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- Report on Germany

**EVALUATION REPORT ON THE
EIGHTH ROUND OF MUTUAL EVALUATIONS**

**'The practical implementation and operation of European policies on
preventing and combating environmental crime'**

REPORT ON GERMANY

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1. EXECUTIVE SUMMARY

The visit was well prepared by the German authorities, and included meetings with the relevant actors with responsibilities in the field of preventing and combating environmental crimes as well as in the implementation and operation of European policies. The visit also included a visit to the Land of Brandenburg which was very interesting and allowed for a better understanding of the situation at operational level. On the other hand, it would have been very useful to visit more Länder in order to gain a wider perspective of the whole country.

During the on-site visit the German authorities provided the evaluation team with information on legal and operational aspects of preventing and combating environmental crimes, as well as on cross-border cooperation and cooperation with EU agencies, and additional information was sent by e-mail upon request.

Thus the evaluation team was able to review the system satisfactorily, and to identify good practices to be shared with other Member states.

Germany is a federal state. The power of the State is divided between the federal level and the Länder, consisting of sixteen states (Länder) and the powers, according to the Constitution, are divided vertically and horizontally.

At horizontal level the State power is divided into three branches of government: the legislative, the executive and the judiciary.

At vertical level, the three powers (legislative, executive and judiciary) are assigned to the three levels of Government: the federal level (Bund), the Länder level and the local level. The power of the State is mainly divided between the federal level and the Länder, while the local level tends to be regarded as a constituent part of the Länder.

The German system is characterised by the principle of 'strict separation' of powers and functions between the federal government and the Länder. As members of the federation, the sixteen Länder have sovereign rights and responsibilities which are not devolved from the federation but are granted to them by the Grundgesetz (GG) (vertical division).

However, the German federal system is not based on completely distinct and separate columns of federal and state powers with no connections between them. In fact, the Basic Law (Grundgesetz) establishes a concentration of legislative functions at federal level and a concentration of administrative powers at Länder level. As a result, most legislation is adopted at federal level, but is implemented by the Länder, which have relative freedom regarding how they apply federal laws in administrative structures.

In fact, according to Articles 30 and 83 of the Grundgesetz, the enforcement of legislation lies within the competence of the Länder. Thus, as a rule, the Länder establish the enforcement authorities and the corresponding procedures (Article 84 (1) GG). In this case, the federal government may not exercise any supervisory control (Fachaufsicht). Legal control (Rechtsaufsicht) is limited to a specific procedure between the federal government and the Länder, and is generally not exercised as an individual review.

Legislative power is divided between the federal level and the Länder. Under the Basic Law, the Länder have the right to legislate if the Basic Law does not confer legislative powers on the federal level (Article 70 GG). In these cases, the parliaments of the Länder are responsible for legislation in their own Land.

For important matters of legislation, the Basic law centralises legislative competences at federal level. Here, the two chambers (*Bundestag and Bundesrat*) are responsible for legislation. In principle, the Bundesrat – a federal organ representing the Länder – enjoys only a suspensive veto, which may be overridden in the Bundestag. But in certain cases, the Bundesrat has an absolute veto, in which cases the Bundestag cannot decide without consent of the Bundesrat.

The Basic Law defines three areas of federal legislation: exclusive legislative power of the federation, concurrent legislative power, i.e. shared between the federation and the Länder, and diverging legislation of the Länder.

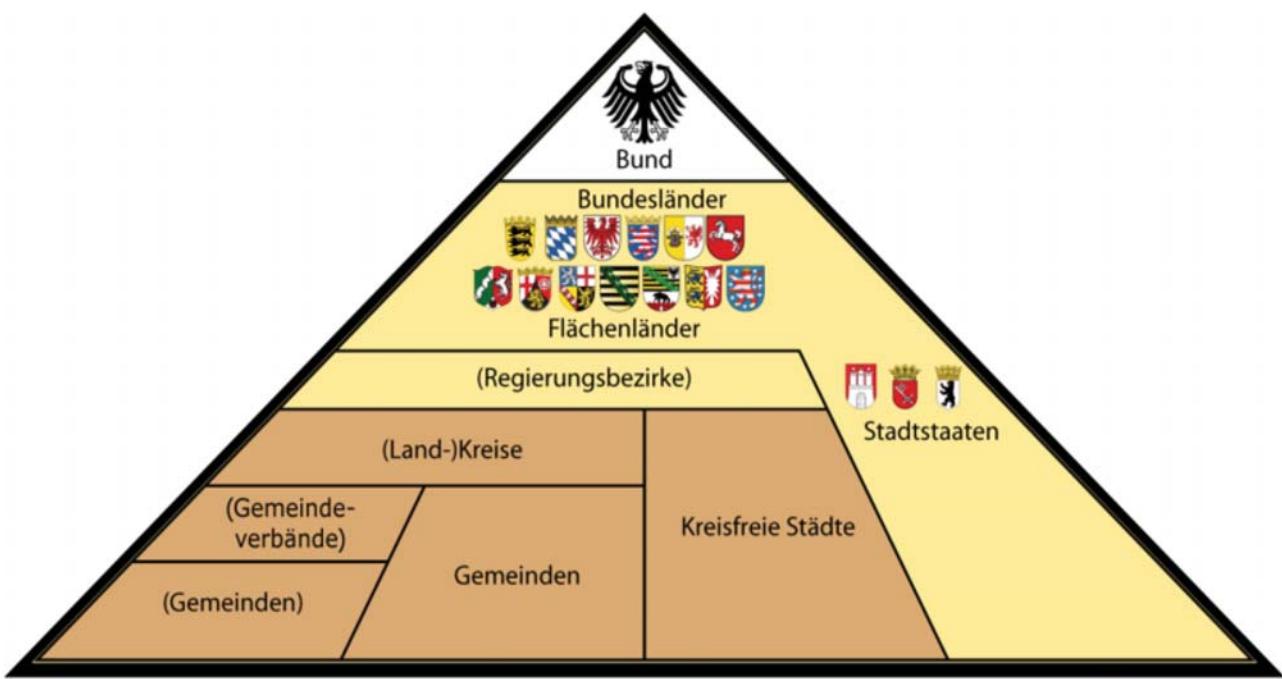
On matters which fall within concurrent legislative power, the Länder have the power to legislate insofar as the federation has not exercised its legislative power by enacting a law (Article 72 GG). On matters which fall within diverging legislation, the Länder are allowed to enact legislation that diverges from federal laws (Article 72 GG). Federal law takes precedence over State (Länder) law (Article 31 GG). Thus, in cases where State (Länder) law is in conflict with federal law, only federal law is binding.

In practice, the federal level has the largest share of the legislative power, due to the possibility to legislate, if it is necessary in the national interest to establish equivalent living conditions throughout federal territory (Article 72(2) GG). Hence, the *de facto* legislative power of the Länder is quite modest, even if their competences were widened in a major reform in 2006. Most of the environmental laws nowadays are federal laws – often deriving from EU legislation. This is especially true for the areas of air pollution control, noise protection, waste management, chemicals, genetic engineering and nuclear safety. Important areas that come under federal laws are, in particular, water management, nature conservation, and landscape conservation.

While most legislative competences are centralised at federal level, the Länder have the main responsibility for the implementation of laws (Articles 30 and 83 GG). This also applies to environmental law.

Municipalities and associations of municipalities (counties, associated municipalities, associations of towns and the surrounding area) are part of the Länder.

Below you can see the structure of Germany with the Federal Republic (Bund) at the top, below the Bund there are sixteen federal States comprising of regional States (Flächenländer) and city States (Stadtstaaten), and everything below that is sub-regional and local level.



Germany has a comprehensive set of rules concerning environmental crimes, consisting mainly of a chapter in the Criminal Code on crimes against the environment (primary criminal law, Kernstrafrecht), and of various rules on environmental crimes found in individual environmental laws (secondary criminal law, Nebenstrafrecht). Criminal law has an important complementary role in relation to environmental administrative law by punishing particularly serious offences with criminal penalties.

The protection of the environment is governed by provisions in the federal Constitution and in the constitutions of some of the Länder. Despite the clear importance given to the environment at constitutional level, it should be noted that tackling waste crime is not seen as a major priority at present, probably due to the need to concentrate efforts on fighting terrorism.

This point was also made in the course of several meetings, in which it was stressed that Germany considered terrorism to be its top priority.

At European level, the German law enforcement authorities (including federal and state police) are represented by the German customs (ZKA) in the EMPACT priority for the years 2018 - 2021 within the framework of the EU SOCTA Policy cycle, which includes environmental crimes.

German customs (ZKA) is part of the EMPACT Priority Environmental Crime as far as its competence is concerned and represents also the Criminal Police Office (BKA) and State Police. However, given that environmental crime is becoming increasingly important both nationally and internationally, a common approach is needed to effectively tackle these behaviours. It would be a plus for all EMPACT countries, as well as for Germany itself, if the German police joined this priority. However it would be a plus for all EMPACT countries if the German police (i.e. BKA) joined the meetings of this priority to directly discuss issues specifically related to Police.

The German law enforcement agencies (esp. BKA and ZKA) also participate actively in the INTERPOL working groups in the frame of the Environmental Security Programme. Further they are member of the EnviCrimeNet and the EnviCrimeNet steering group.

The police has a national and international approach to combating environmental offences; however, decisions taken at strategic level do not necessarily involve any other authorities, such as the environmental authorities who are involved at operational level only. Despite the existence of inter-ministerial decrees exist between the ministries of Justice, Environment and Home Affairs in all federal states, is missing a strategic approach.

There are no general provisions obliging prosecutors and judges to specialise in environmental crimes. However, the courts and prosecutor offices in almost all the Länder have specialised departments/criminal divisions.

Furthermore, within the criminal police of the Länder, specialised investigation units and police investigators with specialised training generally handle environmental crime cases.

The customs authorities play a significant role, especially in cross-border cases. The advantage of this organisation lies in the fact that it is a nationwide authority with clear and direct reporting channels.

All ordinary investigative measures are used to investigate waste crimes, including forensics and financial investigations, electronic data back-up and analysis measures, while special means of investigation play a limited role due to the penalty provided for under the waste crime laws.

A link to organised crime could be found in a few cases only¹. However, the specific elements of the German definition of organised crime, i.e., “using commercial or quasi-commercial structures”, are usually present in businesses in the waste management sector and cannot therefore be used to characterise an activity as organised crime alone. All other specific elements of the organized crime definition must be taken into consideration or proven. On the basis of their strong links with economic crime, serious manifestations of waste trafficking can be characterised as a special form of organised economic crime. Effective investigative tools are not always used in order to successfully investigate waste crime cases.

The way of investigating is different among the Lander as some of them have developed more advanced tools of investigation (such as developed forensic means) .

In order to tackle illegal waste trafficking homogeneously coordination among Prosecutors and police offices from different Länder as well as the exchange of best practices, which have been tested in some Länder are desirable.

¹ Organised crime is not defined by German law. Therefore, the following working definition of "Organised Crime", which was adopted by the Joint Working Party of the German Police and Judicial Authorities (GAG Justiz/Polizei) in May 1990, serves as the basis for the data collection:

“Organised Crime is the planned commission of criminal offences determined by the pursuit of profit or power which, individually or as a whole, are of considerable importance if more than two persons, each with his/her own assigned tasks, collaborate for a prolonged or indefinite period of time

- a) by using commercial or business-like structures,
- b) by using force or other means of intimidation, or
- c) by exerting influence on politics, the media, the public administration, the judiciary or the business sector” (BKA, Organised Crime. National Situation Report 2016, p. 10).

The police, as well as the prosecutors, reported that the legislation is very complex. Particular challenges in the field of environmental crime also arise from the scientific and technical complexity of many cases. Public prosecutor's offices are entitled to request information from all authorities, but only in some Länder do the law enforcement and judicial authorities have direct access to the databases and registers kept by administrative authorities.

Although it would be advisable to guarantee direct access, it must be said that even indirect access is adequate.

A single database - called PIAV - is being implemented and should become operational, for waste crimes, in 3 to 5 years. The integration of customs into PIAV is also foreseen.

The environmental authorities have primary responsibility for inspections and risk prevention, and for enforcing the relevant administrative laws. However, the detection of crimes is limited due to the lack of expertise needed for detecting crimes. At the same time, the detection of crimes would increase if the police had the power to carry out inspections on shipments of waste on public roads. Only some of the Länder: e.g. Rhineland-Palatinate, have given their police this power.

On the other hand, in view of preventing waste crime, the requirement that all trucks carrying waste be marked with an 'A' sign has proven to be effective. This allows control authorities to identify waste shipment vehicles quickly and easily.

Regarding the inspection of facilities, the environmental inspection authority was previously obliged to give notice of an inspection. However, practise has shown that it is beneficial to perform unannounced inspections as well. That is why the procedure has changed in some Länder and now, in addition to announced inspections, unannounced inspections are carried out too.

Cooperation among the authorities concerned seems to be quite good and close. The arrangements for cooperation between the Länder authorities, the Federal Office for Goods Transport, and the customs authorities on inspections of waste shipments are set out in the Waste Shipment Act. There is also a set of guidelines for cooperation between customs authorities and waste authorities with regard to waste shipments (<http://www.laga-online.de/servlet/is/23875/>).

The posting of a police officer to the Environment Ministry of North-Rhine Westphalia is seen as an important instrument of cooperation. The task of this post is to channel possible criminal cases in the Ministry and establish the appropriate link to the police authority or prosecutor.

Apart from the examples of good cooperation described above, some difficulties in cooperation between the various authorities were reported in individual cases by the Ministries of Justice of some Länder.

International cooperation was also said to be good, as was the German authorities' use of EU tools.

Training is generally provided by all the institutions to their personnel. However, joint training involving all the relevant institutions should be organized with a view to sharing experiences and focusing on problems and possible solutions. This is especially needed for environmental authorities that carry out an important role with regard to inspections.

The private sector is involved through a self-control system. However, the representatives of NGOs interviewed during the visit reported that more public controls were needed, and that, if possible, these should be centralised, while self-control systems should be reduced.

The main authorities keep statistics. For the police it is the Federal Criminal Police Office (Bundeskriminalamt) that collects *inter alia* data about the number of cases in the Police Crime Statistics (Polizeiliche Kriminalstatistik). The Federal Statistical Office (Statistisches Bundesamt) compiles the federal judicial statistics, mainly in the Statistics on Criminal Prosecution (*Strafverfolgungsstatistik*, Series 10, Part 3), by combining the results of the criminal law enforcement statistics of the Länder. However, these statistics do not allow drawing conclusions with regard to the progress and outcome of specific cases and proceedings for example, by comparing the number of cases with the number of prosecutions and convictions.

Analysing the available data on recorded cases of waste crime, they seem to be low compared to the size of the territory, social perception and press reports.

In the experts' view, Germany has quite a good system in place for fighting waste crimes but, due to the fact that waste crime is not considered as a priority, the results are not in line with the actual possibilities.

2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997², 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 5 May 2017 that the eighth round of mutual evaluations should be dedicated to 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 the term environmental crime, it was agreed that the evaluation would focus on those offences which Member States felt warranted particular attention.

To this end, the evaluation round covers three specific areas: waste crime, illegal production or handling of dangerous materials, and hazardous waste, and 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 Directives³ (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 law⁴ (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 waste⁵ (entry into force 12 July 2007), are particularly relevant in this context.

Following the decision made by GENVAL, the evaluation round does not cover transnational criminal activities linked to other types of environmental crime, such as illicit wildlife trafficking, illicit timber trade, illicit fish trade or air pollution.

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

³ OJ L 312, 22.11.2008, p. 3.

⁴ OJ L 328, 6.12.2008, p. 31.

⁵ OJ L 190, 12.07.2006, p. 1.

Furthermore, the Directive on Waste requires the Member States to create national waste prevention programmes by 12 December 2013. The objective of these programmes is to present a coordinated national approach to waste prevention, delineating targets and policies, and aiming to decouple economic growth from the environmental impacts of waste generation. National waste prevention programmes should support Member States in decoupling economic growth from the environmental impacts of waste generation.

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

Moreover, the Council conclusions on countering environmental crime of 8 December 2016⁶ recognise that combating environmental crime needs a comprehensive, multidisciplinary approach at all levels, better cooperation and exchange of information between the competent authorities including third countries, and the need to enhance dialogue and cooperation with the relevant international organisations.

Taking all of the above elements into consideration, the evaluation aims to be broad and interdisciplinary, and not focus on the implementation of various instruments relating to fighting environmental crime only, but rather on the operational aspects in the Member States. Therefore, apart from cooperation between the prosecution services and Eurojust, this will also encompass how police authorities and customs cooperate at national level with Europol or Interpol, and how information from the given actors is channelled to the appropriate police and specialised agencies. The evaluation also covers operational practices in the Member States with regard to waste treatment operations, and to establishments and undertakings which collect and transport waste on a professional basis.

⁶ 15412/16 ENFOPOL 484 ENV 791 ENFOCUSTOM 235.

The order of visits to the Member States was adopted by GENVAL on 5 May 2017. Germany was the seventh Member State to be evaluated during this round of evaluations. In accordance with Article 3 of the Joint Action, a list of experts in the evaluations to be carried out was drawn up by the Presidency. Member States nominated experts with substantial practical knowledge in the field pursuant to a written request made to delegations on 28 January 2017 by the Chairman of GENVAL.

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

The experts charged with undertaking the evaluation of Germany were Mr Karl Frauenberger, Mr Pietro Molino and Mr Derk Jan de Boer. The following observers were also present: Mr Andreas Mausolf (Europol), together with Ms Carmen Giuffrida 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 Germany between 30 January and 2 February 2018, and on Germany's detailed replies to the evaluation questionnaire, together with their detailed answers to the ensuing follow-up questions.

3. GENERAL MATTERS AND STRUCTURES

3.1. Action plan or similar strategic documents against waste crime

Germany does not have any plan or similar strategic document on federal level which includes all the institutions tackling and preventing waste crime.

Inter-ministerial decrees governing cooperation between the authorities involved in combating environmental crime have been issued by the Ministries of Justice, Environment and Home Affairs in all states (Länder). However, an inter-ministerial approach, involving all relevant Federal State (Länder) authorities in identifying strategic goals and setting up actions could not be ascertained.

The German police has a national and international approach to combating environmental and consumer protection offences, which is designed to ensure tougher action to combat such offences, and uniform enforcement by the criminal police in Germany.

During the inspection visit, a document was provided which sets out the approach taken to fighting illegal waste disposal at police level in the States (Länder) of Saxony, Thuringia, Brandenburg and Saxony-Anhalt. In this document, the need for cooperation with the waste authorities as well as with the judicial authority is highlighted.

The police's approach involves other authorities at operational level only, and not at the strategic level.

The national approach contains a set of measures, primarily the following:

- Establishment of specialist criminal police units;
- Specialised training for the criminal police;
- National/international exchange of information between criminal police forces, including centralised analysis;
- Cooperation between law enforcement and environmental authorities;
- Combating of supra-local/serious crime by a central unit.

3.2. National programmes/projects with regard to waste crime

No national programme or project has or is being carried out with regard to waste crime.

3.3. Statistics

3.3.1. Main trends with regard to waste crime

Statistics for criminal law enforcement are based on the nationally uniform regulations of the federal States (Länder), as there is no regulation at EU or federal level in this regard.

The Federal Criminal Police Office (Bundeskriminalamt) publishes annually the Police Crime Statistics (Polizeiliche Kriminalstatistik). Data show number of cases and the number of suspected persons in waste crime.

The Federal Statistical Office (Statistisches Bundesamt) compiles the judicial federal statistics by combining the results of the criminal law enforcement statistics of the Länder.

Data are collected electronically, and are usually sent to the competent Land statistical office at the end of each month.

The statistics published annually by the Federal Statistical Office concern the public prosecutor's offices (Staatsanwaltschaften, Series 10, Part 2.6) and the Statistics on Criminal and Administrative Penalty Proceedings (Strafgerichte, Series 10, Part 2.3) list all concluded proceedings in categories according to their subject matter. Waste crimes are included in the 'environmental protection cases' category. However, the statistics do not show what proportion of environmental crime is accounted for by waste crime, or against how many persons the proceedings were brought.

However it should be noted that the number of persons actually tried/convicted for these offences may be higher than the number resulting from these official statistics. That is because in the statistics on criminal prosecution any persons tried/convicted who have infringed more than one criminal provision, i.e who through one act violate a number of provisions, who violate the same provision more than once (§ 52 of the Criminal Code) or who violate a number of provisions by committing multiple offences (§ 53 of the Criminal Code), are only recorded in the statistics in respect of the offence which carries the highest penalty.

The statistics kept by German authorities do not allow drawing conclusions with regard to the progress and outcome of specific cases and proceedings for example, by comparing the number of investigated cases with the number of prosecuted and sentenced persons .

Nevertheless, more details emerge from individual statistics, such as those compiled by the Customs Agency (the 2017 data provide details of the cases investigated and the goods seized).

The number of registered cases does not appear to be particularly high compared to the public perception of eco-crime.

There are no significant statistics from non-governmental organisations (NGO).

From the statistics available, the main trend seems to be almost constant. In the last five years, there has been only a slight reduction in the number of environmental protection criminal penalty proceedings involving waste crime. More specifically, in 2016 a total of 15 931 environmental protection criminal penalty proceedings handled by public prosecutor's offices were concluded — a slight reduction of 760 cases (= -4.6 %) compared with 2011 (16 691).

The environmental protection caseload in the courts is also decreasing, with 1 045 environmental protection court cases concluded in 2016 compared to 1 366 in 2011 — 321 fewer cases (= -23.5 %). There has been also a slight reduction in the number of convictions for environmental crime, which fell from 1 163 to 1 074 between 2011 and 2016 (-89 = -7.6 %).

As regards convictions for unlawful handling of waste, the picture is as follows.

There were 644 convictions for offences under § 326(1) of the Criminal Code in 2016, compared to 773 in 2011 (-129 = -16.7 %).

Under § 326(2) of the Criminal Code, there were 46 convictions in 2016 compared to 13 in 2011 (+33 = +253.8 %; there was a marked increase between 2012 and 2013).

Offences under § 326(5)(1) of the Criminal Code resulted in 127 convictions in 2016 compared to 84 in 2011 (+43 = +51.2 %).

In recent years the number of cases of suspected waste crimes handled by the police in Germany has remained relatively constant at about 8 000. However, criminological research suggests that much of it remains undetected.

In this regard, it should be noted that environmental crime is commonly referred to as "control crime". This means that the more intense the control, the higher the probability that environmental crime will be detected. In fact, offences consisting in waste trafficking (waste crime engaged in on a commercial basis), and petty offences connected with waste are detected only as a result of inspections. This means that the reported incidence of cases does not necessarily represent the actual trends in environmental crime.

