is a case-supporting system, and may therefore be used in a number of situations, such as for inspections, licence applications and requests for advice.

The national application 'Inspection View Environment' (*Inspectieview Milieu*) technically facilitates the automated exchange of data between inspectorates, enforcers and criminal investigators. This information exchange makes for better and more targeted environmental monitoring and enforcement. Various types of data are exchanged, such as environmental data, confidential business information, personal data and police data.

## Case documentation for criminal cases

Summ-IT 'Crime Detection and Investigation' (*Summ-IT Opsporing*) is the software system that supports the entire workflow process of criminal investigations, through the creation of case files. All law enforcement agencies use Summ-IT, but only authorised users can access the system and users' access is limited to the investigations in which they are involved and the data of that investigation to which they need to have access (depending on their role, duties and competences). Summ-IT has a detailed authorisation management system, and also provides for a variety of modules besides the crime detection and investigation module.

The Public Prosecution Service uses the Integrated Processing System for Criminal Cases (*Geïntegreerd Processysteem Strafrecht, GPS*) as a digital workflow system for case files. The preceding system, the Public Prosecution Service Communication System (*Communicatiesysteem Openbaar Ministerie - Parket Administratie Systeem, COMPAS*), is still used in some (atypical) cases.

## Evidence

Detecting and investigating environmental crimes and collecting evidence is difficult. Environmental crimes are usually not reported (*aangifte*) to law enforcement agencies. Detection is proactive during inspections. In many criminal investigations, evidence of alleged violations is collected by taking samples and analysing the results.

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

These aspects are detailed in the previous chapters on cooperation.



### 9.3.3. Investigation techniques

#### Handling seized dangerous materials

The rules about seizure are explained in chapter 3 of the Code of Criminal Procedure (sections 94 to 123).

In general, all objects that may serve to reveal the truth or demonstrate unlawfully obtained gains may be liable to seizure. Also, all objects whose confiscation or withdrawal from circulation has been ordered may be liable to seizure. The investigating officer who seizes an object must prepare a notice of seizure (including in cases where the power of seizure is conferred on the examining magistrate or the public prosecutor). A receipt for the object must be issued, as far as possible, to the person from whom it was seized. The investigating officer must place the notice in the hands of the assistant public prosecutor as soon as possible so that he or she can decide whether the seizure should be maintained. The Public Prosecution Service decides what to do with the seizure: return, store, sell or destroy.

#### Costs of storing seized objects

Seized goods are usually kept by the Movable Property Domain (*Domeinen Roerende Zaken*). The Movable Property Domain is part of the Ministry of Finance and is the legal guardian of seized goods. The Movable Property Domain executes the decision of the Public Prosecutor (return, store, sell or destroy). The costs of temporary storage during investigation are borne by the Public Prosecution Service.

The Movable Property Domain is not allowed to keep dangerous materials at its own storage locations. Small quantities of less dangerous goods such as paint spray cans and batteries may be stored at one location. Another location is equipped to store fireworks. If other dangerous materials are seized, the seized goods are sent to the Royal Marechaussee seized goods storage facility (*KMar Beslag Huis*, KBH) and from there to a processor. The Movable Property Domain has contracts with processors for the processing of dangerous materials.

## Analysis of evidence

The dangerous materials are evidence; evidence has to be analysed by a forensic laboratory. The National Forensic Institute of the Netherlands can analyse the materials but the ILT, the police, the customs authorities, the NVWA and others also have accredited laboratories. In its analysis report, the laboratory will provide an assessment of the damage (based on the amount by which limit values were exceeded).

## Laboratories

- ILT – Measurement and Sampling Team (*Meet- en Monstername Team, MMT*)

The Measurement and Sampling Team is part of the ILT and provides for the ILT with all the measurements and sampling it requires. The team can also be hired by other government agencies.

- NVWA – Risk Assessment and Research Bureau (*Bureau Risicobeoordeling & onderzoek, BuRO*)

The Risk Assessment and Research Bureau of the NVWA advises the Minister for Health, Welfare and Sport and the Minister for Economic Affairs on the safety of food and consumer products, and on animal welfare and animal health. This advice is based on scientific research.

- Customs

As determined in EU legislation, the customs authorities may verify the accuracy of a customs declaration and, if necessary, take samples for analysis or thorough checking.

- National Forensic Institute of the Netherlands (*Nationaal Forensisch Instituut, NFI*)

Forensic research is one of the primary tasks of the National Forensic Institute of the Netherlands (NFI).

The NFI covers almost all scientific fields and more than 30 research areas. The NFI can therefore examine evidence from a wide range of materials.

The forensic research areas are divided into four main categories:

1. Biological traces
2. Chemical and physical traces
3. Digital and biometric traces
4. Special services and expertise.

- The National Institute for Public Health and the Environment (*Rijksinstituut voor Volksgezondheid en Milieu*, RIVM)

The National Institute for Public Health and the Environment (RIVM) focuses on scientific research. The expertise of the RIVM covers three domains:

1. infectious diseases and vaccinology
2. public health and care
3. environment and safety.

