



Council of the  
European Union

059317/EU XXVI. GP  
Eingelangt am 26/03/19

**Brussels, 26 March 2019**  
**(OR. en)**

**6767/1/19**  
**REV 1**

**ENFOPOL 102**  
**COPEN 70**  
**ENV 204**

## **REPORT**

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Subject: 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 ESTONIA

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

**'The practical implementation and operation of European policies on  
preventing and combating Environmental Crime'**

**REPORT ON ESTONIA**

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## 1. EXECUTIVE SUMMARY

The visit organised by the Estonian authorities shed light on the Estonian legislation applicable to environmental crime, in particular waste crime, and problems relating to its implementation. It included meetings with the relevant bodies responsible for preventing and combating environmental crime and for implementing and operating European policies (e.g. the Ministry of the Environment, the Ministry of Justice, the Police and Border Guard Board, the Prosecutor's Office in Tallinn, the Tax and Customs Board and the Environmental Inspectorate). In the course of the evaluation, the Estonian authorities provided the evaluation team with information and clarifications on the legal and operational aspects of preventing and combating environmental crime and on cross-border cooperation with EU agencies and the Member States.

Measures against environmental crime are stipulated, together with other environmental matters, in the 2019-2022 development plan for the area of government of the Ministry of the Environment and in the Estonian Environmental Strategy 2030. The national waste management plan 2014-2020, under the jurisdiction of the Ministry of the Environment, is focused on including information from the field of waste as a whole. It aims to achieve waste policy objectives and waste management at national level, together with international waste cooperation. However, no strategic document or action plan has been adopted in Estonia enabling environmental crime to be tackled by all authorities involved in preventing and fighting environmental crime. In the evaluators' view, working on such a national plan or strategy could strengthen the resilience of the Estonian environmental protection system and the fight against waste crime by enabling all competent national environmental authorities, including judicial ones, to closely cooperate and perform their duties related to combating environmental crime in a more coordinated way.

Estonia does not collect interlinked and integrated statistics. Such statistics are maintained by each individual authority involved in preventing and combating waste crime. Statistics are collected separately by the Ministry of Justice, the police and the Environmental Inspectorate (EI). This means that statistics on criminal offences and misdemeanours are recorded separately. In the evaluators' view, statistics should be assembled in a comprehensive way, ensuring that a given case can be traced from its commencement to the final judgment (e.g. covering crimes and misdemeanours so they can be analysed as a whole phenomenon). That would make it possible to assess the development of the phenomenon in Estonia and enable the competent authorities to tackle it.

As regards legislation, Estonia has implemented the relevant EU instruments relating to waste crime. Fines related to criminal acts and misdemeanours are laid down in the law (e.g. the Penal Code and the Waste Act) and range between a maximum and a minimum, depending on the degree of damage to the environment. However, no clear judiciary instructions have been determined in that regard; therefore, the main challenge is to define terms such as 'environmental damage' and 'risk of damage' and establish how to measure the extent of damage in waste crime cases. There are no sentencing guidelines and there is little case-law on how the courts define these terms. In practice, environmental damage, risk of damage and the extent of damage are assessed on a case-by-case basis by the prosecutors. Therefore, in the evaluators' view, a further review of legislation could be considered in order to define the terms/constituent elements of crimes more clearly so that there is no uncertainty for investigators when applying waste crime-related law.

The decision as to whether a criminal offence or a misdemeanour is involved is taken by the public prosecutor on the basis of the damage to the environment. The evaluators believe that the cost of environmental damage is not feasible to measure in most cases, or at least it is very difficult. This constitutes an obstacle to or limitation in the environmental damage evaluation process. As no binding judiciary instructions are in place to define the notion of waste in determining whether an act constitutes a criminal offence or a misdemeanour, a better delineation between criminal offences and misdemeanours is needed to fight waste crime more effectively.



The outlined issues result in a low number of criminal investigations related to waste crime and a higher number of misdemeanour proceedings conducted by the EI. Those figures might be based on the definition of 'waste crime' and represent a number of detected offences.

The fact that there is currently only a small number of environmental crime cases should not lead to the conclusion that more specialisation is not necessary. Specialisation in the sense of limiting the responsibilities of persons designated to handle environmental crime could perhaps enable the detection of a larger proportion of currently unreported cases by enhancing the available resources.

The main body for investigating waste crime cases is the EI, whose remit is to conduct extrajudicial misdemeanour proceedings and pre-trial criminal proceedings. An investigation department has been set up within the EI to investigate environmental crime, including waste crime. The department consists of a head and five investigators and is responsible for investigating all waste crime in Estonia. The EI has a robust, scientifically trained workforce capable of operating instantly, right after a complaint is made. Its investigators are former police officers who are specialised in fighting environmental crime. The idea of capitalising on the knowledge and experience of former police officers and using them to investigate environmental crime is considered an example of best practice by the evaluators.

The EI is the main player in combating waste crime and violations. It has all rights and powers to investigate and the right to use physical force. When investigating waste crime, the EI makes use of all methods and tools approved and provided for by law, such as inspections, hearings, searches, expert analyses, etc., choosing according to the specific case and the instructions given by the Prosecutor's Office. Surveillance is permitted only in the case of one type of waste crime, namely polluting the environment (Section 364 of the Penal Code). Although the EI is not vested with powers to conduct surveillance activities by itself, its members are trained by the police on surveillance tactics and surveillance operations, giving it added value. In the evaluators' view, taking into account that the police do not prioritise fighting environmental offences, the EI should be provided with the whole range of investigative powers similar to the police in order to be more efficient in combating environmental crime.