At the same time, it should be noted that the statistics could also suggest that control over waste management is higher than in other environmental crime areas, such as water, air, soil pollution or species protection.

Based on past criminological experience and on analyses, a clear relationship seems to exist between general developments in the waste disposal market and the specific incidence of crime.

Since the 1990s, supra-regional and cross-border waste shipments have increased considerably. This development is reflected in the cases of waste trafficking, since waste is generally not disposed of illegally in the area where it is generated, but trafficked via supply chains supra-regionally and transnationally.

Another example of the link between the general developments in the waste disposal market and the incidence of crime is related to mineral waste. This category of materials accounts for half of the hazardous waste generated and, consequently, the disposal infrastructure for mineral waste is also a focus of investigations into waste trafficking. Mineral waste is also used to illegally mix in waste containing organic material.

Cross-border waste is dominated by cases involving the illegal export of bulk waste such as waste electrical and electronic equipment or end-of-life vehicles, followed by illegal imports of hazardous commercial and industrial waste. The data are compiled by the Federal Environment Agency (<https://www.umweltbundesamt.de/en/topics/waste-resources/transfrontier-shipment-of-wastes/prosecution-of-illegal-waste-shipments>).

Additional findings can be drawn from research (<http://www.cwitproject.eu> and <https://www.umweltbundesamt.de/publikationen/development-of-proposals-including-legal>) and from exchanges of intelligence among the criminal police.

At the end of 2016 the waste management authorities recorded a marked reduction in illegal transport using second-hand vehicles, as a result of sustained and intensive inspections.

In 2016 the customs authorities' situation assessment showed an increase in shipments of car batteries to France. There is also evidence of increased competition for German scrap metal dealers from enterprises in the sector which are close to the border. Foreign scrap collectors seem to be collecting larger volumes of waste electrical equipment (including CFC-containing refrigerators) close to the border.

3.3.2. Number of registered of waste crime

The Police Crime Statistics (Polizeiliche Kriminalstatistik), published annually, are compiled from a detailed list of offences, which is based on the categories and definitions of offences in German criminal law

(see https://www.bka.de/EN/CurrentInformation/PoliceCrimeStatistics/policecrimestatistics_node.html). If an action simultaneously constitutes more than one offence, the Police Crime Statistics (Polizeiliche Kriminalstatistik) only record the offence which carries the highest penalty. This can result in an environmental offence not being recorded in the statistics if the perpetrator committed a more serious offence at the same time.

According to the statistics, 7 528 cases of unlawful treatment of waste (out of a total of 12 149 environmental crimes) were registered in 2015.

The situation concerning the detection of contaminated sites seems to vary: while there are Länder that have reported having several illegal landfills, other Länder appear to be almost unaffected by this matter.

In the Statistics on Criminal and Administrative Penalty Proceedings (Strafgerichte, Series 10, Part 2.3), published annually by the Federal Statistical Office, there are no specific statistics on waste crimes since they are included as a subset of environmental crime

(see <https://www.destatis.de/DE/Publikationen/Thematisch/Rechtspflege/GerichtePersonal/Strafgerichte.html>).

The Statistics on Criminal Prosecution (Strafverfolgungsstatistik, Series 10, Part 3) show a detailed list of offences, which is based on the categories and definitions of offences in German criminal law, so detailed data about prosecutions and convictions is provided relating to waste crime. Likewise the Police Crime Statistics (Polizeiliche Kriminalstatistik), these statistics only record the prosecution and/or conviction for the crime which carries the highest penalty (see above). This data show that illegal waste management show a steep increase from 2012 to 2013 (+253.8%). When asked, the German authorities explained that the reason for this increase was the implementation of the Environmental Crime Directive.

Data on penalties imposed for infringements in the course of cross-border waste shipments are published by the Federal Environment Agency (<https://www.umweltbundesamt.de/en/topics/waste-resources/transfrontier-shipment-of-wastes/prosecution-of-illegal-waste-shipments>).

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

The Federal and Länder budgets do not provide for any resources specifically to combat waste crime.

3.5. Prevention of waste crime

Almost all German and EU laws, regulations and directives on waste contain monitoring requirements for the proper and safe disposal of waste, which can indirectly contribute to the prevention of waste crime. The German Criminal Code also includes provisions on waste crime.

With regard to waste shipment, reference is made, in particular, to Regulation (EC) No 1013/2006 and the Waste Shipment Act.

The criminal law has an important complementary role in relation to environmental administrative law by punishing particularly serious offences with criminal penalties.

The environmental authorities have primary responsibility for inspections and risk prevention and for enforcing the relevant administrative laws. The known incidence of crime depends fundamentally on the frequency of inspections and reporting by the regulatory authorities as many crimes are detected only as a result of inspections.

In addition, provisions have also been enacted by some of the Länder, e.g. in Rhineland-Palatinate the police has been given the power by law to carry out inspections on shipments of waste on public roads. However, it must be noted that prevention of waste crime is not considered to be a major priority at present, due to the need to concentrate efforts on fighting terrorism.

3.6. Conclusions

- Inter-ministerial decrees governing cooperation between the authorities involved in combating environmental crime have been issued by the Ministries of Justice, Environment and Home Affairs in all Federal States (Länder).
- However, the experts identified a lack of a strategic approach at both central and Länder level, based also on the lack of any plan or similar strategic document including all the institutions involved in tackling and preventing waste crime. Enhancing cooperation at strategic level should be encouraged.
- The main authorities keep statistics. However, these statistics could be improved since they do not allow trends to be analysed in more detail. In particular, the statistics do not list environmental crimes when other crimes carrying stiffer penalties are committed.
- Waste crime seems to have the highest priority in the control and prosecution of all environmental crimes.
- Nevertheless, the fight against waste crimes and its effects on German territory and Germany's environment, may suffer - in a context understandably dominated by the priority need to fight terrorism - from an underestimation of the phenomenon, due to an insufficiently equipped monitoring system which lacks modern data collection and processing tools.
- According to the data, the number of recorded cases of waste crime seems to be low compared to the size of the territory, social perception and press reports.

4. NATIONAL STRUCTURES

4.1. Judiciary (prosecution and courts)

4.1.1. Internal structure

The Local Courts and the Regional Courts are competent for environmental crimes. However, if the crime is linked to a crime that falls under responsibility of the Higher Regional Court, the environmental crime falls within the competence of the latter.

The prosecutor has certain discretion in deciding whether to prosecute the crime before the Local Court or the Regional Court. However his/her decision depends on the gravity of the crime.

If it considered a minor crime, the competent court is the Local Court, whose judgment can be appealed against before the Regional Court. The judgments of the Regional Court can then be appealed against before the Higher Regional Court.

If the crime is a serious one, the competent court is the Regional Court. In this instance the decision can only be appealed against before the Federal Court of Justice. The Federal Court of Justice is only competent in relation to violations of the law.

The courts are also competent for regulatory offences.

There are no general provisions obliging prosecutors and judges to specialise in environmental crimes. However, in almost all Länder the courts have specialised departments or criminal divisions (Bavaria, Brandenburg, Bremen, Hessen, Hamburg) where environmental offences are concentrated, sometimes together with crimes in other fields. In some Länder the courts have departments specialising in environmental crime, but other courts do not (Hamburg and Bavaria, for example).

Environmental offences are sometimes concentrated in one court (for example in Brandenburg). Sometimes they are handled by economic crime divisions (for example in Hamburg and North Rhine-Westphalia). Additional information can be found in chapter 12.1 of the country report on Germany produced as part of the research project entitled 'EFFACE - European Union Action to Fight Environmental Crime' (<http://efface.eu/fighting-environmental-crime-germany-country-report>).

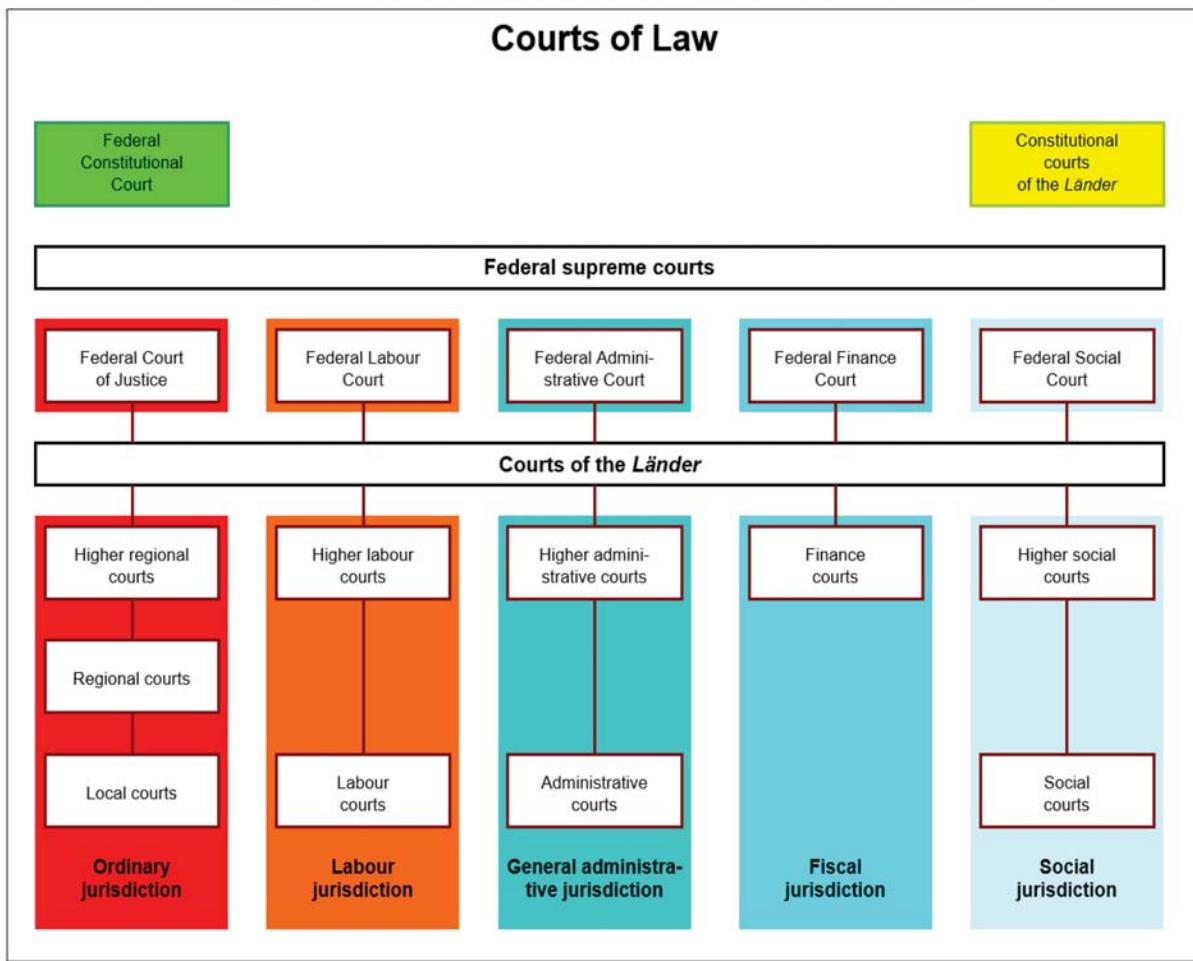
Additional information can be found in chapter 12.1 of the country report on Germany produced as part of the research project entitled 'EFFACE - European Union Action to Fight Environmental Crime' (<http://efface.eu/fighting-environmental-crime-germany-country-report>).

The judicial authority in administrative matters is shared by both the federal level and the Länder. For proceedings regarding responsibility of the State, administrative courts (*Verwaltungsgerichte*, *VG*) are competent as lower courts; the higher administrative courts (*Oberverwaltungsgerichte*, *OVG*) are competent as courts of appeal, and the State constitutional courts (*Landesverfassungsgerichte*) decide on alleged infringements of the States' constitutions. For private law appeals and cases involving compensation for damages due to illegal actions by the administration, the regional courts (*Landgerichte*) are competent.

The federation has the Federal Administrative Court (*Bundesverwaltungsgericht*, *BVerwG*) as a court of appeal and the Federal Constitutional Court (*Bundesverfassungsgericht*, *BVerfG*), which decides on alleged infringements of the federal Basic Law.

Proceedings usually start in the lower court of a Land, then move up to the State's court of appeal and, if one party still wishes to appeal, the Federal Administrative Court is the final court. Only if a right granted by the Basic Law is concerned and the legal proceedings of the lower courts have been exhausted can the appeal go before the Federal Constitutional Court.

The table below sets out the court system.



As regards the public prosecutor's offices, the guidelines adopted by the Magistrates' Academy recommend the establishment of specialised units within prosecutor's offices at Land level: however, it depends on the size of the office (there are specialised units in the biggest Länder, but none in the smaller ones). Prosecutors, however, are under no obligation to remain in the specialised unit or to continue their professional training in this field but in practice they often do.

The public prosecutor's offices of the Länder usually have a separate department or specialised units to which all waste crime cases are referred so that, as a rule, they are handled separately from other crime.

The public prosecutor's offices without an environment department each have special units to which all environmental offences, including waste crime, are referred and where the cases are handled by specialist prosecutors.

Since large-scale waste crime is often accompanied by serious economic offences, the more extensive cases are sometimes dealt with by public prosecutor's offices or departments that specialise in economic crime. Examples of these include the public prosecutor's offices in Bochum and Mühlhausen.

The public prosecutor's offices in Hesse (Frankfurt am Main and Darmstadt), Hamburg and North Rhine-Westphalia have their own environment departments, whose responsibilities include waste crime cases.

In Schleswig-Holstein, all the local public prosecutor's offices have specialist units for environmental cases. They also draw on support from various sources: for example, the public prosecutor's office in Kiel employs an environmental engineer whose tasks include clarifying technical issues and, in straightforward cases, giving an expert opinion on the potential threat posed by any waste-related offences. There is also an accountancy specialist there, some of whose working time is allocated to analysing company documents in particular.

4.1.2. Capacity of and obstacles to the prosecution and punishment of waste crime

Criminal prosecution is fundamentally the responsibility of the public prosecutors while administrative offences are dealt with by the administrative authorities. But, if an appeal against a decision by an administrative authority is lodged and becomes subject to court proceedings, responsibility for the case is transferred to the public prosecutor's office. If a criminal offence and an administrative offence have been committed at the same time, the public prosecutor's office is competent for prosecuting both. The detailed arrangements are based on the Administrative Offences Act and §§ 269 et seqq. of the Guidelines on criminal proceedings and proceedings on regulatory fines.

In order to pool experience in the handling of waste crime, special competences have been established at the public prosecutor's offices and courts in most Länder, thereby improving the prosecution of waste crime and environmental crime overall.

Efforts have been made in the Länder to enhance the capacity of the public prosecutor's offices.

Bavaria has reported that the capacities available for fighting waste crime are sufficient. In 2010 three posts for investigators dealing exclusively with cases of environmental and waste crime were created in the Bremen police force.

In Schleswig-Holstein an additional 500 police posts are to be filled by 2023. A comprehensive site and staffing needs analysis will assess whether and where new offices should be opened, or whether closed offices should be reopened. Staffing and resources in all areas of the judiciary in Schleswig-Holstein are to be reviewed and adjusted.

In the past, a Regional Court in North-Rhine Westphalia identified a special staffing need in the context of a specific major proceeding. The Regional Court's presidium solved the problem in this particular case by relieving the adjudicating body of new cases.

Despite these efforts, the Länder have reported the following further challenges and difficulties.

Structured as it is on the basis of administrative law, environmental criminal law is quite complex. Its penal provisions – which, as regards criminal offences, refer in part to EU legislation – are also accordingly complex. The confusing legal situation, owing to the many references to provisions outside the Criminal Code and the supremacy of EU law, makes it harder for proceedings to be conducted swiftly, as reported by the Land of Schleswig-Holstein.

Difficulties also arise with regard to proving concrete actions (see also Chapter 11.2.2 and page 74 et seq. of the country report on Germany produced as part of the research project entitled 'EFFACE – European Union Action to Fight Environmental Crime' – <http://efface.eu/fighting-environmental-crime-germany-country-report>).

North Rhine-Westphalia reported that the complexity of the matter leads to difficulties in proving the individual responsibility of an accused person, particularly in the case of larger companies with several hierarchical levels.

As regards establishing responsibility, Schleswig-Holstein reported particular problems when dealing with companies with multiple sites throughout Germany. The increasing digitalisation of business records and their outsourcing to servers outside Germany can mean that, if there is no voluntary cooperation, not all documents that are relevant to proceedings may be available for the purposes of an investigation.

Lower Saxony reported that in some cases proving intent was found to be difficult.

Mecklenburg-Western Pomerania reported that witnesses' unwillingness to testify, or to testify fully, is frequently an obstacle.

Bavaria, Baden-Württemberg and Mecklenburg-Western Pomerania reported that the complexity of proceedings and the need for expert opinions mean that proceedings are sometimes lengthy.

Bavaria and North Rhine-Westphalia reported problems with regard to consulting appropriate experts familiar with specific issues, for example the health effects of substances contained in waste. This may have a mitigating effect on the sentence, such that the penalty ultimately imposed in such cases does not correspond to that originally envisaged. However, in general the penalty imposed responds to criteria of restitution and specific deterrence that generally apply to all kind of crimes.

In addition, both Länder reported difficulties in connection with the principle whereby criminal proceedings may not be brought unless an administrative act has been infringed. This means that the judiciary is bound by administrative decisions (such as the granting of permits). In particular, the interpretation of the concept of waste is problematic in some cases. Consequently, legal assessments by the administrative authorities and the courts sometimes differ in this regard.

Saxony-Anhalt pointed out also that analysing dumped waste can be very costly.

Hesse reported that in some cases it can be difficult to prove waste status, as waste is often shipped to developing countries, where the utility value of (partly) defective consumer goods is perceived differently.

In some cases a waste offence is only suspected after the event, for example when analysing the waste streams to be reported to the inspection authority's waste recovery or disposal services. In particular, Saxony-Anhalt reported that in one set of proceedings brought before the court, it was suspected that waste imported from Denmark and Norway, for which notification should have been required, had been shipped under a false declaration and therefore illegally. However, it was no longer possible to prove this, as among other things the waste concerned had already been disposed of/recovered.

In addition, uniformity of law and uniform interpretation and implementation of the law are important requirements in the field of environmental crimes. While respecting the specificity of each Land, focus on an effective coordination and information exchange among the Länder is stressed.

Wiretapping and GPS are available and allowed only under certain circumstances.

Under the German legal system, criminal liability is not attributed to legal persons. In other words, only natural persons are criminally liable under German criminal law. Legal persons may be subject to administrative sanctions in complex proceedings that also fall within the competence of the public prosecutor's office where the underlying offence is a criminal offence.

It seems that the courts are not always able to manage large environmental and waste proceedings as they should be managed. The reasons for this are the prosecutors' and judges' lack of specialisation and the shortage of staff. More prosecutors and judges would be needed.

4.2. Law enforcement authorities

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

Enforcing waste legislation in Germany is essentially the responsibility of the Länder. As a consequence, policing powers in Germany fall within their competence. However, federal authorities such as the Federal Criminal Police Office, the Federal Environment Agency, the Federal Office for Goods Transport and the customs administration also assist with specific enforcement tasks.

In addition, the Länder police forces are in any case required to report certain environmental/waste offences to the Federal Criminal Police Office in accordance with the special reporting service for environmental and consumer protection offences.

The involvement of European or international partners is dealt with primarily through the Federal Criminal Police Office.

As a rule, the ongoing investigation work is carried out by the police, the customs investigation service or other investigators from the public prosecutor's office (§ 152(1) of the Courts Constitution Act).

With regard to the police, the national approach to combating environmental and consumer protection offences, which is mentioned in the paragraph 1, was the basis used to set up and develop specialist units. The specific allocation of tasks is currently as follows:

- Police departments with local jurisdiction, including the water police.

Locally, specialist departments are generally set up at or above the level of the district police authorities/police headquarters and deal with criminal cases involving environmental or consumer protection crime of low to medium severity.

- Criminal police offices of the Länder.

Almost all of the Länder criminal police offices have departments specialised in combating environmental and consumer protection offences.

The Länder criminal police offices are mainly responsible for performing the functions of a central office within their jurisdiction. But they also carry out investigative tasks, particularly in respect of crime classified as serious or of medium severity.

- Federal Criminal Police Office.

The Federal Criminal Police Office, as the criminal police's focal point, supports the police forces of the Federal Republic and of the Länder, and is the National Central Bureau for Interpol. Its specialist department for combating environmental and consumer protection offences mainly serves as a focal point and performs international functions for Germany's criminal police. As a focal point, it forwards to the appropriate departments within the German police any general or case-specific information or requests that are relevant to criminal policing. It also carries out ad hoc assessment projects on crime in the waste management sector, from an operational and strategic perspective. In some exceptional circumstances, the Federal Criminal Police Office itself can conduct investigations on behalf of a public prosecutor's office.

- Federal police

The federal police are responsible for local environmental offences (including waste offences) on railway premises, and share responsibility with other authorities for investigating environmental crimes at sea.

When the criminal police of the Länder have to handle environmental crime, it is generally specialised investigation units and specialised trained police investigators who do the work.

There is a criminal police inspectorate for business/the environment in Baden-Württemberg.

The Bremen police forces have a central team responsible for handling environmental offences (including waste crime). Carrying out inspections on ships and lorries and related facilities is a key part of their work.

The Criminal Police Offices of the Länder North Rhine-Westphalia and Rhineland-Palatinate have specialised units for environmental crime. In Schleswig-Holstein, a central department specialised in combating environmental and consumer protection crime has been set up within the Land Criminal Police Office. At the same time, straightforward cases are not centralised, but processed by environmental and consumer protection investigation teams at regional police headquarters.

One responsibility of Unit SO 31 in the Federal Criminal Police Office's department for serious and organised crime is to analyse environmental crime from an overall perspective.

Alongside the police, other bodies are also involved in investigating waste offences.

The German Customs authorities Customs investigators bring criminal proceedings under tax law in individual cases of waste trafficking involving third countries. Customs They are also responsible for the investigation of illegal employment in the waste disposal sector, including infringements of the Posted Workers Act, benefit fraud and failure to pay sectoral minimum wages. Tax investigation units sometimes cooperate in Länder police investigations into waste trafficking, depending on the nature of the case.

The structure and responsibilities of the German Customs authorities are determined by the representative of the Ministry of Finance. At the top is the General Customs Directorate with its Central Customs Criminal Office, which is subordinate to several customs investigation offices. The so called “Kontrolleinheiten Verkehrswege” are mobile units are part of the Main Customs Offices which are responsible for risk based checks of cross border traffic. They do cooperate with the Customs Investigation Offices.