- Board for Accreditation (*Raad voor accreditatie*, RvA)

Every country within the European Union has a national accreditation body. In the Netherlands, this is the Board for Accreditation (*Raad voor accreditatie*, RvA). The primary task of the RvA is to provide organisations with accreditation and maintain this accreditation for organisations that have declared compliance with the rules. Such organisations include laboratories, inspectorates, certification institutions and verification institutions.

The RvA is a private organisation. In 2010, the Dutch government appointed the RvA as a national accreditation body, based on European Regulation [765/2008](#). Since then, the RvA has become an independent governing body that is accountable to the Minister for Economic Affairs.

Standard operating procedures to ensure a cross-sectoral response

- Standards

The National Normalisation Institute (*Nederlands Normalisatie-instituut*, NEN) is responsible for the development of standards for products, services and processes. The NEN manages over 34 000 international (ISO, IEC), European (EN) and national (NEN) standards which are accepted in the Netherlands.

The policy of the Dutch government is to promote self-regulation in society as much as possible. All those concerned by a particular subject are involved in the development of standards related to it. If a standard fits the government's purpose for certain laws and regulations, the government will refer to this standard in its legislation. In this way, the legislation is adjusted to fit the developed standard, ensuring that it is in keeping with the needs of the organisations concerned.

- Accreditation

Accreditation is a type of certificate or a statement of good conduct which is established by a competent authority. Accredited laboratories and calibration and inspection institutions provide for tests and research results that are reliable, expert and independent. Qualified employees perform the work according to established and validated procedures. The Board for Accreditation (*Raad voor accreditatie*, RvA) is the highest Dutch authority in this area. It determines on the basis of strict, often international, requirements which laboratories and calibration and inspection institutions may be accredited. These laboratories and calibration and inspection institutions have to comply with numerous standards in their techniques and organisation.

The RvA grants accreditation to laboratories and institutions in the Netherlands. The RvA has a mutual recognition agreement (MRA) with other accrediting institutions both within and outside Europe. The European Cooperation for Accreditation (EA) ensures that all countries are treated equally with regard to accreditation and the same requirements apply everywhere. Certificates issued by Dutch institutions which have been accredited by the RvA are therefore fully recognised and accepted in countries that have signed the MRA.

A certificate is a written statement signifying that a product, service, process, person or quality system meets certain requirements, such as safety or durability requirements. The government promotes the reliability of certificates.

A certificate may also include a quality certification logo which can be imprinted on a product or placed in the description of a service. The quality certification logo demonstrates that a product or service meets the requirements associated with that logo.

Anyone can issue certificates, but there are also specific certification bodies (*certificerende instellingen*, CIs) specialised in accreditation. A CI may accredit certain certificates. Accreditation is a guarantee that a product or service meets certain requirements. A CI is independent and expert body.

The Board for Accreditation (RvA) assesses whether the CI complies with international standards.

As regards financial investigations, it should be mentioned that the investigative agencies have their own experts. For example, the ILT/IOD employs – besides criminal investigators – analysts, technical and legal experts, forensic accountants, computer forensic examiners, strategic advisers and experts in obtaining and processing data and information. The police also employs such experts. The investigation team can acquire such expertise for its criminal investigation using the playing field method, which is explained in the answer to question 16.

In the case of lucrative criminal offences, the judge may, in addition to a conviction, impose a confiscation of unlawfully obtained gains (*ontneming wederrechtelijk vermogen*) at the request of the Public Prosecutor. Imposing such a measure ensures that the unlawfully obtained financial benefit is removed. The unlawfully obtained financial benefit can be calculated in a number of ways: calculation per offense or calculation over a certain period of time. Investigation of the (alleged) illegally obtained benefits takes place in the framework of a financial investigation of the criminal case (*Strafrechtelijk Financieel Onderzoek*, SFO), which runs parallel to the investigation in the criminal case.

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

Although the transport sector is made up of many companies, specialised hazardous (waste) substance transport is increasingly dominated by a limited number of large business groups, such as large chemical companies, fuel manufacturers and waste processing companies. Due to the complexity of the rules, their knowledge of the transport of hazardous (waste) substances and the size of certain streams, the large business groups control increasingly large parts of industries (through mergers and acquisitions), including modes of transport.

Another challenge is the definition of waste. The companies that work with hazardous waste substances do not view waste as waste but as materials that can be reused. As a consequence, the application of hazardous waste legislation and the enforcement of the rules – other than those for hazardous substances – will be jeopardised.

These developments complicate the supervision of hazardous (waste) substances and increase the responsibilities incumbent (through self-regulation) on companies.