Customs offices are involved in enforcing the provisions of waste shipment law insofar as the crime falls within their competence. The customs offices concerned are mainly those responsible for import and export clearance and the units at the main customs offices are tasked with carrying out customs inspections. If an inspection gives rise to questions or finds inconsistencies or reasons to suspect an infringement of waste shipment law, the customs office clarifies the facts of the case as far as possible under its own responsibility. Where necessary, it forwards the case to the competent waste authorities of the Länder for a decision to be taken. If a suspected offence lies within the jurisdiction of the customs administration, a customs investigation office carries out the investigation, after having consulted or received instructions from the public prosecutor's office.

For the purposes of the investigation, it can avail itself of any measures and powers under the Code of Criminal Procedure that are legally permissible in the case in question. The customs investigation offices are subordinate to the Central Customs Criminal Investigation Office. Together they form the Customs Investigation Service (see § 1 of the Customs Investigation Service Act). If the service uncovers any illegal activities that fall outside its jurisdiction, it reports them to the bodies competent to prosecute.

The main customs offices are involved in carrying out inspections of waste shipments to other countries and refer any significant cases to the customs investigation offices.

Customs can play a significant role, especially in cross-border cases. The advantage of this organisation lies in the fact that it is a nationwide authority. The reporting channels are thus clear and direct. The system seems to be clearly structured and efficient.

The Federal Office for Goods Transport carries out spot checks to monitor whether the transport of waste by road in goods vehicles meets the special legal provisions. Part of its work in this area is carried out in cooperation with the competent waste authorities, customs and some police departments of the Länder. Whenever it suspects that a criminal offence may have been committed, the Federal Office for Goods Transport has to report to the competent police force or other law enforcement authority for prosecution.

Despite the fact that the focal point responsible for publishing relevant information on shipments of waste on the website (in accordance with Article 5(1) of the Basel Convention and Article 54 of Regulation (EC) No 1013/2006) is based at the Federal Environment Agency, the competent authorities of dispatch or destination also have the right to make information on notifications of shipments publicly available under Article 21 of Regulation (EC) No 1013/2006. The correspondent notifies the Commission of any designations and provides related information as described in Article 50(6) and points (a) and (b) of paragraph 1, in conjunction with paragraphs 2 to 4 of Article 56 of Regulation No 1013/2006.

The maritime security authority can carry out inspections on ships, but only in cases where a sea pollution situation has been detected (investigation in cases of crime against MARPOL; discharge into the sea).

4.2.2. Investigative Techniques/Tools

When investigating waste crime, the following investigative measures are regularly implemented:

- Searches
- Seizure/confiscation and analysis of the business records and correspondence of the accused persons or businesses concerned
- Use of experts, particularly for the collection, analysis and assessment of waste samples, aerial surveys, photographic documentation
- Hearings of witnesses and accused persons
- Surveillance of premises and persons
- Information from insiders and whistle-blowers
- Inspections (without specific grounds) of shipments of waste on public roads and waterways, particularly at waste streams' points of origin and destination
- Analysis of administrative procedures and authorisation documents
- Regular water and soil sampling.

Forensics investigations (e.g. sampling and analysis), financial investigations (e.g. analysis of company accounts), electronic data back-up and analysis measures are regularly used in prosecuting serious offences. In such cases, specialised police units are consulted. Specialist authorities and private service providers/experts are also consulted during sampling and analysis on an ad hoc basis.

Special means of investigation such as electronic monitoring (e.g. of communications), undercover operations and controlled delivery can only be used to investigate waste crime where the specific criteria set out in the Code of Criminal Procedure for such far-reaching interference in fundamental rights are met.

Telecommunications, for example, may not be intercepted solely on the basis of suspicion of one of the offences under § 326 of the Criminal Code and §§ 18a and 18b of the Waste Shipment Act, as these offences are not included in those listed in § 100a(2) of the Code of Criminal Procedure. However, the interception of telecommunications is legally possible if, for example, an individual is simultaneously suspected of professional or gang fraud, corruption or serious tax offences.

Longer-term surveillance of an accused person and the use of technical devices for surveillance purposes is legally possible if an offence in the field of waste crime represents an offence of substantial significance (§§ 100h, 163f of the Code of Criminal Procedure).

Covert investigations are rarely carried out.

The investigative method depends on the police office of the individual Land: some Länder (e.g. in Brandenburg) have developed more advanced tools of investigation; the same is true of specialised police units for waste crimes, which have only been created in a few Länder.

During the visit, the LKA Brandenburg presented a vehicle for sampling at landfills, which it had developed itself. This had become necessary after a large number of illegal landfill sites in the State had become known, and samples or analyses presented in court are valuable evidence. The LKA also has its own accredited laboratory.

With regard to practical experiences reported by the Länder in their replies to the questionnaires, these are listed below.

Rhineland-Palatinate reported that undercover police officers were used in some investigations.

One public prosecutor's office in Lower Saxony reported that procedural financial investigations were usually carried out, and that these proved to be productive and particularly efficient. Another public prosecutor's office in Lower Saxony reported that in some cases, freely available satellite imagery and aerial photographs were consulted. Ground-penetrating radar and magnetic field measurements were also occasionally used to locate waste.

Rhineland-Palatinate reported using regular inspection flights as a special investigative technique. Since 1 January 2014, the Rhineland-Palatinate police have been authorised to conduct inspections of waste shipments on public roads and waterways without specific grounds. This has given the police an effective investigative method for uncovering waste trafficking. For around two years, inspections of waste shipments have been increasingly focused on waste streams' points of origin and destination. This should allow criminal intelligence on possible instances of waste trafficking to play a more significant role in the inspection process.

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

All the ordinary investigative means mentioned in paragraph 4.2.2 are used to investigate waste crime including forensics (e.g. sampling and analysis), financial investigations (e.g. analysis of company accounts) and electronic data back-up and analysis measures.

The Länder authorities experience the following difficulties when investigating waste crime.

The police, as well as the prosecutors, reported that the legislation is very complex (see paragraph 4.1.2.). In addition, frequent changes to national and European environmental law are also a constant challenge for the inspection authorities as regards maintaining their expertise. In order to be constantly updated, operators need more training that so far has not been provided to a satisfactory extent.

There are also problems in determining waste status in view of the complex legal and factual situation (Bavaria, Baden-Württemberg and Lower Saxony).

In particular, the provisions of the Circular Economy Act are considered problematic in practice as regards distinguishing reliably between waste (§ 3(1) of the Act) and by-products (§ 4 of the Act) (Baden-Württemberg).

In general, the police note that legal opinions on the classification and disposal of waste increasingly differ among the Länder. This becomes particularly clear when the police discuss with the competent authorities of other Länder further measures against waste producers from the point when waste shipments are intercepted (Rheinland-Palatinate).

Another challenge is the considerable amount of time needed to decide whether something should be classified as waste. For example, inspecting a container intended for ocean freight in order to determine whether the transported objects are to be classified as waste is very burdensome (opening the container, unloading the content, assessing the content, storing the part of it classified as waste). The fact that investigations need to be conducted swiftly, on the other hand, leads to conflict in such situations (Hesse).

Particular challenges in the field of environmental crime also arise from the scientific and technical complexity of many cases. It is considered a problem that, in some cases, extensive expert assistance and advice is required (Baden-Württemberg, North Rhine-Westphalia, Mecklenburg-Western Pomerania).

Proving individuals' criminal liability is regarded as difficult. It is often difficult to establish who, within a particular corporate structure or affiliation, is responsible for committing an offence. In cases of cross-border waste offences, particular problems arise in determining who is responsible for the shipment (Baden-Württemberg, Bavaria, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saxony).

The situation as regards cross-border cases is further compounded by the fact that contracting entities in non-European countries are difficult to identify (Baden-Württemberg). In addition, many Member States do not have a reporting system, thus making it difficult to determine the place of residence or address of witnesses and accused persons (Bremen).

With cross-border waste crime, issues also arise in relation to the classification of waste in the green or amber list contained in Regulation (EC) No 1013/2006 (Baden-Württemberg). Authorities in different EU countries may also assess the same facts differently in terms of waste law (North Rhine-Westphalia).

In cross-border cases there is also the considerable challenge of ascertaining the division of administrative competences in the Member State concerned and finding an appropriate point of contact for the case in question (Bavaria).

A considerable amount of waste crime involves offences that are only detected as a result of reporting by citizens or through the activities of the police or other authorities (Rhineland-Palatinate, Hesse). The number of offences would increase if more inspections were carried out.

Concerning the inspections, some problems were raised during the visit with regard to the limited role of the police. As mentioned in paragraph 3.5., with the sole exception of Rhineland-Palatinate, the police do not have the power to carry out inspections on road and waterborne waste shipments without specific grounds. Only the environmental authorities have this power. This limitation may seriously affect the detection and investigation of waste crime.

During the meetings the limited possibilities for using special means of investigation was also raised.

Another problem is related to the illegal disposal of hazardous waste, committed by mixing the waste or by making a false declaration. When inspecting waste shipments it is difficult to match the cargo to the declared entry and to monitor compliance with waste producers' and disposers' permits (Rheinland-Palatinate). Swift and reliable sampling and analysis of the waste substance on the spot is therefore indispensable, but the environmental and law enforcement authorities have only limited capacity for this (North Rhine-Westphalia).

In relation to evidence-gathering that can facilitate the opening of investigations, it was reported that while it is the administration's duty to report criminal offences, it is often not able to detect crimes in the first place. This fact could seriously affect the number of offences reported.

A single database for law enforcement authorities - called PIAV (information and analysis system) is being implemented and, with specific reference to waste crimes, should become operational in 3 to 5 years. The integration of customs is also foreseen. This system offers an additional tool besides the existing system (Inpol) since the information contained in PIAV is different from the information included in Inpol. The safety of communications between the Länder police on investigations into waste crimes is not always guaranteed: the need for a safe communications system was underlined.

A further problem mentioned by public prosecutors is that the employees of the companies run by accused persons are often unwilling to testify (Brandenburg).

During the visit to the LKA Brandenburg, the following findings were obtained:

The LKA has its own environmental crime unit dealing with severe (transnational) environmental crimes, while less serious offences are handled by crime investigators within Brandenburg's sixteen police stations. The training of detectives is done partly by the BKA and partly by the private sector. However, it can also happen that detectives at police stations handle environmental crimes that they are not trained for. In general, the uniformed police officers are not trained in handling environmental crimes.

The environmental authorities report further general problems such as the fact that the administration's competences sometimes cover the entire Land (Baden-Württemberg), the lack of central, more specialised public prosecutors (Rhineland-Palatinate) and overall the number of different parties with different competences at central and Länder level (North Rhine-Westphalia).

4.3. Other authorities/institutions

Regulatory responsibility in matters of waste law lies with the environmental authorities of the Länder. In the event of a suspected offence, the environmental administration informs the public prosecutor's office. The law enforcement authorities carry out investigations in cooperation with the competent environmental authorities of the Länder.

If there are no grounds for suspecting an offence or if the investigation is abandoned, the public prosecutor's office forwards the file to the competent environmental authority for the purposes of administrative proceedings.

At central level, a leading role is played by the **Federal Ministry for the Environment, Nature Conservation and Nuclear Safety** (*Bundesministerium für Umwelt, Naturschutz und nukleare Sicherheit, BMU*). The Ministry is responsible for a range of government policies.

One main task of the BMU is to prepare legislation in policy areas which concern the environment. This includes preparing regulatory legislation and transposing EU directives into national law. The ministry is also responsible for issuing statutory instruments - subordinate legislation which specifies further details of a law, in particular with regard to enforcement. The ministry is involved in all legislative projects which have an impact on its areas of competence.

Another task is funding for research and development and support for the market launch of innovative technologies with economic instruments. For instance, support programmes for an environmentally-friendly society are financed through taxes and the revenues from CO2 emissions trading.

National and international coordination and cooperation is another important task of the BMU. Therefore, to ensure that legal provisions can be implemented efficiently in Germany, the central level and the Länder coordinate structures on many issues, develop programmes and formulate joint strategies. As the environment knows no borders, many environmental and climate issues can only be solved through international cooperation. In this context, the BMU represents Germany in the European Union and international organisations (e.g. UN, OECD, WTO).

Finally, to make its activities and planned measures transparent, the BMU carries out media and public relations work. Events and the continuous development of civic participation processes aim to enable the public to play an active role.

Most of the administrative work at the federal level is executed by specialised agencies which have been created for a specific sector of the administration, like environment, transport or agriculture. These agencies provide technical assistance to the administration and focus on the implementation of environmental law. For example, in the environmental sector they are responsible for the monitoring and assessment of the environmental situation and its development, the determination of the causes of environmental pollution or the preparation of regulations.

Among the **subordinated federal environmental authorities**, the following should be mentioned.

The **Federal Environment Agency** (*Umweltbundesamt, UBA*) provides the scientific basis for environmental policy in Germany. The work of UBA centres on gathering data concerning the state of the environment, investigating the relevant interrelationships and making predictions and then, based on these findings, providing federal bodies such as the Ministry of the Environment with policy advice. The UBA also provides the general public with information on various environmental issues. Apart from these activities, the UBA implements environmental law by making sure that it is applied in areas such as CO2-trading and approval processes for chemicals, pharmaceutical drugs and pesticides.

The UBA's main goals are the early detection of environmental risks and threats, the assessment of these risks and finding viable solutions for them in a timely manner. To do so, the UBA conducts research in its own labs and sources out research to scientific institutions in Germany and abroad. It is also the German point of contact for numerous international organisations such as UNEP and WHO.

The UBA has 1 500 employees spread across 13 sites, seven of which are monitoring stations in their own air quality tracking network. The UBA employs experts such as biologists, chemists, economists, lawyers and engineers from all ecology-related disciplines.

The **Federal Office for Radiation Protection** (*Bundesamt für Strahlenschutz, BfS*) mainly deals with the implementation and enforcement tasks of the federal government under the Atomic Energy Act and the Precautionary Radiation Protection Act.

The most important tasks of the BfS are protecting against ionising radiation and non-ionising radiation, monitoring the emissions of nuclear power plants and giving support to the BMU (nuclear safety, health-related and physical/technical radiation protection).

The Länder are the main administrative layer in Germany. In environmental protection, they are mainly responsible for:

- Air pollution control: CO₂ emission registers, establishment of air quality surveillance areas, establishment of smog areas, clean air plans, establishment of protected areas
- Noise prevention: noise abatement planning, establishment of noise protection areas at airports
- Nature and landscape conservation: establishment of protected areas, landscape framework plans, landscape plans
- Waste management: waste management plans, plan approval of waste disposal facilities
- Water management: water resources framework plans, water management plans, waste water disposal plans, ordinances on protection, establishment of water protection areas and establishment of flood areas.

At the very top of environmental administration in the Länder there are the environmental ministries as the supreme State authorities (*Oberste Landesbehörden*). They are responsible for the development of environmental law and the political steering of all environmental affairs in the respective state. The ministries supervise all the lower authorities that are responsible for implementing environmental law. They also monitor the development of the environment, are responsible for State-wide environmental planning and distribute funds for environmental protection. Individual decisions on enforcement are normally made by subordinated authorities, whereas the ministries focus on political planning and steering.

Subordinate to the ministries as supreme State authorities, there is a number of specialised agencies. They are responsible for the technical and scientific aspects of environmental protection for the entire State territory. As specialised agencies, they are not part of the general administration. They only deal with their limited area of responsibility, which gives them a high level of expertise. Thus, for complex matters they act as advisers to many other authorities. Their typical tasks are to advise the ministries and subordinated authorities on complex scientific environmental matters and to gather and provide environmental data for other authorities and the public.

In some Länder (Bavaria, Baden-Württemberg, North Rhine-Westphalia, Hesse, Rhineland-Palatinate, Saxony, Saxony-Anhalt and Thuringia) there are also intermediate State authorities (*Mittelbehörden*), which form an additional layer of the general administrative structure. Their main tasks are to consider specific regional aspects in the implementation of environmental law, to coordinate with other policies, while at the same time ensuring that the administrative units that have enough resources and expertise for complex issues.

Finally, there are also **lower State authorities** that are responsible for smaller facilities, and issues with effects that are usually limited to the local sphere.

Local government in Germany consists of counties (*Landkreise*), independent cities without county affiliation (*Kreisfreie Städte*) and municipalities (*Gemeinden*). The main environmental task of local administrations is the consideration of environmental aspects in their local plans. They are mainly responsible for noise reduction plans, air pollution control programmes, landscape plans, waste water framework plans, waste disposal plans, soil protection programmes and veterinarian matters on their territory. In the event of accidents, they take the necessary first measures.

4.4. Cooperation and exchange of information among national authorities

4.4.1. Cooperation and coordination

At national level, the Waste Shipment Act governs inter-departmental cooperation and the exchange of information in the fight against cross-border waste trafficking. Specific legislative restrictions exist in cooperation with customs and tax authorities on account of tax secrecy.

Exchange of experience among investigating authorities of the Länder takes place in annual meetings organised by the Federal Criminal Police Office (Bundeskriminalamt, BKA). At these meetings the heads of the specialist departments in the Länder discuss combating environmental and consumer protection offences, while specialists in the Länder police forces focus on waste crime.

In addition to these concepts for the police, inter-ministerial decrees governing cooperation between the authorities involved in combating environmental crime have been issued by the Ministries of Justice, the Environment and Home Affairs in all Länder. This has, for instance, resulted in regular joint meetings and exchange of experience at local and supra-regional level.

The Federal Criminal Police Office organises an annual meeting of the heads of the specialist departments in the Länder on combating environmental and consumer protection offences, as well as a meeting of specialists in the Länder police forces on waste crime.

In 1988 the Federal and Länder interior departments agreed to introduce the institutionalised exchange of police case data. This is due to be superseded by a new and improved IT platform. The national approach has also served as the basis for national concepts for the relevant specialist training for the criminal police (1991 and 2009).

The various investigative authorities cooperate on an ad hoc or case-by-case basis and pass on the necessary information in accordance with the legal requirements.

For the most part, cooperation between public prosecutors and the various police authorities is described as being close and good. There are also frequent exchanges of information between the waste authorities, the criminal police offices of the Länder, the Customs authorities (especially the Central Customs Criminal Investigation Office) and the Federal Criminal Police Office.

Exchange of experience at the level of the environmental authorities among the competent authorities of the Länder, Customs authorities and the Federal Office for Goods Transport as well as the Federal Environment Ministry takes place in annual meetings organised by the UBA. At these meetings, experiences on issues related to the implementation of the Waste Shipment Regulation and the Waste Shipment Act are exchanged.

The customs authorities cooperate with the competent waste authorities of the Länder as far as they are able. All customs offices carry out inspections on waste shipments. Import or export clearance for waste is given by specially authorised customs offices. When offences or illegal shipments are suspected, the customs authorities inform the competent waste authorities.

In waste management, there is the electronic waste records procedure for monitoring the collection, transportation and disposal of hazardous waste. Electronic communication is used both for the exchange of data among the operators involved in the disposal process and for sending data to the competent supervisory authorities. For this purpose the Länder have created a common data processing system, to which the competent authorities have access.

The Waste Shipment Act sets out arrangements for cooperation between the Länder authorities, the Federal Office for Goods Transport and customs authorities on inspections of waste shipments. There is also a set of guidelines for cooperation between customs authorities and waste authorities with regard to waste shipments (<http://www.laga-online.de/servlet/is/23875/>).

During joint inspections at pre-established checkpoints, various authorities (e.g. Land police forces, customs authorities, the Federal Office for Goods Transport and, where necessary, the Federal Police) cooperate within the scope of their respective competencies, despite there not being a task force in place.

At Land level, the inspection plans under Article 50(2a) of Regulation (EC) No 1013/2006 include provisions for cooperation between the authorities concerned.

Staff meetings are held in all Länder – some on a regular basis – to exchange information, discuss current legal problems and coordinate cooperation.

Mecklenburg-Western Pomerania has guidelines for cooperation between the police and waste authorities on inspections of waste shipments and an administrative provision covering cooperation between administrative and law enforcement authorities to combat infringements endangering health and the environment.

In Bremen, the law enforcement authority and the administrative body responsible for waste law have an agreement regarding cooperation in the event of suspected environmental offences.

In Saxony-Anhalt, cooperation between the administrative authorities, the police and the public prosecutor's offices for the protection of health and the environment is governed by a circular.

The Baden-Württemberg Ministry of Justice pointed out that the specific characteristics of investigations connected to environmental crime, particularly the frequently necessary clarification of preliminary questions related to administrative law, require close cooperation between law enforcement authorities and the competent administrative authorities. This involves e.g. consulting and analysing the licensing and supervisory authorities' files and conducting an administrative assessment of the relevant facts. For major cases, the Baden-Württemberg Ministry of Justice sometimes coordinates with its Ministry of the Environment.

On the basis of decrees issued by the Hessian Ministry of the Environment, Climate Protection, Agriculture and Consumer Protection, a yearly meeting between representatives of the environment administration and law enforcement authorities has been held in Hesse, at the seat of the Darmstadt Regional Council (Department for Occupational Health and the Environment – Wiesbaden), for several decades.

The aim of the meeting is to foster close cooperation between Hesse's environment administration and its law enforcement authorities. This full-day event includes a series of presentations on the various fields of work of the participants. The meeting is also designed to serve as an opportunity for the participants to become better acquainted and to network. Participants at the last meeting on 9 March 2017 included representatives from the Hessian Ministry of the Environment, Climate Protection, Agriculture and Consumer Protection, the regional councils, the Federal Criminal Police Office, the Land Criminal Police Office, the Frankfurt am Main and Westhesse police headquarters, the water police, the Frankfurt am Main Customs Investigation Office, the Land laboratory and the Frankfurt am Main and Wiesbaden public prosecutor's offices.

In North Rhine-Westphalia, the Office for Environmental Crime and Consumer Protection, which formed part of the Ministry of the Environment, Agriculture, Conservation and Consumer Protection until 16 October 2017, helped the public prosecutor's office to keep in contact with the competent environmental authorities (including through joint discussions with the relevant staff) and also helped them to coordinate investigations. These tasks are now resumed by the specialist departments of the Ministry, which have both the legal and the technical expertise at their disposal for effectively combating environmental and consumer-related crime.

However, the North Rhine-Westphalia Ministry of Justice observed that there are often complaints about understaffing from the departments which assist the public prosecutor's office in combating environmental crime.

Regular meetings are also held between the environmental protection authorities, the relevant specialised departments, the law enforcement authorities and the courts to exchange recent findings from the field of environmental criminal law.

In addition, there is a regular exchange of views between the environmental management and supervisory bodies and the law enforcement authorities. At some public prosecutor's offices annual joint meetings are organised, usually by a public prosecutor's office or the regional administration, between representatives of the public prosecutor's offices, the police, the environmental protection authorities and the judges responsible for environmental protection issues. The aim of this event is to exchange experience on environmental offences, with discussions which may include cases of illegal waste disposal or requirements for a criminal charge or preservation of evidence.

At Duisburg public prosecutor's office, according to the head of the authority, meetings are also held at irregular intervals at which individual cases are discussed as required. Also at that office, two meetings have so far been held which were attended by the competent environmental judge, the police and administrative authorities of the region and higher authorities (Chief Prosecutor's Office, regional administration, North Rhine-Westphalia's Ministry of the Environment, Agriculture, Conservation and Consumer Protection).

An important instrument of cooperation is considered to be the posting of a police officer at North Rhine-Westphalia's Ministry of the Environment. The task of the officer, who is now assigned to a specialist department of the Ministry, is to channel possible criminal cases within the Ministry and to establish the appropriate connection with the police or prosecutor. In addition to the environmental databases, the police officer also has access to police databases, although it is necessary to approach a police station for this.

An example of successful cooperation between law enforcement authorities (LEAs) and environment authorities is reported in the answers to the questionnaire by North Rhine-Westphalia:

'The owner of a transport company with a focus on shipping goods to Africa was said to have illegally transported hazardous waste there, or to have been an accessory to those acts. On the company's large premises, both outside and in several warehouses, he provided his customers with compartments where goods could be accumulated until a container could be filled. Hundreds of defective refrigerators with coolant containing CFCs were stored outside. Containers loaded with this hazardous waste had already been stopped in Antwerp. The premises were to be searched for evidence. Police officers were assisted by officials from the main customs office, who investigated illegal employment, and by specialists from the regional administration, who classified the waste. Staff from the city of Wuppertal's Environment and Construction Department were also present, to verify whether or not the accused person's facility was operating in compliance with the authorisations granted. As investigations into this case continued, the various authorities involved were constantly exchanging information.'

In Rhineland-Palatinate, yearly and ad hoc meetings are held between the environment authorities and law enforcement authorities. The Ministry of the Environment also holds an annual meeting on the subject of waste shipment inspections, with participants from Rhineland-Palatinate's environment and law enforcement authorities and those of neighbouring Länder, as well as from the federal authorities. Rhineland-Palatinate's Office for Environmental Protection also holds an annual section meeting on asbestos, attended by law enforcement authorities. In addition, meetings are held and joint inspections of waste shipments carried out by members of the 'Joint Working Group on Cross-Border Environmental Crime' (Grenz-AG II), made up of cooperation partners from police forces in France, Luxembourg and Belgium and the Land customs authorities and police forces of Baden-Württemberg, Saarland and Rhineland-Palatinate. Lastly, the "SAM Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH" (Hazardous Waste Management Company in Rhineland-Palatinate), as the competent authority and central body responsible for overseeing the disposal of hazardous waste and cross-border waste disposal, cooperates closely with the Land Criminal Police Office in carrying out waste shipment inspections and providing training courses and seminars for police officers and administrative staff.

Regular meetings and discussions among administrative bodies (environment, waste and conservation authorities), the police and public prosecutor's offices also take place in Saxony-Anhalt, and the participating authorities can contribute to these meetings' agendas.

Schleswig-Holstein reports that all its public prosecutor's offices foster a close working relationship between specialists in environmental crime, the competent environmental authorities and the police, in particular through regular and ad hoc joint meetings. By way of an example, when new proceedings begin, the police and the public prosecutor's office immediately coordinate with one another, for instance regarding their responsibilities, any samples that may need to be taken and the possible involvement of external experts. They are also in direct contact with the administrative authorities, for example regarding findings already made, or about the permit situation.

In Bavaria and Baden-Württemberg there are regular staff meetings for the exchange of information, as well as training and information sessions.

In Brandenburg there is a general exchange of experiences – usually once a year – between the public prosecutors' offices, the Land Criminal Police Office and the environmental authorities.

In Bremen a round table discussion dedicated to the fight against waste crime is held twice a year and involves the police, environmental/waste authorities and other administrative authorities.

In Hesse there has been an annual meeting between representatives of the environmental administration and the law enforcement authorities for decades. The aim of the meeting is to foster close cooperation between Hesse's environmental administration and its law enforcement authorities.

Mecklenburg-Western Pomerania pointed out that cooperation between the various authorities which play a role in preventing and fighting waste crime is governed by various laws and administrative provisions. In addition, an administrative provision in Mecklenburg-Western Pomerania stipulates that ad hoc joint meetings, organised alternately by the Office for the Environment, Nature Conservation and Geology and the chief public prosecutor's office, be held to exchange views and experiences, discuss common problems, coordinate measures, inform each other about the adoption or amendment of important legislation and deal with any other relevant issues in the field of combating environmental crime through prevention and law enforcement.

Lower Saxony reports that the environmental authorities, the police and the public prosecutor's office regularly exchange experiences.

In Saxony, on the basis of an administrative act, joint meetings for the exchange of information between the Land administration, the environmental authorities, police and public prosecutor's offices take place as and when required.

In Saxony-Anhalt as well, a regular overall exchange of experience and information with the lower environmental authorities takes place.

In Schleswig-Holstein, a joint ministerial decree governs cooperation between the administrative and law enforcement authorities. This includes the mutual exchange of information and assistance, and the holding of regular meetings. In addition, it is made possible for the public prosecutor's office to attend training courses organised by the administrative authorities.

Despite the abovementioned examples of good cooperation, the Ministries of Justice of the Länder reported the following difficulties in cooperation between the different national authorities.

Bavaria stated that the delay in reporting some cases identified by the Federal Office for Goods Transport to the local police and public prosecutor's office affected the investigations because investigation measures (hearings, provision of security, appointment of persons authorised to accept service of documents, and if appropriate seizure of freight vehicles – § 132(3) of the Code of Criminal Procedure) could not be carried out immediately.

In this connection, Hesse again pointed out that the administrative authorities' decision as to whether a particular case could be classified as waste could take a considerable amount of time. The fact that investigations need to be conducted swiftly, on the other hand, leads to conflict in such situations.

In practice, on the one hand there seems to be functioning cooperation at the operational level between the public prosecutor, the administration and the police. However, there is no strategic connection.

On the other hand, representatives of the Ministry of the Environment and the Environment Administration noted that administrative authorities sometimes have reservations about cooperating with the police because of their own concerns over being investigated. This can only be prevented by careful and justifiable behaviour.

The fact was also mentioned that waste transport inspections by the police or the Federal Office for Goods Transport can sometimes lead to problems if the relevant administrative authorities cannot be reached, especially outside office hours.

4.4.2. Access to information and focal points on intelligence

Germany has several electronic databases, such as ASYS (the Länder's joint waste monitoring system) and ATLAS (automated tariff and local customs clearance system), which contain data on the parties involved and on waste shipments and allow for systematic analysis to identify e.g. illegal practices in the handling of waste or illegal waste shipment, IPA-KON (information portal on waste assessment with a 'waste shipment inspection' module), GdL (hazardous substances database of the Länder), GESTIS substance database (German statutory accident insurance information system on hazardous substances), and GSA (hazardous substances rapid information service).

In accordance with the first sentence of § 161(1) of the Code of Criminal Procedure, public prosecutor's offices are entitled to request information from all authorities, provided there are no other statutory provisions specifically regulating their powers. In particular, the law enforcement authorities can obtain information from databases in the public domain, primarily from the criminal register, the register portals and the companies register. They can also access legal databases containing the texts of legislation, commentaries and court rulings, including in the field of environmental law.

However, it is only in some Länder that the law enforcement and judicial authorities have direct access to databases and registers of the administrative authorities (e.g. in Berlin), while in others they only have indirect access (e.g. in Bavaria, Hesse, Bremen and Saxony). In the latter case, only the competent environmental/waste authorities and customs have access to these databases. In the opinion of North Rhine-Westphalia's competent authorities, it would be desirable for the law enforcement authorities also to have access to ASYS.

In other Länder (e.g. Rhineland-Palatinate), law enforcement and the judicial authorities have access to only some of the abovementioned databases. However, although the police encounter varying degrees of difficulty in accessing the data of public administrations depending on the Land, in general that access, whether direct or indirect, seems to be sufficiently guaranteed.

The Federal Criminal Police Office supports the police forces of the Federation and of the Länder as a focal point for the criminal police. Data on penalties imposed for infringements relating to the cross-border shipment of waste are collected by the Federal Environment Agency.

In accordance with § 15(2) of the Waste Shipment Act, the Federal and the Land authorities exchange information, via the correspondent based at the Federal Environment Agency, on illegal shipments and shipments which cannot be completed as planned, and on current investigations and prosecutions. The correspondent receives enquiries relating to other countries and forwards them to the relevant bodies.

In addition, in some Länder there is a department serving as the Land's focal point for environmental crime.

In North Rhine-Westphalia a focal point for environmental crime issues has been set up in the Ministry of the Environment, Agriculture, Conservation and Consumer Protection.

In Rhineland-Palatinate the Land Criminal Police Office assumes the role of a focal point for police in combating environmental crime. For the other authorities this task is performed by “SAM Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH”, the Aufsichts- und Dienstleitungsdirektion (supervision and services administration) and the Struktur- und Genehmigungsdirektion Nord.

4.5. Training

As regards the judicial authorities, the German Judicial Academy – a supra-regional advanced training institution for judges and public prosecutors from throughout Germany supported jointly at federal and Länder level – regularly offers training programmes on current developments in criminal law which also cover innovations in the field of environmental criminal law.

It regularly offers a four-day conference on current issues in relation to environmental criminal law, organised by North Rhine-Westphalia. The conference includes an introduction to environmental criminal law, a presentation of selected issues and practical matters relating to criminal law in the field of waste, an introduction to the European Network of Prosecutors for the Environment and a module on asset recovery in the field of environmental criminal law. The last such conference took place from 21 to 24 May 2017 in Trier. No knowledge concerning financial investigations or for use by computer forensic investigators working on environmental crime was imparted during the conference.

In addition, issues relating to criminal law in the field of waste formed the subject of a training course which took place from 10 to 13 May 2015 at the German Judicial Academy in Wustrau.

The following training programmes are or have been offered in the Länder:

In Brandenburg, training courses are offered to judges and public prosecutors active in the field of environmental criminal law at the Land's own judicial academy in Königs Wusterhausen. A one-day course on environmental criminal law was last held there in 2010, addressing subjects including 'lines of investigation and methods of control in the field of environmental crime' and 'environmental pollutants in everyday life, in particular asbestos and synthetic mineral fibres'.

In the context of cooperation between the police and judicial authorities, there were plans to hold a two-day training session, the 'expert conference on environmental criminal law', from 30 November to 1 December 2017.

Between 2012 and 2015, the judicial academy of North Rhine-Westphalia organised an annual two-day conference on environmental criminal law for judges and public prosecutors. The meeting began with an introduction to environmental criminal law. Participants were also familiarised with criminal law in the field of waste and with the tasks of the Land Agency for Nature, the Environment and Consumer Protection. In addition, one segment of the conference is dedicated to asset recovery in the field of environmental criminal law, and hence to financial investigations.

Prosecutors and judges are not required to attend specific courses related to their area of assignment but it is their own responsibility to acquire expertise. In addition, there are special training courses for the judiciary in the Länder.

Regarding specialisation, there is a recommendation from the Ministry of Justice to introduce a specialisation in environmental crime for public prosecutors. However, representatives of the administration have stated that, in practice, the prosecution of environmental offences is evidently not a priority and that the high staff turnover in the judiciary makes successful investigations difficult.

In Rhineland-Palatinate, training sessions are occasionally organised on the subject of environmental and waste-related crime. On 2 December 2014, for instance, a Land-specific session was organised for judges in the criminal and administrative appeal courts, district prosecutors, local public prosecutors and lawyers on unlawful handling of waste.

In Schleswig-Holstein, further training is provided in particular for specialised prosecutors, including job shadowing on the premises of a regulatory authority. The prosecutors also take part in training courses occasionally organised by the investigative or administrative authorities as well as external organisations. In addition, general training is provided in the field of financial investigations. The judicial academy in Hesse also organises meetings on environmental criminal law on a regular basis.

Regarding the police, the training programme offered in the field of environmental and consumer protection offences makes provision for both basic and specialist courses. The subject of waste crime is an essential component of a basic training course. The training content is consolidated in the specialist training course on waste trafficking/crime in the waste management sector. In principle, each training course lasts at least one week. The frequency of the criminal police training courses varies depending on the professional requirements of the local police authorities.

The special training courses run by the competent waste authorities of the Länder are also open to federal customs officers tasked with carrying out inspections. In addition, the Central Customs Authority's Training and Knowledge Centre regularly offers four-day training courses on the subject of cross-border shipments of waste/prohibitions and restrictions. Furthermore, the legal topic of cross-border shipments of waste forms part of the higher intermediate career-path training of the federal customs service at the Central Customs Authority's Training and Knowledge Centre.

The training programme of the Federal Criminal Police Office also includes a course on combating waste crime, which is open to investigators in the field of environmental crime.

In addition, the Länder offer own training programmes.

In cooperation with the Land Criminal Police Office, the Police University in Rhineland-Palatinate/Land Police Academy offers a two-week basic training course on the handling of environmental offences, which is repeated every two years. The course is aimed primarily at employees of the criminal police. In terms of content, the course covers the entire spectrum of environmental crime. In the field of waste-related crime, the focus is on the relevant penal provisions, national and international waste legislation/legislation on the shipment of waste, a practical exercise in the context of a real-life waste shipment inspection and practical exercises on water sampling and the sampling of waste and debris. In addition, contacts are established and networks facilitated. From 2018 onwards, this course will be supplemented by an annual two-day refresher seminar.

The Police University also organises an annual three-day basic module on waste shipment inspections and a subsequent (two-day) refresher module. The course is aimed primarily at officers in the traffic-monitoring services. The knowledge acquired is consolidated in the context of a practical exercise involving a real-life waste shipment inspection. The Land Criminal Police Office occasionally organises workshops for staff in the field of waste.

Schleswig-Holstein offers various training courses on environmental and consumer protection crime (i.e. including waste crime) for (criminal) police case officers, including a two-day course on waste law. The Federal Criminal Police Office also offers a five-day specialised module on waste crime for criminal police.

The environmental authorities also organise training on the shipment of waste (information included in the inspection plans).

No information has been given on whether German staff have taken part in any training given by the European Police Academy (CEPOL) or other (European) bodies.

In theory, judges and prosecutors can attend CEPOL's training courses, but only one place is available for the whole of the Federal Republic of Germany.

In addition, there are web-based seminars.

Prosecutors from the environmental crime division of Frankfurt am Main public prosecutor's office have been taking part in training on environmental crime delivered by the European Institute of Public Administration (EIPA) since 2012 and in training on environmental crime delivered by the Academy of European Law (ERA) since 2014.

4.6. Conclusions

- The Federal and Länder budgets do not provide for any resources specifically to combat waste crime.
- Environmental crimes are the responsibility of the local courts and the regional courts. However, if an environmental crime is linked to an offence that falls within the purview of a higher regional court, the higher regional court will assume jurisdiction for it.
- Regulatory responsibility in matters of waste law lies with the environmental authorities of the Länder. In the event of a suspected offence, the environmental administration informs the public prosecutor's office.
- There is a shared judicial authority in administrative matters at federal and Länder level.
- Some problems have been noted in the environmental authorities' ability to detect crimes. Due to their important role, it is recommended that their ability to detect crimes and report them to the police should be improved.
- The technical and operational capacity of the Länder's courts and police depends on the characteristics and different available resources of each individual Land.
- In addition, structured as it is on the basis of administrative law, environmental criminal law is quite complex. The complex legal situation, owing to the many references to provisions outside the Criminal Code and the supremacy of EU law, makes it harder for proceedings to be conducted swiftly.
- In order to avoid discrepancy in tackling illegal waste trafficking and a possible area of impunity, as well as to propagate best practices tested in some Länder, coordination among prosecutors and police offices from different Länder should be improved, possibly by means of a coordinating role within the federal authorities.

- Despite no general provision for specialisation among prosecutors and/or judges in environmental crime, in almost all Länder the courts have specialised departments or criminal divisions, which should be considered a best practice.
- Nevertheless, it seems that in practice more expertise is needed. The courts are not always able to manage large environmental and waste proceedings as they should, due both to a lack of specialisation among prosecutors and judges and to a shortage of staff.
- The complexity of the legislation together with frequent changes to national and European environmental law are also a constant challenge for the inspection authorities as regards maintaining their expertise. Operators need more training in order to remain consistently up to date.
- Public prosecutor's offices are entitled to request information from all authorities, provided there are no other statutory provisions specifically regulating their powers.
- However, it is only in some Länder that the law enforcement and judicial authorities have direct access to databases and registers of the administrative authorities (e.g. in Berlin), while in others they only have indirect access. In the experts' view, the practice of having direct access to databases and registers should be widespread.
- Enforcing waste legislation in Germany is essentially the responsibility of the Länder. As a consequence, policing powers in Germany fall within their competence.
- Federal authorities such as the Federal Criminal Police Office, the Federal Environment Agency, the Federal Office for Goods Transport and the customs administration also assist with specific enforcement tasks.
- Customs seems to be well organised and structured in its area and in its competence. One reason for this seems to be its nationwide responsibility.

- Almost all of the Länder criminal police offices have departments specialised in combating environmental and consumer protection offences. In the experts' view this is a best practice.
- Ordinary investigative measures are regularly implemented, including forensic, electronic data back-up and analysis measures and financial investigations.
- Special means of investigation have been used very rarely for procedural reasons (Code of Criminal Procedure).
- In almost all the Länder, prior notification is given when an inspection of facilities is to be carried out. In the experts' view, Saxony's system of combining announced inspections with unannounced inspections is a best practice since, on the one hand, it encourages the private sector to comply with the rules and, on the other hand, the authorities can detect irregularities in the event that the private company ceases to be compliant after the inspection takes place. It is therefore suggested that this combined system be taken up elsewhere.
- As regards roadside inspection, the use of indicators (letter A) for trucks transporting waste and the levying of severe fines in the event of non-compliance should be considered a best practice as it allows for faster identification of trucks transporting waste and targeted inspection.
- Despite the abovementioned good example, in the experts' view more inspections should be carried out so as to increase the number of offences detected. To this end, the Länder police should be empowered to carry out inspections on road and waterborne waste shipments without specific grounds. In this connection, the inspection powers granted to the police of Rhineland-Palatinate should be considered a best practice.
- Samples need to be taken using secure methods so that they will be accepted in court. To this end, it is suggested that the method used by Brandenburg's Land police, which should be considered a best practice, be taken up elsewhere.

- Regulatory responsibility in matters of waste law lies with the environmental authorities of the Länder. In the event of a suspected offence, the environmental administration informs the public prosecutor's office.
- The competent administrative authorities of the Länder should better specialise their practitioners, including by providing more training and increasing the number of meetings involving representatives of the Länder in order to exchange expertise, mutual support, and experience of practical problems and problems related to interpretation of the law.
- There is good informal cooperation between Länder police and the environmental authorities.
- However, in the experts' view joint task forces could be established at Länder level involving representatives from customs in order to better share data, exchange different expertise, and increase cooperation at federal and Länder level.
- In order to improve cooperation at operational level, the experts suggest that North Rhine-Westphalia's practice of appointing a police officer to the Ministry of the Environment, which should be considered a best practice, be taken up elsewhere.
- A unique data base, called PIAV, is being implemented and, in relation to waste crimes, should probably be operational within three to five years. It would be very helpful if the process could be sped up.
- All the relevant authorities organise training and official education in respect of waste crimes. However, specialisation of all those dealing with environmental matters should be improved by providing them with additional training and also by organising common training involving all authorities.
- The lack of uniform police procedures among the Länder and the different standards of training may be a challenge to achieving high standards at national level.

5. LEGAL ASPECTS

5.1. Substantive criminal law

5.1.1. Description of national legislation pertaining to waste crime

In Germany environmental protection is integrated into the Constitution. Article 20a of the Basic Law states: 'Mindful also of its responsibility toward future generations, the state shall protect the natural bases of life by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.'

Specific articles on the environment are also included in some Länder Constitutions.

The main rules on environmental crime are contained in Chapter 29 of the special section of the German Criminal Code (Sections 324-330d StGB).

Waste crimes are punishable under the Criminal Code when they fall within one of the provisions of Chapter 29.

In particular:

- Section 326 StGB sets out various penalties with the aim of protecting human life and health, aspects of the environment such as water, air and soil, and animals and plants from damage caused by improper management of waste.
- Section 327(2)(1) and (3) provides for advance protection of the legal interests under section 326 by sanctioning the operation of a facility within the meaning of the Federal Emission Control Act or a landfill contrary to administrative law.

There are also secondary criminal laws, such as:

- Sections 18a and 18b of the Waste Shipment Act;
- Sections 27 to 27c of the Chemicals Act;
- Sections 71 and 71a of the Federal Nature Conservation Act;
- Sections 38 and 38a of the Federal Hunting Act.

Sections 18a and 18b of the Waste Shipment Act criminalise the unlawful cross-border shipment of waste.

It should be emphasised that criminal law is seen as the last and most stringent measure for tackling environmental crime, which is usually dealt with under administrative law.

'Waste crime' refers to the offences listed in Article 3(b) and (c) of Directive 2008/99/EC.

Article 3(b) of Directive 2008/99/EC has been transposed into German criminal law by § 326(1),(4),(5)(1) and (6) and by § 330 of the Criminal Code⁷.

Whosoever under § 326(1) of the Criminal Code (Unlawful disposal of waste) unlawfully, outside the facility authorised therefor or in substantial deviation from the proscribed or authorised procedure collects, ships, treats, utilises, stores, dumps, discharges, disposes of or trades in, brokers or otherwise commercialises waste which

1. contains or can generate poisons or carriers of diseases which are dangerous to the public and are communicable to persons or animals,
2. is carcinogenic in humans, has harmful reproductive effects or can cause alterations in the genetic make-up,
3. is prone to explode, spontaneously combustible, or of more than merely minor radioactive quality or
4. because of its nature, composition or quantity is capable of
 - (a) polluting or otherwise negatively and permanently altering a body of water, the air or the soil or
 - (b) endangering an existing population of animals or plants,

shall be liable to imprisonment not exceeding five years or a fine.

⁷ Translator's note: The English version of the provisions quoted in this section uses Prof. Dr Michael Bohlander's translation of the German Criminal Code, published at http://www.gesetze-im-internet.de/englisch_stgb/index.html

The attempt shall be punishable under § 326(4) of the Criminal Code. If the offender acts negligently, the penalty under § 326(5) of the Criminal Code shall be imprisonment not exceeding three years or a fine. The offence shall not be punishable under § 326(6) if harmful effects on the environment, especially on persons, bodies of water, the air, the soil, useful animals or useful plants, are obviously excluded due to the small quantity of waste.