The supervision and enforcement agencies will therefore focus more on cooperation and an integrated approach, so as to be able to track the hazardous (waste) material flow chain (from suppliers/discarders via various modes of transport to recipients/processors). Wherever hazardous substances are present (whether it is waste, residual streams or raw materials) transporters play a role. Knowledge and information about hazardous (waste) substances and their transport is essential in fighting environmental crime.

### 9.3.5. *Training*

The United Nations' European Agreement concerning the International Carriage of Dangerous Goods by Road (the ADR Treaty establishing requirements for the transport of hazardous substances by roads) requires that personnel working with hazardous substances receive specific training. This obligation applies not only to drivers transporting hazardous materials, but also to employees who complete freight letters, warehouse employees and fork-lift truck drivers who move hazardous substances into warehouses. It even applies to employees of home improvement supplies retail companies that sell dangerous substances, such as thinner, and to employees who load these substances into vehicles for home delivery.

The ADR Treaty states that employees must be trained. The level of training is determined by the requirements of the transport of dangerous goods and the responsibilities and duties of the employee with regard to that transport. For example, employees who complete freight letters do not need comprehensive ADR training, but they must be familiar with the basic requirements for the transport of hazardous substances.

#### 9.4. Conclusions

- In the report, the following activities related to the handling of hazardous waste are identified as the most important: blending of dangerous materials in large non-hazardous (waste) streams; document fraud; labelling hazardous substances as non-hazardous; labelling dangerous waste materials as dangerous materials; and illegal transport of mercury. These are certainly also well-known and major problems in the other Member States.
- In addition to these recurrent problems, the Netherlands faces a specific problem concerning the illegal disposal of waste from the production of synthetic drugs. The provincial action plan to combat this type of criminal activity seems to be an adequate basis for successful cooperation in the future, taking into consideration the possible interaction with neighbouring countries.
- The most important aspect in fighting environmental crimes is to enhance the cooperation between supervision and enforcement agencies and allow them to share useful information. Access to and coordination between the various databases in use need to be developed.
- The Andante team is part of the Infrastructure Service of the National Unit of the Police (*Dienst Infrastructuur*, DINFRA) and consists of police officers that carry out tasks at national level involving the enforcement of rules on hazardous waste in road, rail, water and air transport which cannot be performed by regional units. This team focuses on fighting crimes involving the blending of hazardous waste.
- As an example of good practice it can be mentioned that both the investigative agencies and the police have their own experts, in addition to criminal investigators: analysts, technical and legal experts, forensic accountants, computer forensic examiners, strategic advisers and experts in obtaining and processing data and information, including with regard to the illegal production or handling of dangerous materials.



## 10. FINAL REMARKS AND RECOMMENDATIONS

### 10.1. Suggestions from the Netherlands

### 10.2. Recommendations

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

The Netherlands should follow up on the recommendations given in this report 18 months after the evaluation and report on the progress to the Working Party concerned.

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

#### *10.2.1. Recommendations to the Netherlands*

1. Consider the possibility of increasing the involvement of the customs authorities at strategic and tactical levels as well as in the activities of the National Environmental Chamber;
2. Encourage the national authorities to collect and publish statistics on criminal offences and court cases concerning waste crime;
3. Consider the possibility of sharing their expertise on financial investigations within the environmental crime priorities of the EU Policy Cycle;

4. Consider the possibility of focusing more at national level on the inspection of waste shipments out of the Netherlands;
5. Consider connecting the competent authorities to the SIENA system;
6. Assess the necessity of establishing JITs from the very beginning phase of the investigations (as for the financial investigations), if appropriate;
7. Encourage the 29 regional environmental agencies to work in a more integrated way, including by sharing more information;
8. Consider the possibility of creating guidelines on the distinction between (by-)products and waste;
9. Review the inspections system in relation to Article 50(c) and (d) of the Shipment Regulation.

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

Member States should consider the following good practices:

1. The Knowledge Centre put in place by the judicial authorities for the interpretation of law and case law;
2. The high level of education and training of the specialised police officers, prosecutors and judges, as well as the initial training of all LEA authorities;
3. The existence of one specialised police officer in every police unit;
4. The existence of specialised environmental inspectors;
5. The good functioning of the National Environmental Chamber and its role in taking decisions related to the competent authorities to deal with each case;
6. The existence of specialised prosecutors and judges;
7. The assessment of the financial part of the case from the very beginning of the investigations;
8. The five-year rotation system of the inspectors in charge of assessing the big companies.

### *10.2.3. Recommendations to Eurojust/Europol/Commission*

1. Europol should reinforce resources in the field of environmental crime in order to enhance the fight against this type of crime;
2. Europol should enhance its focal point in the environmental crime field, taking into consideration its multidisciplinary dimension;
3. Eurojust should raise awareness of the added value of using JITs;
4. The Commission should consider the possibility of drafting guidelines on how to differentiate between (by-)products and waste.