§ 330(1) of the Criminal Code stipulates that in especially serious cases of an intentional offence , the penalty shall be imprisonment from six months to ten years. An especially serious case typically occurs if the offender

1. damages a body of water, the soil, a nature conservation area or a natural park (conservation area within the meaning of § 329(3) of the Criminal Code) in such a manner that the damage cannot be eliminated or only at extraordinary expense or after a lengthy period of time;
2. endangers the public water supply,
3. permanently damages an existing population of animals or plants of species under threat of extinction or
4. acts out of profit-seeking.

§ 330(2) of the Criminal Code states that whosoever by an intentional offence places another person in danger of death or serious injury or a large number of people in danger of injury or causes the death of another person, shall be liable to imprisonment from one to ten years, and in cases causing the death of another person, to imprisonment of not less than three years. In less serious cases the penalty shall be imprisonment from six months to five years, and from one to ten years in cases causing the death of another person (§ 330(3) of the Criminal Code).

Article 3(c) of Directive 2008/99/EC has been transposed into German criminal law by §§ 18a and 18b of the Waste Shipment Act.

§§ 18a and 18b of the Waste Shipment Act contain provisions on illegal shipments of waste falling under Regulation (EC) No 1013/2006. § 18a refers to illegal shipments of hazardous waste and § 18b to illegal shipments of non-hazardous waste.

Illegal shipment of hazardous waste

Under § 18a(1) of the Waste Shipment Act whosoever carries out an illegal shipment within the meaning of Article 2(35)

1. (a),(b), (c), (g)(i) or (g)(ii) of Regulation (EC) No 1013/2006
or
2. (f) in conjunction with
 - (a) Article 34(1) or (3), Article 39, Article 40(1), Article 41(1), introductory wording, or Article 43(1) of Regulation (EC) No 1013/2006 or
 - (b) Article 36(1), also in conjunction with Article 40(2) of Regulation (EC) No 1013/2006

of hazardous waste within the meaning of point 2 of Article 3 of Directive 2008/98/EC shall be liable to imprisonment not exceeding five years or a fine.

Under § 18a(2) of the Waste Shipment Act, whosoever by an intentional act as defined in § 18(2)(1) endangers the life or health of another person, animals or plants, a body of water, the air, the soil or another person's property of significant value, shall be liable to imprisonment not exceeding five years or a fine.

Under § 18a(3) of the Waste Shipment Act, whosoever

1. persistently repeats an act referred to in paragraph 1 or,
2. in the cases referred to in paragraph 1 acts out of profit-seeking, shall be liable to imprisonment from six months to five years.

Whosoever in the cases referred to in paragraph 1 puts the life of another person at risk of death or serious damage to their health, or puts a large number of people at risk of damage to their health, shall under § 18a(4) of the Waste Shipment Act be liable for imprisonment from one to ten years.

Where the cases referred to in paragraph 4 are less serious, the penalty shall be imprisonment from six months to five years (paragraph 5). Whosoever in the cases referred to in paragraph 1 causes the death of another person shall be liable for imprisonment for no less than three years (paragraph 6).

Where the cases referred to in paragraph 6 are less serious, the penalty shall be imprisonment from one to ten years (paragraph 7). If the offender acts negligently in the cases referred to in paragraphs 1 or 2, the penalty under § 18a(8) of the Waste Shipment Act shall be imprisonment not exceeding three years or a fine.

Under § 18a(9) of the Waste Shipment Act the court may, in the cases referred to in paragraphs 1, 2 and 8 of § 18a, reduce the penalty under § 49(2) of the Criminal Code or waive the penalty if the perpetrator voluntarily averts the danger or remedies the situation he or she caused before any substantial damage arises. If the danger is averted or the unlawful situation remedied without the perpetrator's intervention, a voluntary and serious effort to achieve this objective shall be deemed sufficient.

Under § 18a(10) of the Waste Shipment Act the offence shall not be punishable under paragraphs 1 to 8 if the action involves an insignificant quantity of hazardous waste.

Illegal shipment of non-hazardous waste

Under § 18b(1) of the Waste Shipment Act whosoever carries out an illegal shipment within the meaning of Article 2(35)

1. (a),(b),(c) (g)(i) or g(ii) of Regulation (EC) No 1013/2006 or
2. (f) in conjunction with
 - (a) Article 34(1) or (3), Article 39, Article 40(1), Article 41(1), introductory wording, or Article 43(1) of Regulation (EC) No 1013/2006 or
 - (b) Article 36(1)(b), (f) or (g), also in conjunction in each case with Article 40(2) of Regulation (EC) No 1013/2006

of waste within the meaning of Article 3(1) of Directive 2008/98/EC, which is not hazardous waste as defined in Article 3(2) of Directive 2008/98/EC, shall be liable for imprisonment not exceeding two years or a fine.

Under § 18b(2) of the Waste Shipment Act, whosoever by an intentional act as defined in § 18(2)(2) endangers the life or health of another person, animals or plants, a body of water, the air, the soil or another person's property of significant value, shall be liable to imprisonment not exceeding two years or a fine.

Under § 18a(3) of the Waste Shipment Act, whosoever

1. persistently repeats an act described in paragraph 1 or
2. in the cases referred to in paragraph 1 acts out of profit-seeking, shall be liable to imprisonment from six months to five years.

Whosoever in the cases referred to in paragraph 1 puts the life of another person at risk of death or serious damage to their health, or puts a large number of people at risk of damage to their health, shall under § 18b(4) of the Waste Shipment Act be liable for imprisonment from one to ten years. Where the cases referred to in paragraph 4 are less serious, the penalty shall be imprisonment from six months to five years (paragraph 5).

Whosoever in the cases referred to in paragraph 1 causes the death of another person (paragraph 6), shall be liable for imprisonment for no less than three years. Where the cases referred to in paragraph 6 are less serious, the penalty shall be imprisonment from one to ten years (paragraph 7). If the offender acts negligently in the cases described in paragraphs 1 or 2, the penalty under § 18b(8) of the Waste Shipment Act shall be imprisonment not exceeding one year or a fine;

Under § 18b(9) of the Waste Shipment Act, the court may in the cases referred to in paragraphs 1, 2 and 8 reduce the penalty under § 49(2) of the Criminal Code or waive the penalty if the perpetrator voluntarily averts the danger or remedies the situation he or she caused before any substantial damage arises. If the danger is averted or the unlawful situation remedied without the perpetrator's intervention, a voluntary and serious effort to achieve this objective shall be deemed sufficient.

Under § 18b(10) of the Waste Shipment Act the offence shall not be punishable under paragraphs 1 to 8 if the action involves an insignificant quantity of waste.

Sanctions imposed on legal persons or on associations of persons

If the director of a legal person or an association of persons has committed a criminal or administrative offence (including the administrative offence of breach of supervisory duties) as a result of which duties incumbent upon the legal person or association of persons have been breached or the legal person or association of persons has been, or was intended to be, enriched, a fine may be imposed in accordance with § 30 of the Administrative Offences Act.

A fine of up to EUR 10 million may be imposed in the event of an intentional offence, and a fine of up to EUR 5 million in the event of a negligence offence. The fine should exceed the financial advantage that the perpetrator gained from the administrative offence. If the legal maximum is not sufficient in this regard, it may be exceeded under § 30(3) in conjunction with § 17(4) of the Administrative Offences Act.

Administrative Offences

At administrative level, there are about 223 laws/regulations governing waste and many infractions are punished as regulatory offences. For example, unauthorised disposal of waste materials that do not present the dangers set out in section 326(1) of the Criminal Code is covered by section 69(1) of the Circular Economy Act as a regulatory offence.

Less serious violations related to the shipment of waste are punishable under Section 18 of the Waste Shipment Act as regulatory offences.

The regulatory offences may be punished through fines. These fines are imposed under administrative law and may be imposed by an administrative authority or further to an appeal in court proceedings.

Failure to restore a polluted area is not punished as a crime.

In addition to the provisions of criminal law, German law contains further provisions covering the actions described in Article 3(b) and (c) of Directive 2008/99/EC.

5.1.2. Other rules or judiciary instructions

Section 268 of the guidelines for criminal proceedings and proceedings to impose a regulatory fine (RiStBV) refers prosecutors and judges to the provisions on penalties and fines for environmental protection purposes contained in numerous laws, which may be applicable depending on the specific circumstances of the case.

Some Länder also have supplementary provisions on competence and cooperation in respect of environmental offences.

For example, Baden-Württemberg has administrative guidelines on environmental offences covering cooperation between the law enforcement and administrative authorities (in the area of waste).

Under Saxony-Anhalt's regulations on jurisdiction in matters of waste law, police on traffic duty are responsible, alongside the competent waste authorities, for monitoring compliance with waste regulations.

A joint circular has also been issued on enforcement when monitoring waste disposal as part of the supervision of facilities under waste law, and there is a supervision plan for plants producing industrial emissions. Inspections on public roads are covered in a joint circular on enforcement of the Circular Economy Act and of the Waste Shipment Act when monitoring waste shipments.

5.1.3. Determination of the seriousness of waste crime

Criteria to determine whether a case is particularly serious are set out in § 330(1) of the Criminal Code (see paragraph 5.1.1.), which provides for a penalty from six months to ten years of imprisonment if the offender:

1. *damages a body of water, the soil, a nature conservation area or a conservation area within the meaning of § 329(3) in such a manner that the damage cannot be eliminated or only at extraordinary expense or after a lengthy period of time;*
2. *endangers the public water supply,*
3. *permanently damages an existing population of animals or plants of a strictly protected species; or*
4. *acts out of profit-seeking.*

Paragraphs 4, 5, 6, 7, 9, and 10 of both § 18a and § 18b of the Waste Management Act also contain rules on aggravating and mitigating circumstances and on the seriousness of the case (see paragraph 5.1.1.).

Furthermore, under § 46 of the Criminal Code, sentencing must take account of the consequences of the offence to the extent that the perpetrator is to blame for them. This means that alongside the other sentencing considerations set out in § 46 of the Criminal Code, the damage caused by the perpetrator is a key criterion for sentencing in respect of a specific environmental offence.

Some Länder (e.g. Brandenburg) have adopted police guidelines to help with identifying serious waste crime; in case of doubt, the guidelines suggest how to proceed.

5.1.4. Links with other serious criminal offences

Based on their strong links with economic crime, serious manifestations of waste trafficking can be characterised as a special form of organised economic crime. The perpetrators are usually economic operators in positions of responsibility in established private or semi-private companies in the waste disposal market. They use their position for illegal personal enrichment and/or to strengthen the company's market position by illegal means. Experience shows that perpetrators can conduct illegal waste trafficking on a large scale only in the context of a company structure.

In some cases a link to corruption exists since many business activities in the disposal sector require authorisation from the public administration. Public officials can therefore be corrupted in order to obtain an illegal authorisation.

A link to organised crime could be found in a few cases only. A reason for this might be the specific feature of the German definition of organised crime – 'using commercial or quasi-commercial structures' – is a normal aspect of business in the waste disposal sector and cannot therefore be adduced to characterise an activity as organised crime (in recent years, the federal organised crime assessment has recorded between one and three investigations where the main activity was waste trafficking).

The Länder have reported either that they are unaware of cases where there is a link between waste crime and other serious offences in the field of organised crime, or that such cases occur only infrequently. In larger-scale criminal proceedings for serious waste crime, however, there is a clear link to corporate-related offences such as fraud, corruption, retention and embezzlement of wages, insolvency offences and tax evasion.

Brandenburg reported two proceedings where environmental crimes were linked to corruption.

Hesse reported individual proceedings against businesses which were seeking to increase profits by consistently saving on waste disposal costs.

Lower Saxony reported a small number of investigations regarding the shipment to Nigeria of refrigerators and refrigerated vehicles containing CFCs.

During the visit two cases were presented by the representative of North Rhine-Westphalia, which clearly set out the connection between environmental crime and organised and white-collar crime. The two cases concerned the illegal handling of oil pellets and the illegal use of mercury. It was emphasised that without proper knowledge of environmental criminal law, initially on the part of the environmental administration and subsequently on the part of the public prosecutor, a successful investigation and indictment is not possible.

This shows the advantage of assigning a police officer to North Rhine-Westphalia's Ministry of the Environment. The officer can actually play an important role as a facilitator between the EPA and the police.

It should be noted that, in the context of complex environmental and economic cases, it is difficult to find suitable experts.

Rhineland-Palatinate found that waste offences were frequently linked to companies in the construction sector (who were handling and disposing of materials containing asbestos, in particular), to companies dealing with disposal and recycling (tank cleaning companies, for example), to businesses operating landfill sites and to transport companies. The Land Criminal Police Office added that, on account of the seriousness of other criminal offences, investigations into organised crime or corruption may overlook underlying environmental offences.

In Saxony-Anhalt the former head of a district authority is being investigated for corruption, including in relation to waste crime.

Schleswig-Holstein pointed out that some cases can also involve tax offences, for example when a waste disposal company draws up inaccurate invoices for what it claims was proper disposal.

Thuringia drew on its experience of practical casework where, in addition to waste crime, cases of suspected economic offences had come to light, in particular retention and embezzlement of wages, insolvency offences and tax offences.

5.1.5. The role of NGOs

Non-governmental organisations (NGOs), like any private individual, can report offences even if they themselves have not suffered any damage as a result of the offence. Based on the information provided, the law enforcement authorities assess whether to initiate a criminal investigation and any further measures. However, NGOs have no right to join as a private accessory prosecutor under § 395 of the Code of Criminal Procedure.

NGOs essentially play a role of reporting, study and research.

They also have a role in administrative procedures or administrative proceedings, as the Environmental Appeals Act (act containing supplemental provisions on appeals in environmental matters pursuant to Directive 2003/35/EC), which entered into force on 15 December 2006, grants associations the right to appeal against some environmental decisions and authorisations without requiring the associations to assert that their own rights have been violated.

The associations must be officially recognised as described in § 3(1) of the Environmental Appeals Act. Depending on the association, the recognition process may be carried out by the Federal Environment Agency, the Federal Agency for Nature Conservation, or the competent authority of the Land (paragraphs 2 and 3 of § 3 of the Environmental Appeals Act).

Examples of decisions and authorisations that can be appealed include decisions granting permission in respect of projects for which an environmental impact assessment (EIA) must be carried out (§ 1(1)(1) of the Environmental Appeals Act). However, environmental associations can also appeal against other decisions by authorities that apply environmental legislation when granting permission for projects (§ 1(1)(5) of the Environmental Appeals Act) and, *inter alia*, some surveillance and supervisory measures taken by authorities in the enforcement of environmental legislation (§ 1(1)(6) of the Environmental Appeals Act).

The representatives of NGOs interviewed during the visit claimed that there was a need to increase public controls, possibly in a centralised way, and simultaneously to scale back the system of self-administered controls.

The NGOs also recommend that a register of natural persons involved in the waste sector be established, since companies often change their names.

5.2. Procedural, jurisdictional and administrative issues

5.2.1. Difficulties encountered with regard to the admissibility of evidence

The Ministries of Justice of the Länder reported the following difficulties.

Bavaria reported that sampling by environmental and administrative authorities was occasionally unsatisfactory or not carried out, with the result that it could not be used in criminal proceedings. There remain difficulties with documenting and assessing environmental conditions at the time of an inspection in a way that stands up in court.

North Rhine-Westphalia also reported a similar problem, as the environmental authorities often take only a few samples, even when there are large amounts of waste. This makes it difficult to refute the defence that the mixtures are not uniform. It was also reported that the situation had occurred in which it was no longer possible to examine evidence to determine the risk posed by the substance, as the police had already disposed of it without sufficient verification. North Rhine-Westphalia also described the seizure of hazardous waste as problematic, as such measures give rise to obligations incumbent on the law enforcement authorities under waste legislation which the public prosecutor's offices and courts can hardly comply with properly. In addition, problems with witnesses may arise in the main hearing, as construction sites often employ foreign workers who only stay in Germany for a limited period and who may therefore no longer be available.

Hesse pointed out that the taking of water and soil samples in connection with illegal waste disposal required detailed knowledge of environmental criminal law on the part of the investigating authorities, as there were considerable requirements to be met with regard to the taking of evidence, to ensure that it was valid and stood up in court. For example, mention was made in this connection of the problem of retained samples and the taking of comparative samples around the contaminated site.

The Ministry of the Interior and Sport of Rhineland-Palatinate reported that the taking of samples of solid and semi-solid waste and of dumped materials, especially debris, is carried out in accordance with LAGA (Bund-/Länder-Arbeitsgemeinschaft Abfall) Guideline PN 98. Such sampling had been carried out for many years with proven expertise and had always stood up in court. In recent years, according to their observations, lawyers throughout Germany had specialised in challenging sampling based on LAGA PN 98 on a large scale and tackling it with their own reports. Obtaining a representative sample to assess possible criminal conduct by an accused person had therefore been made more difficult. Under the leadership of the Federal Criminal Police Office, several criminal police offices of the Länder (including Rhineland-Palatinate) had joined together in a working party in order to work out a solution in conjunction with the LAGA. In addition, the specific classification of waste was difficult, as there were no legal provisions or regulations that were directly enforceable. Although correspondents' guidelines on Regulation (EC) No 1013/2006 were an important instrument for assessing waste status, they were precisely not binding for the legal characterisation.

In Lower Saxony the complexity of the interdisciplinary issues concerning certain aspects of evidence (characterisation of waste, risk level) was described as problematic. The actual storage of items of evidence sometimes posed problems. However, the prevailing view was that there were no specific problems.

The prosecutors interviewed during the visits stressed the difficulty of finding the necessary technical skills for investigation and the need to have uniform investigative standards.

At judicial level, in some Lander it is recorded the impossibility to successfully manage and complete this type of trials, due to their technical difficulty.

5.2.2. Measures other than criminal or administrative penalties

The judicial Authority can order the confiscation of the economic benefits obtained by committing the offence. Objects generated as a result of a premeditated act or used or intended for use in its commission or preparation may be confiscated, as may objects to which the offence relates (the latter only in the case of certain waste offences set out in § 330c of the Criminal Code and § 19 of the Waste Shipment Act).

The waste management legislation likewise provides for the possibility of confiscation also where administrative offences have been committed under the Circular Economy Act and the Waste Shipment Act.

In addition, 'security measures', which do not punish offenders but are intended to prevent them from re-offending, can also be implemented. However, specifically in the case of 'waste offences', an occupational ban (§ 70 of the Criminal Code) should be considered under which offenders can be prohibited at least temporarily from engaging in a profession or trade if they have committed the offence in abuse of their profession or trade or in gross violation of the obligations associated therewith and there is a risk that they will again commit serious offences of this kind if they continue to engage in this profession or trade.

As regards the liability of legal persons, in Germany there is no criminal liability for legal persons subject only to administrative sanctions with a complex procedure managed by the prosecutor.

Prosecutors can apply a 'fine' to a legal person (company) even if the criminal proceedings against the individual person does not go ahead, e.g. because that person has not been identified.

5.2.3. Handling of seized objects

The competent public prosecutor's office decides how seized objects are to be dealt with. Locally, standard cooperation measures between law enforcement and environmental authorities are normally used. As a rule the costs of temporary storage are treated as procedural costs. If later convicted, the defendant also bears the costs of the proceedings. Otherwise the authorities bear the costs.

However, it is very rare for copious quantities of waste to be secured as evidence. Representative samples are usually taken, along with photographs and other records on the nature, quantity and composition of the waste. At the earliest opportunity, samples are sent to a certified laboratory for analysis; at the latest when the analysis has been completed, the public prosecutor's office can authorise the disposal of the waste. The storage and disposal of the waste remains the responsibility of the waste holder.

If safety measures are necessary, the costs for these may be recovered from the perpetrator. In the case of hazardous substances (e.g. explosives, chemicals, etc.) provision is made for safe and secure storage. Dangerous substances or goods are stored in areas specially reserved for that purpose by the port authority or the fire brigade, for example. If the authority is unable to store the goods, appropriate storage space is rented on the open market.

The authorities can use administrative procedures in the area of waste shipment to make provision for the secure storage or the seizure of waste together with its means of transport and packaging (§ 11(4) and (5) of the Waste Shipment Act). Costs for storage or seizure are charged to the persons concerned in accordance with Article 25 of Regulation (EC) No 1013/2006.

5.3. Environmental restoration

The perpetrator is responsible for remedying the damage caused. If nobody can be held accountable (in due time), then the regulatory authorities are responsible for addressing safety issues, for example through restoration.

Environmental agencies, at both central and Länder level, cannot turn civil action into criminal trials.

Confiscation is provided for, but there is no possibility of directly allocating the confiscated profits to environmental agencies and/or police budgets.

5.4. Jurisdiction

5.4.1. Principles applicable to the investigation of waste crimes

In accordance with § 3 of the Criminal Code, German criminal law applies to crimes committed at least in part (see § 9 of the Criminal Code) on German territory. In addition, in accordance with § 4 of the Criminal Code, German criminal law applies, regardless of the law applicable in the locality where the act was committed, to acts committed on a ship or aircraft entitled to fly the federal flag or bear the national insignia of the Federal Republic of Germany.

Pursuant to § 5(11) of the Criminal Code, German criminal law applies, regardless of the law applicable in the locality where the act was committed, to the environmental offences set out in §§ 324, 326, 330 and 330a of the Criminal Code if they are committed outside German territory but in the area of the German Exclusive Economic Zone, insofar as international conventions on the protection of the sea allow for their prosecution as criminal offences.

German criminal law also applies in accordance with § 5(12) of the Criminal Code, regardless of the law applicable in the locality where the act was committed, to acts committed by German public officials while abroad for official reasons, whether or not they are committed in connection with their official duties.

In accordance with Article 12 of the Act implementing the Convention on the Law of the Sea, German criminal law applies in cases under §§ 324, 326, 330 and 330a of the Criminal Code to acts committed from a ship in the North Sea or the Baltic Sea outside the German Exclusive Economic Zone by discharging substances in breach of duties under administrative law (§ 330d(4) and § 330d(5) of the Criminal Code) which support the implementation of international conventions on the protection of the sea. In so far as the act is committed within the territorial waters of another state, this applies if the offence is punishable under the law of that state. Article 2 of the Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances of 13 September 1983 (Federal Law Gazette 1990 II p. 70) defines the area of the North Sea.

Finally, in accordance with § 7(2)(1) of the Criminal Code, German criminal law applies to acts of any kind committed abroad if the act is a criminal offence in the locality where the act is committed and the offender is German.

In accordance with § 7(2)(2) of the Criminal Code, German criminal law applies to acts of any kind committed abroad if the act is a criminal offence in the locality where the act is committed and the offender is a foreigner at the time of the offence, is found to be in Germany and, although the Extradition Act would permit extradition for such an act, is not extradited, because a request for extradition is not made within a reasonable period of time or is rejected, or the extradition is not practicable.

5.4.2. *Rules in case of conflicts of jurisdiction*

In cases of conflicts of jurisdiction the legislation implementing Framework Decision 2009/948/JHA applies to any kind of criminal proceeding including waste crime.

5.5. Conclusions

- In Germany the protection of the environment is provided for in the constitution both at state level and by some Länder.
- German legislation on environmental crime provides for both criminal offences and regulatory offences.
- The rules on environmental crime are contained in the German Criminal Code (Sections 324-330d StGB) and in secondary criminal law, such as the Waste Shipment Act, the Chemicals Act, the Federal Nature Conservation Act and the Federal Hunting Act, which have a supplementary role. The legislation also lays down the criteria for determining the seriousness of waste crime.
- Significant environmental crimes, especially cross-border ones, often seem to be linked to other offences such as economic crimes or financial offences. Based on their strong links with economic crime, serious manifestations of waste trafficking can be characterised as a special form of organised economic crime. However, no criminal offences have been defined that specifically include a focus on organised waste trafficking and it is difficult to apply the standard provisions relating to organised crime.
- In fact, the Länder have reported either that they are unaware of cases where there is a link between waste crime and other serious offences in the field of organised crime, or that such cases occur only infrequently.
- In some cases, a link to corruption exists since many business activities in the disposal sector require authorisation from the public administration.

- NGOs essentially play a role of reporting, study and research.
- Representative samples are usually taken, along with photographs and other records on the nature, quantity and composition of the waste.
- If safety measures are necessary, the costs for these may be recovered from the perpetrator, who is also responsible for remedying the damage caused.
- Problems have been detected regarding the taking of samples by environmental and administrative authorities. It is therefore suggested that they be better trained in this area and/or that they be trained as certified specialists in environmental enforcement activities.
- **When environmental crime is committed in coincidence with serious crimes specified in the Criminal Procedure Code (e.g. sec. 100a para (2) of the German Criminal Procedure Code), special investigations tools (e.g. wiretapping) may be used under the existing law.**
- The judicial Authority can order the confiscation of the economic benefits obtained by committing the offence. In the experts' view it would be recommendable to make use of the proceeds from crimes with a view to funding the fight against environmental crime.
- There is no criminal liability for legal persons subject only to administrative sanctions. A 'fine' can be imposed on a legal person (company) independently of the criminal proceedings.
- Large, complex environmental crimes often require very specialised experts but appointing them poses a challenge for some investigating authorities even though expert associations like the Federal Association of Publicly Appointed, Sworn and Qualified Experts (Bundesverband öffentlich bestellter und vereidigter sowie qualifizierter Sachverständiger - BVS) and the Federal Association of Experts and Evaluators (Bundesverband Deutscher Sachverständiger und Fachgutachter - BDSF) exist.

6. COOPERATION

6.1. International Cooperation

6.1.1. Forms of cooperation in cross-border cases

In the area of waste management legislation, the legal basis for the cross-border exchange of information and, where appropriate, requests for mutual legal assistance, is Regulation (EC) No 1013/2006 and §12(1) of the Waste Shipment Act. Furthermore, discussions with colleagues from other countries take place during the annual working meeting organised by the Federal Environment Agency, as well as project-based and informal communication between inspectors during cooperation activities within the IMPEL network. In addition, contacts can be established via the focal points of the contracting parties designated under the Basel Convention and via the Federal Foreign Office.

Police cooperation is channelled primarily through Interpol and Europol. In certain particularly urgent cases, police liaison officers may be involved.

At judicial level, Eurojust supports the coordination of criminal proceedings and the exchange of information.

The experience with these institutions and communication channels is considered to be positive in every respect.

The Grenz-AG II working group has proved to be an effective instrument in the fight against cross-border waste trafficking, partly because it improves international contacts. For example, thanks to this working group, regular cross-border inspections of waste shipments have been firmly established in the area of the Trier/Luxembourg border crossing point.

Custom cross-border cooperation takes place by way of administrative and judicial assistance provided by the Central Customs Criminal Investigation Office. Each customs investigation office also has an officer responsible for administrative and judicial assistance who acts as a local point of contact.

The legal basis for cooperation is Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, and the Naples II Convention. Otherwise the relevant bilateral agreements are applicable (such agreements exist in most cases).

Subject to the conditions laid down in § 34 of the Customs Investigation Service Act, cooperation is also possible outside the scope of such agreements.

The Central Customs Criminal Investigation Office takes part in various international initiatives relating to waste trafficking (e.g. EnviCrimeNet, Interpol). Furthermore, the Central Customs Criminal Investigation Office will be actively taking part in the EMPACT priority on environmental crime.

The instruments for mutual assistance in criminal matters, which govern criminal proceedings in general, are also applicable.

In Rhineland-Palatinate a Joint Working Group on Cross-Border Environmental Crime (Grenz-AG II) was formed. Under the leadership of the Land police headquarters in Saarbrücken, meetings and joint cross-border inspections of waste shipments take place together with police forces from France, Luxembourg and Belgium and the customs authorities and police forces from the Länder of Baden-Württemberg, Saarland and Rhineland-Palatinate. The aim is to organise annual meetings and inspections, subject to the respective human resources of the member countries. Moreover, each year the Land Criminal Police Office in Rhineland-Palatinate takes part in international waste shipment inspections organised by the Münster regional government, which particularly facilitates the development and maintenance of contacts with the Dutch police. For the exchange of information in cross-border cases of waste crime, they use all the joint police centres, and particularly the joint police centre in Luxembourg. The Land Criminal Police Office use SIENA, Europol's information system. In specific cases of illegal cross-border waste shipments it cooperates directly with the competent authorities of the countries concerned in accordance with Article 24 of Regulation (EC) No 1013/2006.

Schleswig-Holstein reported that, as part of the cooperation with Scandinavian countries, particularly with Denmark, the police are able to use the German-Danish Joint Centre for Police and Customs Cooperation in Padborg.

In Thuringia the police take part in certain EU inspection operations (e.g. the Augias EU-wide week of police inspections of waste shipments in 2010, and Interpol's inspection operation in 2017).

For the most part, cross-border cases of waste crime involve illegal waste shipment.

In Bremen, the formalised and standardised exchange of information on suspicious activity between police, customs and environmental/waste authorities has proved fruitful. Suspicions formed by the police and customs authorities are communicated to the competent environmental/waste authorities via a specific form.

The representatives of the judiciary mentioned the ENPRO network, which includes prosecutors of the states bordering the Baltic Sea. This network works on practical cooperation and on regular and frequent professional exchange of information and discussions between prosecutors; it also collects information on legislation and prosecution of environmental crime in other Member States. The network makes it possible to exchange information quickly in the event of marine pollution.

The relevant German Authorities are also part of the NSN - North Sea Network of Investigators and Prosecutors - a body associated with the OSPAR Commission and closely cooperating with the Bonn Agreement which was set up in 2002 to help enforce international regulations preventing pollution from ships in the North Sea.

The representative of Saxony-Anhalt noted that problems can arise in cross-border cases when the administrative authorities of the sender and recipient countries disagree on the case assessment. In concrete terms, waste shipments from Saxony-Anhalt to the Czech Republic often appear questionable from the perspective of Saxony-Anhalt. Especially those going towards Mychlovary. When asked, however, the Czech authorities indicate that these shipments are in order.

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

As reported in the previous paragraph, the instruments for mutual assistance in criminal matters which govern criminal proceedings in general are applicable. Between Member States, direct communication has proved fruitful. This does not rule out the use of focal points by the police.

The national focal point in Germany for the exchange of police information with other countries is the Federal Criminal Police Office.

Information is exchanged through, inter alia, the Anti-Fraud Information System (AFIS-Mail) and the Europol SIENA application.

A public prosecutor's office in Lower Saxony reported on a joint liaison point, staffed by police, which supported an exchange of information between the Netherlands and the investigative authorities in Lower Saxony in all cross-border procedures.

North Rhine-Westphalia reported that cooperation with the Bureau for EU regional Cooperation in Criminal Matters (BES) in Maastricht, run partly by North Rhine-Westphalia, has proved very helpful and fruitful.

For the exchange of information in cross-border cases of waste crime, Rhineland-Palatinate uses all the joint police centres, and particularly the joint police centre in Luxembourg. The Land Criminal Police Office in Rhineland-Palatinate already uses Europol's SIENA information system.

The public prosecutor's offices reported that they used the standard channels and tools, for example the European Judicial Network (EJN).

As part of international police cooperation, information is retrieved from Europol databases on an ad hoc basis.

In addition, EU information sources which are freely available on the internet, such as EUR-Lex, are used.

6.1.3. Difficulties faced in judicial cooperation relating to waste crime

The same challenges to cooperation in criminal matters that arise in cases of complex or organised crime are also reported in cases related to waste crime.

The public prosecutor's offices therefore criticised the often long and complex judicial assistance process in general.

6.1.4. Operational performance of JITs in waste crime

German legal practice is making increasing use of Joint Investigation Teams. In general, JITs are regarded by legal practitioners as an important investigative instrument and if necessary can be also used in the fight against illegal waste shipment. However, German public prosecutor's offices have not yet taken part in JITs specifically for cases of waste crime.

6.2. Cooperation with EU agencies and networks

6.2.1. Cooperation with Europol and Eurojust

Since 1 January 2004, Germany has registered six operational environmental crime cases at Eurojust. Four of them are currently ongoing.

Most of the cases concern various types of (hazardous) chemical pollution (contamination in food, emission deficits, illegal handling/trafficking of waste and fraud). One case concerns trafficking of European protected animal species.

Concerning the type of requested assistance, three cases involve MLA facilitation, and one involves EAW facilitation.

Germany also frequently receives requests in environmental crime cases. There have been 20 cases in which Germany has received requests since 1 January 2004, five of which are currently ongoing.

The cooperation also involves coordination meetings, meetings with other Member States and assistance in relation to communication with third countries.

Experiences with the aforementioned institutions have been positive in every respect. Particular mention should be made of the various information channels which are available for exchanging data and requests in a secure and timely manner. Specialised police contact points in Europol and Interpol are especially welcome in that connection.

However, the area of environmental crime is characterised by investigations that must be carried out very quickly, such as vehicle or ship inspections, while sometimes Eurojust is reported to be too slow. Therefore the German institutions prefer to make use of the abovementioned networks because they are more agile.

The competent Land police authorities are familiar with Europol products and tools such as: Environmental Crime Threat Assessment (2013), SOCTA, Early Warning Notifications. Various Länder have established access to EPEs within the framework of EnviCrimeNet. In addition, the Land police forces are kept regularly informed about those platforms and opportunities in the context of police training courses, and via the workshop for the directors of the central authorities for environmental and consumer protection offences.

The Central Customs Criminal Investigation Office is also familiar with some of the aforementioned Europol products and tools, which are brought into play in the context of strategic decisions.

The Land Criminal Police Office in Rhineland-Palatinate occasionally makes use of the opportunities and tools offered by Europol to obtain targeted information about a specific crime situation in Europe.

6.2.2. Experience resulting from the use of various environmental networks

German Authorities reported positive experiences with networks such as Environmental Crime Network (EnviCrimeNet), the Network for the Implementation and Enforcement of EU Environmental Law (IMPEL), the European Network of Prosecutors for the Environment (ENPE), as they offer the chance to exchange best practices and acquire information. Furthermore, the networks provide personal contacts with experts for ad hoc case handling and advice when required.

The Bremen environmental/waste authority and police have been taking an active part in IMPEL (European Union Network for the Implementation and Enforcement of Environmental Law) activities in the area of waste for over ten years, not least by giving presentations at events. The environmental/waste authority, in cooperation with the Bremen police, has also taken part in EU-wide inspection operations organised by IMPEL. The police force is also a member of the international INECE SESN network (Seaport Environmental Security Network). This global network is active in seaports all over the world, promoting the fight against illegal waste shipments by means of awareness campaigns, knowledge sharing and the exchange of information.

Two prosecutors from the environmental crime division of the public prosecutor's office in Frankfurt am Main (Hesse) have been following the work of the European Network of Prosecutors for the Environment (ENPE) as 'working members' ever since the network was established in 2012. The exchange of experiences with colleagues in different Member States of the European Union has proven to be very enriching for that division. In addition, prosecutors from that same division have already taken part in highly fruitful, international and multidisciplinary events organised by IMPEL on issues in the area of waste legislation, possible approaches to investigative proceedings and the practice of waste inspections in general.

The Land Criminal Police Office in Rhineland-Palatinate is also familiar with those platforms. In particular, EnviCrimeNet is used to exchange specialist information on the state of play as regards combating environmental crime.

The services provided by the Waste and TFS Expert Team of IMPEL (Network for the Implementation and Enforcement of EU Environmental Law) are mainly used by the waste authorities – in ways which vary from Land to Land – and are regarded as helpful in terms of enforcement.

6.3. Cooperation between Germany and Interpol

Nothing was reported.

6.4. Cooperation with the private sector

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

Pursuant to § 59 of the Circular Economy Act in conjunction with § 2 of the Regulation on waste management officers, certain operators of facilities are obliged to appoint an official responsible for waste management, who must be suitably knowledgeable. Such officials are in particular both authorised and obliged to oversee the progress of waste from its generation or delivery to its recovery or disposal, and to monitor compliance with the provisions of the Circular Economy Act and with the regulations enacted on the basis thereof, and fulfilment of the requirements and conditions laid down in accordance therewith (points 1 and 2 of § 60(1) of the Circular Economy Act). Such officials may be guilty of an environmental offence if they unduly omit to inform the management of an environmental hazard, and if the materialisation of such a hazard would almost certainly have been averted had the management been informed thereof in a timely manner.

Regarding practical experience, Rhineland-Palatinate reported that cooperation between the public prosecutor's offices and the private company dealing with hazardous waste, which is vested with sovereign rights ("SAM Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH"), is very good.

Pursuant to the Waste Shipment Act, in Schleswig Holstein responsibility for organising the disposal of hazardous waste is also entrusted to a private company, "Gesellschaft für die Organisation der Entsorgung von Sonderabfällen mbH". The police report very good experiences in terms of their cooperation with the company.

Within the framework of the 'Saxony-Anhalt Environmental Alliance', an agreement has been concluded between the Land Government and waste management sector in Saxony-Anhalt with the aim of designing a waste management system fit for the future. Alongside the general requirement to comply with the relevant legislation, one element of that agreement is the commitment to demonstrate the legal conformity of cross-border shipments of waste.

6.4.2. Liability in case of non-compliance with an obligation to pass on information to competent authorities

Under the German legal system, the law enforcement authorities are obliged to take the necessary measures whenever there is a suspicion of a criminal offence. Other public bodies may be required to provide the law enforcement authorities with information.

6.4.3. Experience of cooperation with the private sector

The Länder stated that reports from the private sector had often been the basis of their intelligence. Hesse pointed out that, in the case of some criminal proceedings relating to environmental offences committed within individual undertakings, efforts have been made by the relevant compliance departments to work closely with the investigation.

6.5. Conclusions

- The instruments for mutual assistance in criminal matters, which govern criminal proceedings in general, are applicable to waste crimes. However, the judicial assistance process is often considered to be long and complex in general.
- Direct communication between Member States has proved fruitful. This does not rule out the use of focal points by the police.
- For the exchange of police information with other countries, the national focal point in Germany is the Federal Criminal Police Office.
- The experience with Eurojust and Europol and their communication channels is also considered to be positive in every respect.
- As part of international police cooperation, information is retrieved from Europol databases on an ad hoc basis.
- Police and prosecutors make use of almost all EU tools for cooperation. The Central Customs Criminal Investigation Office also takes part in various international initiatives relating to waste trafficking.
- The Central Customs Criminal Investigation Office is actively taking part in the EMPACT priority on environmental crime.
- Some Länder make use of Joint Centres for Police and Customs Cooperation involving other countries (e.g. the German-Danish Joint Centre in Padborg).
- German Authorities reported positive experiences with the available environmental networks.

- Although German legal practice is making increasing use of Joint Investigation Teams, German public prosecutor's offices have not yet taken part in JITs specifically for cases of waste crime.
- The same challenges to cooperation in criminal matters that arise in cases of complex or organised crime are also reported in cases related to waste crime.
- The private sector and Public Private Partnerships are involved by imposing the obligation to appoint an official responsible for waste management, who must be suitably knowledgeable.
- The cooperation with the private sector seems to be quite good and reports from the private sector have often been the basis of intelligence.
- In general, efforts are made by the relevant compliance departments to work closely with the investigations.

7. ILLEGAL TRAFFICKING OF WASTE

7.1. National structure

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

The national structure is the same as mentioned in chapter 4.

Inspection authorities deal with administrative offences, while the investigation of criminal offences, depending on the particular features of the case, is a matter for police or for customs investigators who act under the supervision of the public prosecutor's office. As regards the general competences, see paragraph 4.2.1.

The environmental authorities of the Länder are responsible for inspecting waste disposal and shipment (monitoring waste facilities and source streams, including on-site inspections).

The Federal Office for Goods Transport (Transport Monitoring) and customs authorities have legal responsibility for cooperation on the inspection of cross-border waste shipment. It also monitors whether the transport of waste by road in goods vehicles meets the specific legislation. It thus helps to prevent and fight the illegal shipment of waste. In the event of non-compliance with the legislation, the Federal Office for Goods Transport must inform the relevant Länder authorities and/or the Federal Environment Agency of the action decided on. Where there are grounds to suspect the illegal shipment of waste, the Federal Office for Goods Transport must report the case to the relevant police or other law enforcement authority.

In keeping with its statutory duties, the Federal Office for Goods Transport carries out regular inspections. In 2015 it carried out a total of 24 000 waste inspections on motorways and trunk roads and identified 2 500 breaches of waste legislation, 300 of which were suspected of involving a criminal offence.

The customs authorities are responsible for monitoring cross-border goods traffic. They take part in the inspection of waste shipments as part of their current duties.

As a rule, federal and Länder police services do not have any inspection or preventive responsibilities or powers for the implementation of environmental or consumer protection law or powers or responsibilities specifically in relation to cross-border goods traffic.

Eight Länder have also used their waste legislation to give their police services the power to inspect waste shipments regardless of whether they suspect wrongdoing. This is apart from their general traffic policing duties.

7.1.2. Detection of illegal shipment of waste

The illegal shipment of waste is usually reported by police authorities (Länder Police; also (depending on cases) Federal Office on Goods Transport, Federal Criminal Police, Federal Police, Custom Agency, Maritime Agency). Furthermore illegal shipment of waste is reported by environmental authorities or by private persons.

Road transport operations offer a major opportunity to detect illegal activity such as waste trafficking on a commercial scale. In fact, in such cases the main illegal activities occur during in-house operations that sometimes involve complex economic, technical and legal aspects, making them highly opaque to outsiders. Moreover, these offences become more difficult to detect as criminals become more professionalised.

According to the regulatory authorities of the Länder, illegal waste shipment can come to light in the following ways:

- official inspections, including in facilities and during transport;
- environmental damage cases;
- information from reports/permits under §§ 53 and 54 of the Circular Economy Act, notifications and means of compliance, prosecutions and entries in commercial registers;
- return requests from the relevant authorities in recipient states.

Waste offences are also detected during customs clearance or routine checks by inspection units. As part of joint operations, priorities for combating the illegal shipment of waste are set and measures, including targeted inspections, are carried out, with due regard for the inspection plans drawn up by the Länder. Tip-offs from other national bodies or countries and, last but not least, from private whistle blowers, may help with detection.

In order to prevent waste crime, trucks that are carrying waste must be marked with an obligatory 'A' sign. This allows control authorities to quickly and easily identify waste shipment vehicles. If a corresponding truck does not have these signs, it has already committed an offence and a large fine can be imposed for infringing the obligation.

7.1.3. Specificity of illegal shipment of waste

There is a general trend towards obscuring the immediate harmful effect of the offence. The following practices should be noted in this regard:

- misclassification of waste and concealment of the origin of waste and disposal routes through supply chains, intermediate waste processing facilities, warehouses and transfer stations;
- mixing hazardous waste with less hazardous or non-hazardous materials;
- manipulation of weighing slips and delivery notes or accompanying documents as regards the in- and output of facilities, material analyses and accounts;
- transport of misclassification waste outside normal working hours;
- use of frontmen in company management;
- anti-competitive arrangements between illegal market players;
- suspension of operations during inspections.

According to what reported in the answers to the questionnaire, the following *modi operandi* have been observed in practice in the Länder.

During waste shipment inspections in Bremen it was noticed that documentation did not correspond to the actual waste. What seem to be correctly reported or authorised waste shipments sometimes turn out to be illegal on closer inspection. There are several container packing centres in the Bremen area where all sorts of second-hand goods are packed for countries of destination in Africa. These packing centres also exist in other large German cities and in the countryside. They are often used by citizens of African origin for packing containers with re-usable goods, but also with waste electrical and electronic equipment (WEEE) and other sorts of waste (in particular old refrigeration equipment containing CFCs, end-of-life tyres, etc.).

Identifying and inspecting these so-called African centres is therefore a decisive means of combating illegal waste shipment at source (upstream). Most of the used vehicles shipped from Bremen's ports, which are usually destined for countries in West Africa, contain used goods. The vehicles are thus used as packing space. Here too, inspections regularly turn up goods that should be classified as waste, similar to that found at the above-mentioned packing centres. Standard inspection of used car lots and markets is thus another tried and tested means of combating illegal waste shipment. In general, the ports in Bremen and other major ports in north-western Europe can be said to function as veritable bottlenecks for legal and illegal waste streams.

The environmental authorities in Baden-Württemberg reported suspicions that there were international groups operating, especially towards Eastern Europe, in commercial-scale waste collection. These groups reportedly evaded prosecution through being highly organised and well informed.

North Rhine-Westphalia reported that materials with a lower specific weight than hazardous waste were sometimes used to conceal that waste during illegal shipment. For example, a thick layer of earth was spread over mercury to conceal the mercury and prevent inspectors' measuring probes from coming into contact with it. Another widespread practice is to illegally 'dilute' hazardous waste with other materials in order to then pass it off as non-hazardous waste during transport.

These types of practice typically involve serious economic crime. From Aachen it was reported that in that area, illegal cross-border waste shipments often involved waste electrical and electronic equipment, thought to be shipped to Africa through the port of Antwerp. However, there was no reason to suspect that these activities involved organised crime groups or individual perpetrators involved in serious crime.

Hesse reported that, according to prosecutors' estimates, there has been an increase in illegal cross-border waste shipment. However, no separate statistics are kept on this. From the experience of prosecutors in Hesse, it is mainly individual offenders who are involved.