## ANNEX A:

## PROGRAMME FOR THE ON-SITE VISIT AND PERSONS INTERVIEWED/MET

**Draft Programme for eighth round of mutual evaluation**

On the practical implementation and operation of the European policies on preventing and combating environmental crime.

**Visit to the Netherlands**

Focus: - Illegal Trafficking in Waste

**Wednesday 22 November – Friday 24 November 2017**

- Illegal Production or Handling of Dangerous Materials

		<b>Wednesday 22 November 2017</b>	<b>Location THE HAGUE</b> <b><u>Ministry of Security and Justice in The Hague/Den Haag</u></b> <b><u>Turfmarkt 147</u></b> <b><u>2511 DP Den Haag</u></b> <b>Z36-33 - Zwolle room (South tower)</b>
		<b>Activity</b>	<b>Presenter's name</b>
<b>8.30</b>		<i>Pick up at Lobby Novotel Suites Den Haag City by Wendela Neeft</i> <i>Walk to ministry.</i>	
9.00		<b>Coffee and tea</b>	
9.30	9.40	<b>Welcome</b>	<b>International Coordinator of the Law Enforcement Department</b> Nicholas Franssen
9.40	10.00	<b>Introduction team and guests (expectations of team)</b>	<b>Everyone</b>
10.00	10.45	<b>Policy and action programmes of Ministry of Infrastructure and the Environment regarding waste processing</b> <i>Break 10.45-11.00</i>	<b>Ministry of Infrastructure and the Environment/Rijkswaterstaat</b> Marco Kraakman, advisor waste and materials at the Rijkswaterstaat
11.00	11.45	<b>General Provisions Environmental Law Act (Wabo) and system of licencing supervision and enforcement</b>	<b>Ministry of Infrastructure and the Environment</b> Jan Teekens, policy advisor Marc du Maine, policy advisors
<b>12.00</b>	<b>13.00</b>	<b>lunch offered by the Ministry of Security and Justice</b>	
13.00	13.45	<b>Bird's Eye Overview</b> <b>- The functioning of the system of licencing, supervision and enforcement</b> <b>- organisation involved FP, NP, ILT, NVWA, OD's (tasks and responsibilities)</b> <i>Break 13.45-14.00</i>	<b>Regional Environmental Agencies</b> Jos Zanders, project manager BRZO  <b>Police</b> Hugo van Klaveren, Portfolio Holder Chief Investigation of environmental crime on behalf of the National Police

14.00	14.45	<b>Bird's Eye Overview continued</b> <b>- decision making process SMK, LMK</b> <i>Break 14.45-15.00</i>	<b>Public Prosecutors Service</b> Rob de Rijck, Coordinating Public Prosecutor for environmental crime of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation
175.00	15.30	<b>Courts</b>	<b>Courts Expertise Centre Environment and Health</b> Roos van den Munckhof, judge Court East Brabant
15.30	16.00	<b>National Public Prosecutor's Office for Financial, Economic and Environmental Offences (Functioneel Parket)</b> <i>Break 16.00-16.15</i>	<b>Public Prosecutors Service</b> Rob de Rijck, Coordinating Public Prosecutor for environmental crime
16.15	17.45	<b>Organisation of the National Police</b> and <b>Case Gandalf</b>	<b>Police</b> Hugo van Klaveren, Portfolio Holder Chief Investigation of environmental crime on behalf of the National Police Leo Rooijackers, senior tactical investigator
		<i>10-minute walk from Ministry to restaurant</i>	
<b>18.00</b>	<b>20.00</b>	<b><u>dinner offered by the Ministry of Security at Cottontree City by Dimitri</u></b>	<b><u>Cottontree City by Dimitri</u></b> <b><u>(<a href="http://www.cottontree.nl/city/en/">http://www.cottontree.nl/city/en/</a>)</u></b> Lange Voorhout 98, Den Haag