After evaluating the results of inspections on illegal waste shipments, Rhineland-Palatinate reported the following main issues:

- Systematic and deliberate mixing of hazardous waste with non-hazardous waste at least up to the tolerance level applied in practice and usually beyond: criminals deliberately exploit the tolerance limit in order to boost their profits. Hazardous waste thus finds its way into the disposal of non-hazardous waste, which may adversely affect the quality of recycling products (e. g. biomass and compost), and lead to a build-up of harmful substances in the environment. In addition, immediate environmental risks may easily result, as the processing of this mixed waste leads to the direct release of harmful substances (e.g. artificial mineral fibres or asbestos). In incinerators, certain hazardous waste can lead to problem residues in the ash.
- Illegal export of e-waste, especially to West Africa: the perpetrators tend to use the inside of used vehicles or export the waste in containers.
- Dumping of contaminated soil and shredded building waste in opencast mines for recultivation.
- Disposal of unauthorised waste in biomass power stations, e.g. waste containing solvents, or mixed industrial waste. The police in Schleswig-Holstein also report waste being shipped to biogas plants.

It is difficult to make any generalisation about the degree of organisation of perpetrators of this sort of offence. However, all the offences depend on waste producers and disposers working together, or at least on the disposer tolerating the waste that is deposited. The export of e-waste to Africa also requires a logistics chain comprising a number of links.

In Brandenburg both individual offenders and commercial operators have been investigated for illegal waste disposal; some organised arrangements between landfill site operators and disposers have come to light, although the offenders were not part of the organised crime milieu as such.

In Schleswig-Holstein notifiable waste is reported to have been shipped as green-listed waste or as products. Sometimes there have been reports, which are almost impossible to verify, of recovery operations taking place abroad.

7.1.4. Measure on shipment of waste

Under Regulation (EC) No 1013/2006 and the Waste Shipment Act, measures can be taken to ensure that the shipment of waste between Member States, as well as to and from Member States to third countries is managed in an environmentally sound manner throughout the period of shipment, as well as in the recovery, or disposal of waste.

Inspection plans and risk assessments are of practical significance in this regard.

As regards policing, several Länder have supra-regional police strategies for inspecting waste shipments and combating waste trafficking, including cooperation with neighbouring countries.

7.2. Inspections

7.2.1. Methodology of inspections and follow-up

The instruments normally used by environmental authorities include:

- a. checking documentation and waste, where necessary drawing on the services of environmental laboratories;
- b. inspection of facilities and/or waste shipments;
- c. use of a common cross-Länder computer system;
- d. access to registers/keeping of supporting documents pursuant to Article 20 of Regulation (EC) No 1013/2006.

Previously, in some Länder, the environmental inspection authorities were obliged to announce inspections. However, practise has shown that it is beneficial to perform unannounced inspections as well, so the procedure has changed meanwhile. Now, unannounced inspections are also carried out in addition to the announced inspections.

Inspection activities focus on hazardous waste.

Some Länder collect samples using safe methods accepted in court. To this aim Brandenburg created a special vehicle scientifically equipped for sampling in the field.

In addition, the instruments/methods set out in the inspection plans are used.

When carrying out their inspections, inspectors from the Federal Office for Goods Transport use the specific instructions issued by the office. These include explanatory material on the legislation, descriptions of the various procedures and the correspondents' guidelines on Regulation (EC) No 1013/2006. The Federal Office for Goods Transport keeps these instructions regularly updated.

If there is evidence of a criminal offence, it is reported to the competent public prosecutor's office.

The public prosecutor's office decides whether an investigation should take place and on any necessary preservation measures.

Other types of infringement are prosecuted by the competent enforcement authority. A distinction is drawn between first offences and repeat offences; cautions are also issued, and the IMPEL manual 'A practical guidance for managing illegal shipments of waste' is used.

There are no statistics on confiscation measures.

As a result of an inter-ministerial decree, operation controls in Saxony-Anhalt focus on unannounced and irregular inspections. This allows companies in the field of waste management to be monitored more efficiently and discrepancies detected. The decree also includes coordinated waste controls by several competent authorities.

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

Waste electrical and electronic equipment is bulk waste.

It is a regular illegal practice upon export to declare such waste as used goods in order to circumvent the monitoring system. Therefore inspections are needed to detect such illegal activity. However, given the volume of goods passing through (containers are now the main form of transport in ports), only a fraction of container traffic can be inspected. The authorities responsible for the implementation of waste law therefore subject customs declarations to a preliminary analysis.

The Federal Office for Goods Transport works with the competent environmental authorities and uses their own specific WEEE analysis when conducting joint inspections.

A whole series of environmental authorities pay special attention to waste electrical and electronic equipment when carrying out their inspections. Furthermore, the Länder enforcement agencies are also empowered to take measures under the German Electrical and Electronic Equipment Act, which transposed the EU Directive on waste electrical and electronic equipment. Correspondents' Guidelines No 1 for Regulation (EU) No 1013/2006 are also of relevance.

With regard to end-of-life vehicles a number of environmental authorities in the Länder report that, while inspecting, it is challenging to distinguish between waste and non-waste used cars. For this purpose Correspondents' Guidelines No 9 for Regulation (EU) No 1013/2006 have been issued and are used.

Because such a large number of undertakings are involved in the shipment of end-of-life vehicles, it is not possible to carry out inspections across the board on all undertakings. Inspections are carried out when there is due cause, including on non-accredited undertakings, garages or other premises, following tip-offs or investigations by the Criminal Police Offices of the Länder.

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

Before an illegal shipment can be taken back, an in-depth investigation is required to prove that the shipment was illegal and who was responsible. This and the subsequent measures for taking back or alternative means of disposal require a close and trusting working relationship between the competent authorities of the States concerned. According to the information provided, the taking back of illegal waste shipments can be hampered by several factors: differences in understanding of the classification of waste; investigations not satisfactorily conducted and lack of cooperation between the authorities concerned; mixing of waste from different producers; difficulties in identifying those responsible; the insolvency of companies involved; lack of space for preservation or storage; and lengthy procedures, sometimes involving the courts, for reimbursement of the costs of returning the waste.

Informal and personal contacts with colleagues from authorities in other States, including through participation in IMPEL projects, simplify cooperation when actual cases arise.

7.2.4. *First inspection plan*

In accordance with Article 50 of Regulation No 1013/2006, as amended by Regulation No 660/2014, first inspection plans have been adopted by 15 Länder. There is one Land which has not yet produced an inspection plan.

7.3. Conclusions

- The environmental authorities of the Länder are responsible for inspecting waste disposal and shipment, while the Federal Office for Goods Transport (Transport Monitoring) and customs authorities have legal responsibility for cooperation on the inspection of cross-border waste shipment.

Given the volume of goods passing through the borders only a fraction of container traffic can be inspected. However, some Federal and Länder police services do not have any inspection or preventive responsibilities or powers in relation to cross-border goods traffic. Eight Länder have used their waste legislation to give their police services the power to inspect waste shipments regardless of whether they suspect wrongdoing. In the expert's view, since inspections are needed to detect such illegal activity, this has to be considered a best practice that should be spread.

- In the expert's view, detection and reporting of waste crimes by the relevant environmental authorities should be improved.
- In order to prevent waste crime, trucks that are carrying waste must be marked with an obligatory 'A' sign. This is considered a best practice in the prevention field.
- As regards policing, several Länder have supra-regional police strategies for inspecting waste shipments and combating waste trafficking, including cooperation with neighbouring countries.
- Regarding waste disposal/recovery, in some Länder, the environmental inspection authorities are obliged to announce the inspection. In other Länder this procedure has changed and now, in addition to the announced inspection, unannounced inspections are also carried out. That is considered a best practice that should be spread widely to other Länder.
- Some but not all Länder collect samples using safe methods accepted in court. To this aim, Brandenburg created a special vehicle scientifically equipped for sampling in the field. That is considered a best practice to be spread widely.

- There are no statistics on confiscation measures. It is suggested to keep statistics also on these data.
- Regarding end-of-life vehicles, a number of environmental authorities in the Länder report that, while inspecting, it is challenging to distinguish between waste and non-waste used cars. For this purpose Correspondents' Guidelines No 9 for Regulation (EU) No 1013/2006 have been issued and are used.
- Informal and personal contacts with colleagues from authorities in other States are used to simplify cooperation when actual cases arise.

8. MANAGEMENT OF HAZARDOUS WASTE

8.1. The classification of hazardous waste and the challenges in terms of establishing the gravity of an offence

Point (b) of Article 3 of the Directive was transposed into German law by § 326(1) and (5) subparagraph 1 of the Criminal Code and § 330 of the Criminal Code. All of the offences under those provisions relate to hazardous waste.

In 2016, 848 people were adjudicated for a criminal offence under § 326(1) of the Criminal Code and 157 of a criminal offence under § 326(5) subparagraph 1 of the Criminal Code

The misclassification of waste has transpired to be one of the most significant modi operandi for the trafficking of waste.

Some Länder have reported the following experiences.

Mecklenburg-Western Pomerania reports that it often appears not to be criminal intent which is behind the misclassification of waste by producers/holders, but rather negligence combined with a lack of expertise. Upon inspections by the administrative authorities, those concerned were frequently unable to produce any information relating to the waste classification on the spot (information concerning the waste and possible contamination with pollutants, representative analyses, etc.).

In Bremen, when there is a case of suspected misclassification, an investigation is carried out for confirmation by means of chemical analyses and reports. Schleswig-Holstein emphasises that problems can result from the criteria for distinguishing between mixtures (Ordinance on the CLP Regulation/CLP Regulation), especially for H 14-ecotoxic.

North-Rhine Westphalia reports that, given the financial advantage to be gained from disposing of hazardous waste at low cost, it is sometimes declared as non-hazardous waste. During inspections of waste shipments, it is not immediately apparent that such waste is hazardous waste, especially if it has been mixed with non-hazardous waste. 'Premixed waste' has proven particularly problematic.

In Saxony-Anhalt, a database for the classification of waste according to hazard level has been created and published.

The competent authorities in Hesse have reported that, in order to improve the identification of misclassification waste, they have developed a database which, in addition to information on the shipment procedure, also includes images relating to the European list of waste. The database is openly accessible on the internet (<https://www.hlnug.de/themen/abfall/hessian-database-for-waste-transports.html>).

Actions taken to ensure traceability from production to final destination and control of hazardous waste are described in paragraphs 4.4.1. and 8.2.

Given the evidence requirements in criminal proceedings, work carried out at the scene of the crime is of particular importance in waste offences in order to determine the characteristics of the substance (e.g. waste hazard criteria) and the impact on human health and the environment.

Experts' assessments, representative sampling that will stand up in court, and an analysis of the substances found are therefore often indispensable.

For hazardous waste, an expert or a specialist authority usually has to be called in so that the type and hazard level of the waste can be determined with accuracy. Furthermore, the proper storage and subsequent disposal of hazardous waste are problematic. Such measures often generate high costs.

8.2. The system of inspections and authorities involved

The authorities designated under the law of each specific Land are responsible for inspections and controls.

In Saxony-Anhalt, for instance, inspections of waste disposal facilities as well as collectors/carriers and dealers/brokers take place annually, as provided for by decree. The frequency of monitoring of waste producers is at the discretion of the authorities.

The system of inspections of waste shipments which are potentially also hazardous waste, as well as their frequency and scope, depends on the actual inspection plans under Article 50(2) of Regulation (EC) No 1013/2006.

The Federal Office for Goods Transport also carries out additional regular checks as part of its statutory tasks. In 2015 a total of 24 000 waste inspections were carried out by the Federal Office for Goods Transport on motorways and trunk roads, during which 2 500 infringements of waste law were detected, 300 of which were suspected criminal offences.

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

The monitoring of the management of hazardous waste is governed by §§ 47 et seqq. of the Circular Economy Act and the special regulations enacted on the basis thereof. The obligation of producers, holders, collectors, carriers and disposers of hazardous waste to provide proof is of particular importance. It means that they must provide not only each other but also the competent authority proof of the proper disposal of hazardous waste. Furthermore, collectors, carriers, dealers and brokers require a permit from the authorities for their activity. Beyond this the Länder, as enforcement authorities, decide autonomously whether and how often to carry out any inspections for due cause.

8.4. Trends in illegal hazardous waste management

For trends in illegal hazardous waste management see paragraph 3.3.1.

8.5. Conclusions

- All the offences related to hazardous waste (point (b) of Article 3 of the Directive) are covered by § 326(1) and (5) subparagraph 1 and § 330 of the Criminal Code.
- The authorities implementing the inspection as well as the system of inspections depends on the law of each specific Land.
- The misclassification of waste is one of the most significant modi operandi for the trafficking of waste.
- Some Länder, such as Saxony-Anhalt and Hesse, have developed a database for the classification of waste according to hazard level. That is considered a best practice and should be spread more widely.
- Due to the importance of the work carried out at the scene of the crime in order to determine the characteristics of the substance (e.g. waste hazard criteria) and the impact on human health and the environment, the role of the experts which are appointed is very important. In the experts' view, it could be helpful to establish a network at central level, to ensure an appropriate level of expertise, involving multidisciplinary skills (chemical, physical, biological, environmental, etc.).
- The monitoring of the management of hazardous waste is implemented both through the obligation of producers, holders, collectors, carriers and disposers of hazardous waste to provide proof of the proper disposal of hazardous waste and through the inspections carried out by the enforcement authorities of each Länder.
- The proper storage and subsequent disposal of hazardous waste are problematic as they often generate high costs. In order to avoid these costs, it is suggested to make use of the expertise and to destroy the hazardous waste as soon as possible.

9. ILLEGAL PRODUCTION OR HANDLING OF DANGEROUS MATERIALS

9.1. The concept of dangerous materials

The definitions of substances with hazardous properties are laid down in administrative law, especially in provisions in the fields of waste law, chemicals law, occupational health and safety law and atomic energy law. In these areas of law, substances with hazardous properties are given a statutory definition. For example: § 3a of the Chemicals Act, § 2(1) of the Hazardous Substances Ordinance, § 3(9) of the Federal Immission (Inward Emissions) Control Act and § 2(1) of the Atomic Energy Act. Chemicals and substances classified as dangerous are also in the Regulation Implementing the Chemical Weapons Convention, Appendix 1, Lists of Chemicals 1 to 3, and in the War Weapons Control Act, Appendix, List of Weapons of War, Part A, Biological Agents Ordinance.

Therefore, the constituent elements of the environmental offences listed in Section 29 of the Criminal Code, in particular § 326 (Unauthorised Dealing with Wastes) and § 328 (Unauthorised Dealing with Radioactive Substances and other Dangerous Substances and Goods), and the crimes dangerous to the public listed in Section 28 of the Criminal Code are linked to the definitions laid down in administrative law.

Moreover, the specific administrative laws also contain further provisions for penalties and other rules concerning prohibitions.

According to § 3(1) of the Prohibition of Chemicals Ordinance, restrictions on the placing on the market of certain substances, mixtures and articles derive in particular from Article 67 in conjunction with Annex XVII to Regulation (EC) No 1907/2006.

Under § 3(2) and subparagraph 1 of § 13(1) of the Prohibition of Chemicals Ordinance, the placing on the market of the substances and mixtures listed in column 1 of the table in Appendix 1 or of substances, mixtures or articles which may release or contain them in the amounts laid down in column 2 of the table, is a criminal offence subject to the exceptions set out in column 3.

The substances, mixtures and articles listed in the Prohibition of Chemicals Ordinance are all dangerous substances (first sentence of § 1 of the Prohibited Chemicals Ordinance).

The Chemicals Act lays down criminal offences (§§ 27 and 27b of the Chemicals Act) and administrative offences (§ 26 of the Chemicals Act) against (national and EU) legal provisions on chemicals. Criminal offences against EU law (§ 27(1), subparagraph 3 and § 27b of the Chemicals Act) and administrative offences relating to EU law (§ 26(1), subparagraph 11 of the Chemicals Act) are governed by the Sanctions for Chemicals Offences Ordinance, and relate to Regulation (EC) No 850/2004 (POPs), Regulation (EC) No 1907/2006 (REACH), Regulation (EC) No 1102/2008 (Mercury), Regulation (EC) No 1272/2008 (CLP), Regulation (EC) No 1005/2009 (Ozone), Regulation (EU) No 528/2012 (BPR), Regulation (EU) No 649/2012 (PIC) and Regulation (EU) No 517/2014 (F-Gas).

At national level there are also other rules imposing prohibitions and restrictions with associated criminal penalties:

- Unlawful deliberate release of a certain dangerous substance, mixture or article (cf. §§ 8 and 10 in conjunction with § 12(2) of the Prohibition of Chemicals Ordinance) pursuant to § 27c of the Chemicals Act if the person who released it knows that the substance, mixture or product is intended for use in committing an unlawful act that constitutes an offence under criminal law;
- Restrictions on the production and use of certain dangerous substances, mixtures and articles pursuant to § 16(2) in conjunction with Annex II of the Hazardous Substances Ordinance;
- Prohibition on the placing on the market of fluorinated greenhouse gases pursuant to the first sentence of § 9(1) of the Chemicals-Climate Protection Ordinance;
- Prohibition on the placing on the market of paints and varnishes and vehicle refinishing products pursuant to § 3(1) of the Solvent-based Paints and Varnishes Regulation;

- Second sentence of § 7(1) and (1a) of the Act on the peaceful use of atomic energy and protection against its hazards (Atomic Energy Act): Construction and operation of facilities for the fission of nuclear fuels for the commercial generation of electricity and facilities for reprocessing irradiated nuclear fuels;
- § 3 of the Atomic Energy Act: Import and export of nuclear fuels;
- § 4 of the Atomic Energy Act: Transportation of nuclear fuels;
- § 5 of the Regulation on the shipment of radioactive waste or spent fuel (Nuclear Waste Shipment Regulation): Shipment of radioactive waste or spent fuel;
- the Radiation Protection Ordinance based on the Atomic Energy Act lays down limit values and protective measures to safeguard people from the hazardous effects of ionising radiation. A permit to handle and transport radioactive substances is one of the requirements.

As regards the 'Illegal production or handling of dangerous materials', reference is made to points (a), (d) and (e) of Article 3 of Directive 2008/99/EC. These points were primarily transposed into German law by §§ 311, 324 to 328 and 330 of the Criminal Code. The acts described in those laws are therefore punishable offences within the meaning of this question.

Substances and mixtures are classified by producers, importers and downstream users pursuant to Title II of Regulation (EC) No 1272/2008 (CLP Regulation).

Where doubts arise, the decision of an independent court, which if necessary obtains an expert's report, is binding in individual cases.

Rules regarding radioactive substances are contained in § 2(3) of the Atomic Energy Act.

9.2. Types of illegal activity related to illegal production and handling of dangerous materials and current trends in that field

In previous years the police have recorded cases relating to waste/building materials containing asbestos and CFCs, illegal pesticides/biocides and also the transport of dangerous goods and/or hazardous waste.

As regards CRBN substances, the focus in the area of nuclear crime is on activities involving the unauthorised disposal of radioactive materials. From the criminological viewpoint, assessing these cases poses problems since those responsible cannot usually be identified and hence there is no information about the alleged motive (was it intentional, e.g. to avoid disposal costs or was it negligent, e.g. owing to a lack of expert knowledge). In 2016 a total of eighteen cases involving nuclear offences were recorded, of which five fell into the category of 'unauthorised disposal'. Depending on the level of radiation, such incidents are in principle punishable under § 326 of the Criminal Code. There have been no recorded cases over the years involving materials usable in nuclear weapons. There are moreover no indications of an 'unauthorised market' for radioactive and/or nuclear materials in Germany. One criterion for the existence of such a market would for example be the identification of repeat offenders. That has so far not been the case in Germany. In Germany the last serious attempt to acquire radioactive material was observed in spring 2009. Nor was it possible to establish any links to organised crime.

As regards biological agents hazardous to health, a total of 16 cases, almost all of them so-called 'anthrax hoaxes' involving letters filled with powder to give the impression that a hazardous B substance had been sent, were recorded in 2016. There were 13 cases of various kinds of crime involving C substances.

Overall, cases involving B and C substances are small in number.

The Länder reported as follows:

Cases involving the illegal handling of materials containing asbestos or tar and working fluids such as waste oil or coolants, prohibited shipments of e-waste to Africa or the criminal handling of materials containing asbestos in connection with building renovations occurred with particular frequency (Baden-Württemberg, Bavaria, Hesse, Mecklenburg-West Pomerania, Lower Saxony).

The proceedings pending in Bavaria concerned offences within the meaning of § 326 of the Criminal Code, usually cases of unauthorised disposal of waste by private individuals or SMEs. The handling of asbestos, including the storage on sites of parts of buildings containing asbestos and/or the inappropriate demolition of parts of buildings containing asbestos were the examples most frequently cited. The dumping of bags containing domestic waste in stretches of water and of oil tanks whose content has leaked and also the storage of scrap cars with working fluids are other examples.

Lower Saxony mentions court proceedings relating to the unauthorised use of detergents, fertilisers, plant-protection products and pesticides.

North Rhine-Westphalia reported that the mixing and subsequent improper and illegal storage of waste that contained oil, was acidic (low pH value), would form hydrochloric acid (chlorine chemistry) and would possibly self-ignite had also been the subject of investigations. The hazardous waste was in some cases shipped into Germany from other EU Member States. An export of mercury from Germany to countries outside the EU without mandatory notification was also the subject of investigations.

There were also reports of criminal investigations into offences under the Chemicals Act in connection with the marketing of technical devices containing substances listed in Annex I to Regulation (EC) 1005/2009.

As regards the handling of hazardous substances, proceedings were also brought to deal with asbestos clean-ups that had been incorrectly carried out and with the unauthorised and improper storage of liquid waste in the form of spent acids and rinsing waters containing chrome and nickel. Other proceedings concerned the illegal disposal of substances containing PCBs and the export of passenger vehicle engines for reuse in South Africa.

Saxony-Anhalt described a case involving the incorrect declaration of waste. For cheaper disposal, there were examples of certain kinds of waste reportedly being taken to landfill sites where dumping was not or was no longer authorised. The most frequent environmental offence was alleged to be the parking of scrap cars with working fluids.

For the current trend in the field of the illegal production or handling of dangerous materials, see paragraphs 8.1., 9.1 and 9.2.

9.3. Procedural aspects

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

All items that may be relevant as evidence for the investigation are taken into official custody or otherwise seized. As a rule, this applies to transport documents, invoices and similar documents, waste samples and photos taken by the police to document conditions on site and/or data storage media, smart phones and similar devices, records of in-depth questioning of the relevant witnesses and, where appropriate, expert's reports. This is documented in the investigation files.

Data concerning the cases in question are gathered and evaluated centrally at police and customs headquarters.

In the case of hazardous substances (e.g. explosives, chemicals etc.) provision is made for safe and secure storage. Dangerous substances or goods are stored in areas especially reserved for that purpose by the port authority or the fire brigade, for example. If the authority is unable to store the goods, appropriate storage space is rented on the open market.