		<b>Thursday 23 November 2017</b>	<b>Location <u>UTRECHT</u></b> <b><u>Inspectie Leefomgeving en Transport / Human Environment and Transport Inspectorate (ILT)</u></b> <b><u>Graadt van Roggenweg 500</u></b> <b><u>3531 AH Utrecht</u></b> <b>Zaal 7.56</b>
		<b>Activity</b>	<b>Presenter's name</b>
<b>08.30</b>		<i>Pick up at Lobby Novotel Suites Den Haag City by Wendela Neeft</i> <i>Bus to Utrecht</i>	
10.00	10.45	<b>Netherlands Food and Consumer Product Safety Authority (NVWA)</b> <i>Break 10.45-11.00</i>	<b>Netherlands Food and Consumer Product Safety Authority (NVWA)</b>  Karen Gussow, coordinating specialist inspector for the team development and intelligence NVWA-IOD
11.00	11.45	<b>Fraud with residual streams</b>	<b>NVWA</b>  Bart Fortuin, strategic analyst / researcher
<b>12.00</b>	<b>13.00</b>	<b>lunch offered by ILT</b>	
13.00	13.30	<b>The Human Environment and Transport Inspectorate (ILT) combating environmental crime</b>  Outline:  The presentation will give a general introduction into the organization of the Human environment and transport inspectorate, the Dutch national inspectorate on environmental oversight and enforcement. A short overview of developments in the past, present and near future will be given and strategic goals, intelligence lead planning and allocation of resources will be covered.  <i>Break 13.30-13.45</i>	<b>Human Environment and Transport Inspectorate (ILT)</b>  Peter Neuteboom, managing board representative
13.45	14.15	<b>Future exploration of plastics</b>  Outline:  Explanation of plastics as a key priority in the circular economy as well in EU and the Netherlands. An overview will be given on supervision on EPR (e.g. packaging and waste packaging en ELV) and Regulation on shipment of waste. Supervision in the years to come is raised: transition to a circular economy, risk based, law enforcement and other possibilities to supervise as well as priorities to explore the plastic market.  Than what do we need?: agreements, law, and above	<b>ILT</b>  Guido van der Meij, senior inspector

		all: transparency and authority. Developments like the China import ban will be explained. <i>Break 14.15-14.30</i>	
14.30	15.00	<p><b>Supervision on the Transport of Dangerous Goods (Waste Materials) in the Netherlands/What is the effect of our supervision on waste crime?</b></p> <p>Outline:</p> <p>The presentation has as starting point that Illegal acts are made throughout the whole chain of which transport is a small part.</p> <p>An overview of the national law and regulations of the transport of dangerous goods and cooperation with other inspectorates / (public (services), (inter)national organizations will be given.</p> <p>Explained will be who and what we have to supervise and how we carry out the inspections on the transport of dangerous goods.</p> <p>Developments (e-commerce, e-waste, use of drones, GPS etc.) will be explained.</p> <p><i>Break 15.00-15.15</i></p>	<p><b>ILT</b></p> <p>Hennie van der Stokker, senior advisor</p>
15.15	16.00	<p><b>Investigation Buttercup</b></p> <p>Outline:</p> <p>The Investigation ‘Buttercup’ is a Dutch case that concerns the violation of the European Waste Shipment Regulation. The case was about garbage / mixtures of waste which were shipped to the Netherlands under the name of old paper from the UK, Ireland and Scotland. The Dutch company exported the waste illegally to China. In January 2017, the court Zeeland and West Brabant has sentenced the suspects to imprisonment.</p> <p><i>Break 16.00-16.15</i></p>	<p><b>ILT</b></p> <p>Thera Boelhouwer, coordinating specialist inspector</p> <p>Ben Bom, forensic accountant</p>
16.15	16.45	<p><b>Case 30 days of action</b></p> <p>Outline:</p> <p>Specific cross border operation carried out from 1 to 30 June 2017. A world-wide operation against illegal disposal and trade in waste in which forty-three countries participated. The operation was initiated and coordinated by Interpol in cooperation with the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL).</p>	<p>Ton Post, senior inspector</p>
16.45	17.00	<b>Summary of the afternoon</b>	<p>Edwin Lakerveld , head of ILT-IOD</p>
<b>17.30</b>		<b><u>Transport to The Hague</u></b>	

		<b>Friday 24 November 2017</b>	<b>Location</b> <b><u>Ministry of Security and Justice in The Hague/Den Haag Z36-33 - Zwolle room (South tower)</u></b>
		<b>Activity</b>	<b>Presenter's name</b>
<b>8.30</b>		<i>Pick up at Lobby Novotel Suites Den Haag City by Wendela Neeft</i> <i>Walk to ministry.</i>	
<b>8.45</b>		<b>coffee and tea</b>	
9.00	9.45	<b>Licencing</b> <b>Supervision / inspections and enforcement – the Big 8</b> <b>Regional Environmental Agencies</b> <i>Break 9.45 – 10.00</i>	<b>Provinces, municipalities, regional environmental agencies</b> Jos Zanders, project manager BRZO Marinus Jordaan, senior staff officer enforcement
10.00	10.45	<b>Case car disassembly</b> <i>Break 10.45 – 11.00</i>	<b>Regional environmental agency Rijnmond (DCMR)</b> Annelies Zuurmond-van Ede, extraordinary investigating officer Marinus Jordaan, senior staff officer enforcement
11.00	11.45	<b>Case illegal disposal of hazardous and toxic waste</b> <i>Break 11.45 – 12.00</i>	<b>Regional environmental agency Central and West Brabant (OMWB)</b> Jordi van der Steen, specialist researcher
12.00	12.30	<b>Presentation by the expert team on conclusions and draft recommendations</b>	<b>Expert team</b>
<b>12.30</b>	<b>13.30</b>	<b>Optional lunch offered by the Ministry of Security and Justice</b>	
		<b>end of this day's programme</b>	



## ANNEX B

## LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	DUTCH OR ACRONYM IN ORIGINAL LANGUAGE	DUTCH OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
<b>BTP</b>	<i>Basistakenpakket</i>		<p><b>Basic Tasks Collection (BTP)</b></p> <p>Local licensing authorities (in provinces and municipalities) are required to transfer most of the environmental licensing tasks and inspection tasks to the regional environment agencies. These tasks are listed in the <i>Basistakenpakket</i>/Basic Tasks Collection (BTP). See <a href="https://www.omgevingsdienst.nl/default.aspx">https://www.omgevingsdienst.nl/default.aspx</a> for an overview of this list. These basic tasks are set out in the VTH Decree (<i>Besluit VTH</i>). Local licensing authorities can choose to transfer extra monitoring tasks to the regional environmental agencies that are not included in the BTP.</p>
<b>BRZO</b>	<i>Besluit Risico's Zware Ongevallen</i>		<p><b>Risks of Major Incidents Decree</b></p> <p>The EU Seveso III Directive is implemented in the Dutch BRZO Decree. BRZO is an abbreviation of <i>Besluit Risico's Zware Ongevallen</i>, in English: Risks of Major Incidents Decree.</p>
<b>BRZO-omgevingsdienst</b>			<p><b>Regional BRZO environmental agency</b></p> <p>All companies that work with dangerous materials have to comply with the Dutch BRZO Decree (implementation of the EU Seveso III Directive). These companies, along with any companies that have a 'Rie cat 4' installation are supervised by six specialised environmental agencies. These six agencies are called 'BRZO Environmental Agencies' (<i>BRZO-omgevingsdienst</i>). The six count among the 29 environmental agencies. They execute the normal basic tasks like any other environmental agency, but they also supervise these heavy industries for their own territory and for the territories of other environmental agencies.</p>

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	DUTCH OR ACRONYM IN ORIGINAL LANGUAGE	DUTCH OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
BOD-en	<i>Bijzondere opsporingsdiensten</i>		<p><b>Special Investigative Services</b></p> <p>The four national supervisory authorities have their own investigative services, known as Intelligence and Investigative Services (<i>Inlichtingen- en Opsporingsdienst, IOD</i>).</p> <p>ILT/IOD (Intelligence and Investigative Service of the Human Environment and Transport Inspectorate)</p> <p>NVWA/IOD (Intelligence and Investigative Service of the Netherlands Food and Consumer Product Safety Authority)</p> <p>ISZW/IOD (Intelligence and Investigative Service of the Social Affairs and Employment Inspectorate)</p> <p>FIOD (Intelligence and Investigative Service of the Fiscal Intelligence and Investigative Service).</p> <p>These four services combined are called the Special Investigative Services.</p>
	<i>Bijzondere opsporingsambtenaar</i>		<p><b>Special investigating officers</b></p>
BOA	<i>Buitengewoon opsporingsambtenaren</i>		<p><b>Extraordinary investigating officers (BOA)</b></p> <p>An extraordinary investigating officer (BOA) is a sworn criminal investigation officer who is authorised to detect certain offences, which are usually limited in number or belong to a specific category. This is in contrast to general criminal investigation officers, who are responsible for detecting and investigating almost all criminal offences. Examples of extraordinary investigating officers are municipal enforcement officers, parking controllers, forest rangers, environmental criminal investigating officers, public transport conductors and social benefits criminal investigators. In many cases, extraordinary investigating officers also have duties related to maintaining public order and safety. Some of these officers are authorised to carry and use weapons.</p>

	<i>Douane</i>		Tax and customs administration
<b>EVOA</b>	<i>Europese Verordening Overbrenging Afvalstoffen</i>		<b>Waste Shipment Regulation (WSR)</b> EVOA is the Dutch abbreviation for the Waste Shipment Regulation (WSR) – Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.
<b>FP</b>	<i>Functioneel Parket</i>		<b>Literally: Functional Office. National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation.</b>
	<i>Haalcriminaliteit</i>		<b>Literally: fetch crimes. Proactive detection of crimes.</b> Detection of environmental crime requires proactive detection. Contrary to most other types of crimes, there are no immediate victims (in most cases) when an environmental crime is committed. Detection of environmental crime therefore depends on proactive checks, e.g. inspections of chemical industries. Also, environmental crimes are easy to commit and difficult to detect.
<b>IPPC</b>	<i>IPPC installatie</i>		<b>IPPC installation</b> An IPPC installation is a stationary technical unit where one or more activities listed in Annex I of the European Industrial Emissions Directive are carried out. This Annex used to be part of the IPPC Directive. These activities are divided into six categories. Category 4 covers activities in the chemical industry. Installations which carry out activities in chemical industries are called IPPC category 4 installations; in Dutch ' <i>RIE 4 installatie</i> ' or ' <i>IPPC 4 installatie</i> '. RIE is an abbreviation of <i>Richtlijn industriële emissies</i> , which is the Dutch translation of Directive 2010/75/EU on industrial emissions.
<b>IOD</b>	<i>Inlichtingen- en Opsporingsdienst</i>		<b>Intelligence and Investigative Service</b> The criminal investigative service of one of four national supervisory authorities.
<b>ILT</b>	<i>Inspectie Leefomgeving en Transport</i>		<b>Human Environment and Transport Inspectorate (ILT)</b>