The costs of handling and storage may be seen as the costs of criminal proceedings which are to be borne by the accused, if convicted. The law enforcement authorities can call on the appropriate experts to conduct substance analysis.

Expert opinions are prepared mainly by the Federal Criminal Police Office, the Central Customs Authority's Training and Knowledge Centre, the Länder criminal police offices, the Länder offices for health, nature, environment and consumer protection, experts at the environmental authorities, or by independent experts and laboratories.

In the case of radioactive substances the EU's Joint Research Centre in Karlsruhe can assist with analyses of nuclear materials (see also paragraph 5.2.3.).

9.3.2. The cooperation with European and international partners

Contact with European supervisory authorities takes place via the Federal Office for Chemicals. In matters of nuclear-related hazard control, a notification is -where necessary - sent to the database of the International Atomic Energy Agency (IAEA).

Specialised departments of the Federal Criminal Police Office notify other countries as required using the information channels provided by Interpol and Europol. The competent administrative authorities are informed.

9.3.3. Techniques of investigation

As described in paragraph 4.2.2., all measures and powers laid down in the Code of Criminal Procedure may in principle be used in investigations with the limitation provided for by the law (on the basis of the provided penalty).

The Länder reported that financial investigations are carried out where appropriate. Such investigations are also conducted for the purpose of asset recovery. For example, in Bremen there have since 2012 been four criminal investigations involving environmental/waste disposal offences that have been accompanied by financial investigations; one of the cases saw assets recovered.

North Rhine-Westphalia reported that the use of financial investigators and IT consultants and steps to ensure asset recovery are among the standard measures that are widely used by the public prosecutor's offices in Bochum and Siegen in proceedings involving waste crimes.

Cyber investigations are also conducted alongside financial investigations in Rhineland-Pfalz, Saxony, Saxony-Anhalt and Schleswig-Holstein wherever the criminal investigation so requires. These include, in particular, internet access to the relevant fora, chat rooms and social networks.

Several Länder point out that there is a nationwide working party which monitors e-commerce as regards the marketing of dangerous substances and mixtures.

9.3.4. Main obstacles to successful investigation and prosecution

Depending on the danger posed by the substances and/or the means used to commit the offence, personal safety and protection of the public may take precedence over criminal prosecution (the principle of hazard prevention before criminal prosecution when higher legally protected interests are endangered and/or for the purpose of preventing serious damage).

The Länder reported the following difficulties.

Problems in identifying those responsible in companies, especially where responsibility was shared, were said to be a significant obstacle to criminal prosecution (Baden-Württemberg and Mecklenburg-West Pomerania).

The different ways in which the facts were legally classified by the specialised agencies on the one hand and courts on the other, as well as proof of *mens rea* (particularly in the case of truck drivers), were mentioned in some cases (Bavaria).

It is considered imperative to obtain and analyse samples of the dangerous materials that were the subject of proceedings, since documents and papers on the materials (transport documents, declaration analyses, waste balances, expert opinions, etc.) often contain incorrect information (North Rhine-Westphalia). However, a particular difficulty lay in the complexity of the substance-related criminal law to be applied, especially the way it is rooted in administrative law (Lower Saxony, North Rhine-Westphalia). A further expansion of analysis capabilities would be desirable.

9.3.5. Training

Course content ('calendar sheets') is available to the police at Land and central level as an annex to the 'Federal training plan for special further training in criminal police matters'.

Regarding the course organised by the Federal Criminal Police Office, it provides training in modular form for specialised police personnel in the dismantling of explosive devices. As a rule, the handling of chemical, biological, radiological or nuclear materials is the preserve of trained specialised forensic science personnel, even during investigations.

The course catalogue for the 'Federal training plan for special further training in criminal police matters' below lists various courses at federal and Land level on the subject of CBRN which are given by the Federal Criminal Police Office.

- Basic course 'Explosives investigator'
- Advanced course 'Explosives investigator'
- Advanced course 'Crime scene work following significant events involving explosives'
- Special course 'NBC hazards'
- Special course 'Manual neutralisation techniques with/without additional NBC load'
- Economic crime, corruption, environmental crime
- Advanced course 'Nuclear crime'

At Land level, the following can be mentioned.

Hesse provides regular training in how to deal with incidents involving radioactive materials with joint exercises involving the services deployed (fire brigade, radiation protection personnel, police and armed police/bomb disposal experts). Crime scene work exercises also take place under radiation protection conditions.

In Schleswig-Holstein police representatives regularly participate in annual chemical service discussions. The Land Criminal Police Office in Schleswig-Holstein holds an expert seminar entitled 'Environmental crime and consumer protection' where technical issues involving the chemicals regulations are discussed.

The Federal Office for Radiation Protection also organises regular training courses for staff of the law enforcement authorities on nuclear-related hazard control.

The environmental law conference at the German Judicial Academy in Trier mentioned in paragraph 4.5. covers procedural law questions and cooperation with environmental authorities.

9.4. Conclusions

- The definitions of substances with hazardous properties are laid down in the administrative law. Therefore, the constituent elements of the environmental offences listed in Section 29 of the Criminal Code are linked to the definitions laid down in administrative law.
- Substances and mixtures are classified by producers, importers and downstream users pursuant to Title II of Regulation (EC) No 1272/2008 (CLP Regulation).
- Where doubts arise, the decision of an independent court, based on an expert's report if needed, is binding in individual cases.
- No case has been recorded involving materials usable in nuclear weapons and there is no indication of an 'unauthorised market' for radioactive and/or nuclear materials in Germany nor is there any indication of links to organised crime.
- All relevant evidence is taken into official custody or otherwise seized providing for safe and secure storage. The costs of handling and storage are considered costs of criminal proceedings which are to be borne by the accused, if convicted.
- Evidence can be analysed by an appointed expert.
- Exchanges with European supervisory authorities proceed via the Federal Office for Chemicals. In matters of nuclear-related hazard control, where necessary a notification is sent to the database of the International Atomic Energy Agency (IAEA).
- All measures and powers laid down in the Code of Criminal Procedure may in principle be used in investigations with the limitations provided for by the law on the basis of the penalties.
- Federal and Länder police are provided with training by the Police Academies and by the Federal Office for Radiation Protection.
- Environmental authorities take part in the environmental law conference at the German Judicial Academy in Trier.

10. FINAL REMARKS AND RECOMMENDATIONS

10.1. Suggestions from Germany

Language barriers are a persisting problem for European (and international) cooperation and best practice exchange. Information for practitioners on site will only be useful if a comprehensive picture covering the complete interplay of national and international regulations is provided.

Therefore it is suggested to elaborate and provide guiding materials, which can be complemented by national information. Translation into national languages has to be ensured.

10.2. Recommendations

The expert team involved in the evaluation of Germany was able to satisfactorily review the system for practical implementation and operation of the Directives and the Regulation.

Germany should conduct a 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 thought it fit to make a number of suggestions for the attention of the German authorities. Furthermore, based on the various good practices, related recommendations to the EU, its institutions and agencies, Europol in particular, are also put forward.

10.2.1. Recommendations to Germany

1. While acknowledging that Central Customs Criminal Office (ZKA) also represents the view of German Police within EMPACT, it would be a plus for all countries if the German police (i. e. BKA) joined the meetings of this priority to directly discuss issues specifically related to Police.
2. Germany has not implemented any strategic plan at federal level and the cooperation is mainly left to the operators at operational level. Due to the numerous authorities involved and complexity of the matter, in the experts' view, the fight against environmental crime should be considered as a cross-ministerial task and therefore it is suggested to involve all relevant authorities in drawing up appropriate central and Länder strategies.

3. The experts noticed that the budgets used for combating environmental crime may not be sufficient to achieve the desired results. It is recommended to allocate a sufficient amount of the budget to tackle waste crimes.
4. A national approach for the police was designed to ensure stronger action to combat environmental offences in a uniform way. This national approach should also include Länder police having access to an environmental enforcement database developed by environmental authorities. In this context, it would be advisable to reproduce the model adopted by Brandenburg police to directly access to the data of environmental authorities. Cooperation at strategic level between Federal Police and Länder Police should also be encouraged.
5. Due to the fact that the police forces lie within the responsibility of the Länder and are thus also differently structured and equipped, increased good knowledge and experiences should be presented and exchanged among the Länder. In this context, the experts have noticed that some best practices - underlined in the context of the present report - are in force in some Länder and suggest that these be spread more widely.
6. The experts detected that the methods used to secure the sample are not always those which can be accepted in court. It is therefore recommend to spread the methodology used by Brandenburg police who are using a mobile unit (lab) where they can take samples of contaminated waste, soil, water or polluted air. To this end it is also suggested to increase the budget for these local mobile units so that the police are well equipped to carry out their enforcement duties.
7. Environmental offences are also referred to as control offences, so the discovery of such cases requires proactive action. In this context, the training of uniformed patrol officers in the detection of possible environmental crimes is encouraged. These police forces are on patrol anyway and therefore represent a suitable, existing potential for detecting possible environmental crimes.
8. In order to increase the detection of environmental crimes by administrative authorities, it is also advisable to spread the good experiences of Saxony-Anhalt in relation to duplication of announced inspections with unannounced inspections.

9. To the same end it is also suggested to spread the practice of giving police power to carry out roadside inspections, as is the case in Rhineland-Palatinate.
10. The establishment of a common police database related to environmental crimes among Länder authorities and Federal authorities is already ongoing. The procedure should be made faster.
11. In the experts' view, the insight into the effectiveness of enforcement activities at Länder level could be improved. A digital, risk-oriented data system should therefore be developed to support knowledge-based decision making in terms of enforcement with regard to serious environmental crime events.
12. In order to successfully investigate cases, the possibility should be explored of introducing, at legislative level, effective investigations tools for waste crimes even when environmental crime is not committed in an organized crime framework or coincides with other serious crimes
13. The experts have noticed the need to enhance the environmental authorities' ability to detect crimes and report them to the police. It is therefore recommended to encourage the competent administrative Länder authorities to better specialise their practitioners, also by providing more training and increasing the number of meetings involving Länder representatives. Joint training and meetings could achieve exchange of expertise, discussions on practical problems, mutual support and exchange of opinions related to problems of interpretation of law. A suitable way of minimising such problems was demonstrated by the Ministry of the Environment in North Rhine-Westphalia by introducing a staff unit for environmental crime. It is recommended that this model be adopted in all Länder.
14. In field of environmental crime, prosecutors and judges must be able to manage particularly complex legal issues. It is important to ensure sufficiently well-trained and specialised judges and prosecutors and therefore it is suggested that the amount of training be increased. It is also suggested that specialised units be established in courts, in order not to lose the knowledge and skills acquired.

15. In the experts' view, police and environmental agencies should also be provided with more training. With specific regard to the police, the training should encompass the use of intelligence sources, data analysis, detection and investigation techniques to acquire more evidence in specific environmental cases.
16. In the experts' view, more joint training should be organised involving representatives of all authorities involved in order to exchange expertise and discuss practical problems, mutual support and problems related to the interpretation of law.
17. In order to improve the cooperation also between local authorities and regional authorities and with a view to encouraging the adoption of a cooperative strategy, joint training involving all relevant authorities should be organised by certified training institutes.
18. The experts noticed that in some Länder there are staff meetings on a regular basis to exchange information on environmental crimes, but there is no official structure in terms of implementation and cooperation, e.g. there are no joint taskforces to combat environmental crimes. For complex environmental cases, involving the participation and competence of several authorities, it is recommended that so-called task forces be set up involving members of all authorities. Having access to their respective databases would directly benefit the task force.
19. Due to the high level of expertise often required in relation to waste crimes during the investigation phase as well during the trial, the existing professional expert associations as well as the experts within the public-law bodies should be spread out more effectively to the relevant administrations. This would be very helpful in order to get better expertise and being able to stand up in court.
20. Environmental authorities should take a key role in raising general awareness about damage and harm caused to the environment by environmental permit violations, including by actively informing the public about detected cases and damage caused. In order to direct people to law-abiding behaviour, it is suggested that public information campaigns be organised regularly.

21. Cooperation with third countries should be improved.
22. The possibility should be considered of improving statistics by working on a method to collect systematic, reliable and updated statistics, comprising the number of notifications, investigations, prosecutions and convictions.

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

1. The evaluation team suggests that all EU countries consider the possibility of adopting a single common indicator for trucks transporting waste as this would allow faster identification of trucks and implementation of targeted inspections.
2. The evaluation team considers sharing of information between EPAs and LEAs both at national and international level very relevant and suggests the establishment of a common database at European level. The evaluation team considers duplicating the system of announced inspections with unannounced inspections is a best practice to be shared with all Member States.

10.2.3. Recommendations to Eurojust/Europol/Commission

In order to speed up contact with the relevant authorities and exchange efficient and effective information in cases of cross-border illegal waste transport, the evaluation team suggest the adoption of an electronic communication system similar to the TRACES (Trade Control and Expert System) and RASFF (Rapid Alert System for Food and Feed). See the websites https://ec.europa.eu/food/animals/traces_en and https://ec.europa.eu/food/safety/rasff_en.

ANNEX A: PROGRAMME FOR THE ON-SITE VISIT AND PERSONS INTERVIEWED/MET

Monday, 29 January 2018

Arrival

During the day

Tuesday, 30 January 2018

Federal Ministry of Justice and Consumer Protection,

Room: Gustav-Radbruch-Saal (5.001)

Moderation by Markus Busch, Head of Division Criminal Suppression of Economic Crime, Computer

9:30 a.m.

9:45 a.m.

10:30 a.m.

10:45 a.m.

12:00 p.m.	Lunch on invitation of the Federal Ministry of Justice and Consumer Protection	
1:00 p.m.	Prosecuting Environmental Crime (Part 1) <ul style="list-style-type: none"> • Report on cooperation in the environmental and maritime networks in the North and Baltic Seas (NSN and ENPRO) • Priority, specialisation, training and resources of prosecutors • Co-operation between prosecutors, police and environmental protection agency <p><u>Participants:</u></p> <ul style="list-style-type: none"> • Prosecutors from Public Prosecutor's Offices who have been active in the field of combating Environmental Crime • Representatives of the Federal Ministry of Justice; Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety; Federal Ministry of the Interior, Federal Ministry of Finance 	<ul style="list-style-type: none"> • Mr Christian Sangmeister, • Ms Kristina Rabe, • Mr Benjamin Bittermann, • Mr Arndt Müller, • Mr Stephan Sina, • Mr Ewald Brandt, • Ms Carolin Schiemann (Public Prosecutor, Bremen), • Mr Thomas BöX (Senior Public Prosecutor, München), • Ms Juliane Rein (Public Prosecutor, Duisburg), • Mr Marc Sotelsek (Public Prosecutor, Dortmund), • Mr Arno Lehmann (District Court Judge, Hamburg), • Mr Christopher Yianni (Interpreter), • Ms Enken Tadsen-Duch (Interpreter)
2:30 p.m.	Coffee Break	
3:00 p.m.	Prosecuting Environmental Crime (Part 2) <ul style="list-style-type: none"> • Discussion with Practitioners 	See Prosecuting Environmental Crime (Part 1)
After the discussion	Guided tour through the Federal Ministry of Justice	
7:00 p.m.	Working Dinner on invitation of the Federal Ministry of Justice and Consumer Protection <ul style="list-style-type: none"> • Restaurant "Brasserie am Gendarmenmarkt" 	

<p>Wednesday, 31 January 2018 Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety, Stresemannstraße 128 -130, 10117 Berlin, Room: 1.001 Moderation by Matthias Sauer, Head of Division Freedom of Information Legislation, Environmental Liability Legislation, Better Regulation</p>		<p>Mr Matthias Sauer, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety, Division G II 1</p> <p>Ms Kristina Rabe, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety, Division G II 1</p> <p>Mr Michael Ernst, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety, Division WR II 1</p> <p>Mr Benjamin Bittermann, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety, Division G II 1</p>
<p>9:30 a.m. Introductory remarks</p> <p>9:45 a.m. Welcoming of the Evaluation Team: by Dietmar Horn, Director Directorate-General G, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety</p>		<p>Mr Dietmar Horn, Director Directorate-General G, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety</p> <p>Additional participants for the whole morning session:</p> <ul style="list-style-type: none"> • Mr Christian Sangmeister, Federal Ministry of Justice and Consumer Protection • Ms Dana Ruddigkeit, German Environment Agency • Ms EnkenTadsen-Duch, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety, Interpreter
<p>10:00 a.m. The Role of Environmental Criminal Law for Environmental Protection in Germany and the Concept of a “Compliance Chain” by Ms Kristina Rabe, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety</p> <p>10:15 a.m. Presentation of the research project “Umweltstrafrecht – Status quo und Weiterentwicklung; Umweltstrafrecht und andere Sanktionen als Instrumente zur Verbesserung der Befolgung von</p>		<p>Ms Kristina Rabe, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety, Division G II 1</p> <p>Ms Christiane Gerstetter and Mr Stephan Sina, Ecologic Institute</p>

	Umweltrecht (Compliance)" by Ms Christiane Gerstetter and Mr Stephan Sina, Ecologic Institute Discussion	
11:00 a.m.	Coffee Break	
11:30 a.m.	Perspectives of Administrative Experts from German States (Part 1) by Mr Horst Reulecke Fortes, Ministry for Environment, Agriculture, Conservation and Consumer Protection of the State of North Rhine-Westphalia and by Mr Robert Hanel, Ministry of the Environment, Energy, Food and Forestry of the State of Rhineland-Palatinate Discussion	Mr Horst Reulecke Fortes, Ministry for Environment, Agriculture, Conservation and Consumer Protection of the State of North Rhine-Westphalia Mr Robert Hanel, Ministry of the Environment, Energy, Food and Forestry of the State of Rhineland-Palatinate, Division 1074
12:45 a.m.	Lunch (Ristorante 'essenza') Upon the invitation of the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety	
2:15 p.m.	Perspectives of Administrative Experts from German States (Part 2) by Ms Elke Dreißig, Office of Administration of the State of Saxony-Anhalt Discussion	Ms Elke Dreißig, Office of Administration of the State of Saxony-Anhalt, Division Kreislauf- und Abfallwirtschaft, Bodenschutz
3:00 p.m.	Coffee Break	
3:15 p.m.	Perspective of Civil Society Representatives by Tomas Brückmann, GRÜNE LIGA e.V. Discussion Perspectives of Waste Experts from the Federal Level by Ms Anne Sachse, German Environment Agency and by Mr Michael Ernst, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety Discussion	Tomas Brückmann, GRÜNE LIGA e.V. Ms Anne Sachse, German Environment Agency, Fachgebiet III 1.2 Rechtsangelegenheiten, Vollzug ElektroG und BattG Mr Michael Ernst, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety, Division WR II 1

Thursday, 01 February 2018 Federal Ministry of the Interior, Room: B.2.230		
9:00 a.m.	Welcoming by Mr Sven Berger, Head of Division Serious and Organised Crime	Mr Sven Berger, Head of Unit Serious and Organised Crime, Federal Ministry of the Interior Mr Peter Steck, Deputy Head of Unit Serious and Organised Crime, Federal Ministry of the Interior Additional participants for the whole morning session: <ul style="list-style-type: none"> • Mr Christian Sangmeister • Mr. Benjamin Bittermann • Ms Christiane Gerstetter • Mr Arndt Müller • Ms Schechter
9:15 a.m.	Combating environmental crime in Germany by the Police by Mr Andreas Windolph, German Federal Criminal Office	Mr Andreas Windolph, German Federal Criminal Office, Unit SO 31 Environmental Crime
10:00 a.m.	Combating environmental crime by the German customs investigation service by Mr Dietmar Möllmann, German Customs Office	Mr Dietmar Möllmann, German Customs Office, Head of Unit Prohibitions and Restrictions
11:00 a.m.	Coffee Break	
11:15 a.m.	Combating environmental crime by the German Federal Police by Mr Christian Schüler, German Federal Police Directorate Sea	Mr Christian Schüler, German Federal Police Directorate Sea, Unit for Maritime Safety

12:00 a.m.	Working Lunch on invitation of the Federal Ministry of the Interior Restaurant: "Paris-Moskau"	
1:00 p.m.	Visit of the State Office of Criminal Investigation of Brandenburg in Eberswalde End 5 p.m. (back at the hotel)	<p>Mr Dirk Volkland, Head of State office of Criminal Investigations</p> <p>Mr Ulf Lange, Head of Department of Economic and Environmental Crime</p> <p>Mr Benno Schultz, Head of Forensic Institut</p> <p>Mr Mike Ekrowski, Member of Crime Scene Unit (Environmental)</p> <p>Mr Harry Jäkel, Head of Investigation Unit for Serious Environmental Crime;</p> <p>other participants from the State office of Criminal Investigations</p> <ul style="list-style-type: none"> • Mr Dr Matthias Pfaffe • Mr Markus Neuguth <p>other participants</p> <ul style="list-style-type: none"> • Mr Christian Sangmeister • Ms Christiane Gerstetter • Mr Peter Steck • Mr Andreas Windolph • Mr Dieter Möllmann • Ms Schechter (Interpreter)
5:00 p.m.	Internal meeting of the Evaluation Team	

Friday, 02 February 2018 Federal Ministry of Justice and Consumer Protection Room: Rosenburg-Saal (1.096)		
10:00 a.m.	Wrap-up-session <ul style="list-style-type: none"> • General observations • final remarks 	Mr Christian Sangmeister Federal Ministry of Justice and Consumer Protection Mr Sven Berger Federal Ministry of the Interior Mr Benjamin Bittermann Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety Mr Arndt Müller Federal Ministry of Finance Mr Christopher Yianni Federal Ministry of Justice and Consumer Protection (Interpreter)
12:00 a.m.	Transfer to Airport Berlin Tegel	

ANNEX B: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

List of acronyms, abbreviations and terms	Germany or acronym in original language	Germany or acronym in original language	English
AFIS-Mail			Anti-Fraud Information System
BfS		Bundesamt für Strahlenschutz	Federal Office for Radiation Protection
BKA	BKA	Bundeskriminalamt	Federal Criminal Police Office
EFFACE			European Union Action to Fight Environmental Crime
EIPA			European Institute of Public Administration
ELV			End of Life Vehicles
EPA			Environmental Protection Agency
ERA			Academy of European Law
IAEA			International Atomic Energy Agency
IRC	IRC	Internationale rechtshulp centrum	Centre for mutual legal assistance (in the Netherlands)
LEAs			Law enforcement authorities
NGO			Non-governmental organisations
NSN			North Sea Network of Investigators and Prosecutors
PCS			Police crime statistics
UBA		Umweltbundesamt	Federal Environment Agency
WEEE			Waste Electrical and Electronic Equipment
ZKA	ZKA	Zollkriminalamt	German customs