<b>ILT/IOD</b>	<i>ILT Inlichtingen- en Opsporingsdienst</i>		<b>Intelligence and Investigative Service of the ILT</b> The criminal investigation service of ILT.
	<i>Inspectie View Milieu</i>		<b>Inspection View Environment</b> Inspection View is a system by which information on inspections and enforcement can be exchanged between governmental organisations. Currently, there are three different versions of Inspection View: Inspection View Companies, Inspection View Environment and Inspection View Inland Waterway Vessels.  The ILT is the manager and owner of these systems and officers of other organisations may make use of these systems. Officers cannot access documents (such as inspection reports or letters regarding interventions) in Inspection View Environment, but must request these directly from the relevant authority.
<b>ISZW</b>	<i>Inspectie Sociale Zaken en Werkgelegenheid</i>		<b>Social Affairs and Employment Inspectorate</b>
<b>ISZW-IOD</b>	<i>ISZW Inlichtingen- en Opsporingsdienst</i>		<b>Intelligence and Investigative Service of the ISZW</b> The criminal investigation service of ISZW.
<b>IPO</b>	<i>Interprovinciaal Overleg</i>		<b>Association of Provinces of the Netherlands</b> IPO is an association of the twelve provinces of the Netherlands. The association looks after provincial interests and forms a platform for exchanging knowledge and experiences among the twelve Dutch provinces. The IPO also instigates and takes the initiative in reform programmes.

<b>LHS</b>	<i>Landelijke Handhavingsstrategie</i>		<p><b>National Enforcement Strategy</b></p> <p>The National Enforcement Strategy is a document which provides guidance on supervision and sanctioning. All organisations involved have implemented the LHS or ensured that their policies are in line with the strategy.</p> <p>The LHS is a document containing guidelines to determine the frequency of inspections for companies and specify what type of sanctions should be imposed in specific situations (based on specific circumstances such as gravity factors) and when cases should proceed for trial by a judge. The National Enforcement Strategy is a policy guideline for all administrative and law enforcement organisations in environmental crime and the Public Prosecution Service. The strategy is not codified in legislation.</p>
LMK	<i>Landelijke Milieukamer</i>		<p><b>National Environmental Chamber</b></p> <p>The National Environmental Chamber is a special national steering committee (<i>stuurploeg</i>) for environmental crimes.</p>
NVWA	<i>Nederlandse Voedsel- en Waren Autoriteit</i>		<p><b>Netherlands Food and Consumer Product Safety Authority</b></p>
NVWA/IOD	<i>NVWA Inlichtingen- en Opsporingsdienst</i>		<p><b>Intelligence and Investigative Service of the NVWA</b></p> <p>The criminal investigation service of the NVWA.</p>
	<i>Ondermijnende criminaliteit.</i>		<p><b>Undermining crime</b></p> <p>Undermining crime is crime that damages social structures or trust in them. This kind of crime is often committed in organised form.</p>

<p><b>OD</b> <b>RUD</b></p>	<p><i>Omgevingsdienst or Regionale uitvoeringsdienst</i></p>	<p><b>Regional environmental agency (OD) or Regional Implementation Service (RUD).</b></p> <p>The RUDs have been renamed 'ODs', but some ODs are still called RUDs. Local authorities (provinces and municipalities) are usually the licensing authorities and therefore primarily responsible for monitoring compliance with environmental legislation. Local licensing authorities are required to transfer most environmental licensing and inspection tasks to the regional environment agencies. These tasks are listed in the <i>Basistakenpakket/Basic Tasks Collection (BTP)</i>. Local licensing authorities can choose to transfer extra monitoring tasks to the regional environmental agencies that are not included in the BTP. Although the regional environmental agencies execute several environmental tasks, the municipalities and provinces are still the competent authorities and responsible for these tasks. These regional environment agencies employ (extraordinary) investigating officers who can take action if the rules are violated.</p>
	<p><i>Prewegg-document</i></p>	<p><b>Literally: pre-weight document. Prior deliberation document.</b></p> <p>A deliberation document is a document that gives an initial outline of a potential criminal case. On the basis of that document, a steering committee (<i>stuurploeg</i>) decides whether the case is of sufficient severity and there is sufficient suspicion. If that is the case, a project proposal will be commissioned.</p>
<p><b>RIE 4</b></p>	<p><i>RIE 4 installatie</i></p>	<p><b>IPPC category 4 installation</b></p> <p>RIE 4 installations are the installations for industrial chemical activities listed in category 4 of Annex I to Directive 2010/75/EU on industrial emissions (in Dutch: <i>Richtlijn industriële emissies, RIE</i>).</p>

<p><b>SMK</b></p>	<p><i>Strategische Milieukamer</i></p>	<p><b>Strategic Environmental Chamber (SMK)</b></p> <p>The criminal-law approach to environmental crime falls under the direction of the specialised National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation. Due to the complex institutional context with the involvement of various ministries, inspection services and investigative services, a coordinating body has been set up: the Strategic Environmental Chamber (<i>Strategische Milieukamer</i>, SMK). The SMK is chaired by the Chief Public Prosecutor of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation. The SMK sets policy and priorities in the criminal-law approach to environmental crime. The SMK meets three times a year.</p>
	<p><i>Stuurploeg</i></p>	<p><b>Steering committee</b></p> <p>A steering committee is a committee that decides whether a crime should be investigated, based on certain criteria such as sufficient severity, suspicion, resources, and so on. For environmental crime a specific national steering committee has been put in place: the National Environmental Chamber (LMK). The LMK consists of representatives from the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation, the police, the ILT/IOD, the NVWA/IOD and the environmental agencies. After a crime is detected, several stages are gone through to decide if and how the crime is to be investigated. First, a deliberation document (<i>preweeg-document</i>) is drawn up to give an initial outline of a potential criminal case. If the steering committee decides that the case is of sufficient severity and there is sufficient suspicion, a project proposal will be commissioned. On the basis of the project proposal, the steering committee decides whether a criminal investigation is started, under the direction of a case prosecutor. The required capacity for the investigation will be made available on the basis of a plan of approach.</p>

	<i>Uitvoeringsagenda SMK</i>		<p><b>Action Programme of the Strategic Environmental Chamber</b></p> <p>This action programme is a new initiative. The first programme is currently being determined by the Strategic Environmental Chamber. All organisations that are part of the SMK will commit to this programme. The programme will identify priorities and goals for specific subjects and phenomena related to environmental crime. The priorities are derived from the identified threats in the National Threat Assessment on Environmental Crime. The priorities and goals will focus on the decision-making regarding the cases which should be investigated and the subjects and phenomena on which intelligence needs to be gathered.</p>
UvW	<i>Unie van Waterschappen</i>		<p><b>Association of Dutch regional water board authorities</b></p> <p>The Association of Dutch regional water authorities is an association of all the water board authorities. The association looks after water authorities' interests and forms a platform for exchanging knowledge and experiences among the 22 water authorities.</p>
VNG	<i>Vereniging van Nederlandse Gemeenten</i>		<p><b>Association of Netherlands Municipalities</b></p> <p>The VNG is an association of all Dutch municipalities, the countries Aruba and Curaçao, and the public bodies Bonaire, St. Eustatius and Saba. The VNG supports and promotes the interests of local administrations. The VNG helps municipalities to exchange knowledge and experiences regarding the implementation of national and local policies. The VNG also lobbies on behalf of the municipalities in numerous platforms.</p>



	<p><i>Waterschappen or hoogheemraadschappen</i></p>	<p><b>Water board authorities</b></p> <p>Water boards are regional government bodies responsible for managing water barriers, waterways, water levels, water quality and sewage treatment in their respective regions. These regional water authorities are among the oldest forms of local government in the Netherlands, some of them having been founded in the 13th century. The role of the water board authorities in combating waste crime is mainly concerned with the pollution of surface water, for example through the use of illegal plant protection products and fertilisers as growth promoters.</p>
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ANNEX C

THE INTERVENTION MATRIX

criminal law investigation administrative law Financial fine Repairing Temp shut down extra surveillance	criminal law investigation administrative law Financial fine Repairing Temp shut down extra surveillance	criminal law investigation administrative law Shut down Revoke license Repairing Temp shut down	criminal law investigation administrative law Shut down Revoke license Repairing Temp shut down
criminal law investigation administrative law Financial fine Repairing Warning / speech	criminal law investigation administrative law Financial fine Repairing Temp shut down extra surveillance	criminal law investigation administrative law Financial fine Repairing Temp shut down extra surveillance	criminal law investigation administrative law Shut down Revoke license Repairing Temp shut down
administrative law Repairing Speech inform	criminal law investigation administrative law Repairing Warning / speech	criminal law investigation administrative law Financial fine Repairing Temp shut down extra surveillance	criminal law investigation administrative law Financial fine Repairing Temp shut down
administrative law Repairing Speech inform	administrative law Repairing Speech inform	criminal law investigation administrative law Financial fine Repairing Warning / speech	criminal law investigation administrative law Financial fine Repairing Warning / speech