There is close cooperation between the EI and the other law enforcement authorities (LEAs) such as the Police and Border Guard Board (PBGB) and the Tax and Customs Board (TCB). These carry out joint surveillance activities under the supervision of a prosecutor.

Pre-trial investigations, including those started by the EI, are directed and supervised by the public prosecutors. The latter take the final decision on whether an environmental infringement is severe enough to be charged as a crime and taken to court. However, there is no specialisation among prosecutors, and due to unclear legislative solutions, most infringements are dealt with in misdemeanour proceedings. In the evaluators' view, as few training opportunities are available to prosecutors, consideration should be given to increasing their knowledge of waste crime, e.g. by providing them with more training.

Judges are not specialised in environmental crime. Unlike prosecutors, judges are not involved at national level in activities aimed at improving the resilience of the Estonian environmental protection system, nor do they attend EUFJE meetings. Thus they miss out on the opportunity to exchange information with other judges and improve their knowledge and experience as regards environmental crime. Therefore, training could enhance the capacity of judges to handle environmental crime cases.

The EI has introduced some training for local authorities with a general focus on waste-related issues. It also organises waste-related training for customs and the police. In cooperation with the police, the EI has also begun to provide one-day training for some of its own staff with a view to carrying out joint raids and surveillance (covert investigation techniques).

The shortcomings identified in the functioning of the Estonian agencies structure may result from the lack of priority given to preventing and combating environmental crime at central level. On top of that, more structured cooperation could be considered in order to rely less on coincidence and personal contacts, e.g. through formal cooperation agreements supported by setting up a NEST-style platform. Considering that environmental crime is mainly economic crime, the evaluators believe that national funding could also enhance efforts against environmental crime.

Administrative authorities (e.g. the Environmental Board) do not deal with waste crime. In the context of the transboundary movement of waste, the supervisory authority (the EI) and the law enforcement authority (the TCB) have the same mandates as those arising from the Law Enforcement Act: to implement measures laid down in the law with the aim of preventing illegal activities and implementing mandatory environmental protection measures; to stop any unlawful activities that harm or endanger the environment, or any lawful activities related to the use of natural resources, if they endanger people's lives, health or property; to use physical force on the basis of and pursuant to the procedure provided for in the Law Enforcement Act. It seems that the EI plays a predominant role in investigating waste crimes in Estonia. Since the EI is also involved in conducting inspections on illegal shipments of waste, and on the management of hazardous and dangerous waste, the evaluators believe that maintaining its capacity and functionality should also be a priority in the future.

The TCB is in charge of detecting waste transport infringements. It uses risk-based criteria for its inspections – this could also be done by the EI. In the evaluators' view, the risk criteria should be assessed and updated more frequently. The use of traffic police to detect infringements on the roads could also be considered. Road inspections appear to be an 'exclusive' task of the EI. Nevertheless, a lack of intelligence leads and a decreasing number of investigators (and presumably inspectors) seem to be the main obstacles to the successful detection of this type of crime.

The private sector is involved in the fight against environmental crime. There is an advisory board consisting of 20 persons, including representatives of universities, NGOs and public agencies, set up at the initiative of the Environmental Board. They meet once a year. This board has a broad remit without particular focus or priorities. The idea of setting up a platform for cooperating with a private sector group consisting of experts from various fields is, in the evaluators' view, very valuable and beneficial as civil society can actively participate in preventing and fighting against environmental crime.

The Estonian authorities have not yet been involved in joint investigation teams (JITs) related to waste crime. They have established access to European databases offered by IMPEL and Europol in order to search information and best practices. Contact points were appointed at the Environmental Board (cross-border movement of waste with regard to written consents and information exchange) and the EI (monitoring). Currently the main channel for the exchange of information appears to be IMPEL and its databases. Otherwise, information is exchanged bilaterally, including through the TCB and the PBGB.

Estonia is perceived as a transit or destination country for waste. Waste declared as oil came from Russia and Belarus; end-of-life vehicles (ELVs) were imported from the US, oil residue from Sweden. In the evaluators' view, the current level of cooperation still leaves room for improvement between Estonia and third countries (in particular neighbouring ones).

There are small number of cases of infringements involving hazardous waste (two cases in 2017), accounting for a small percentage of all waste infringements (0.82 %). That percentage even decreased in the past year. It seems that Estonia has a potential problem with the misclassification of hazardous waste as non-hazardous; this should be investigated. Furthermore, the concept of dangerous substance and hazardous substance seems to be overlapping.

The evaluation team found a few examples of best practice in Estonia to be shared with the other Member States. Legislation appears to be complex, but due to the lack of case-law on waste crime, it seems to be unclear for LEAs. Its application is based on decisions taken by prosecutors on a case-by-case basis and therefore there is no clear delineation between criminal offences and misdemeanours. Although the structure is in place, the efficient protection of the country from environmental crime requires all government bodies – not only the EI – to prioritise the fight against environmental crime and violations. More specialisation, in particular within the police and prosecutors' offices, and more structured cooperation and coordination could also facilitate this process. Considering the dedication of EI staff on the one hand, and the number of steps to be taken to strengthen Estonia's capacity in the fight against environmental crime on the other, the evaluators believe that the situation in Estonia is promising.

## 2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997<sup>1</sup>, a mechanism was established for evaluating the application and implementation at national level of international undertakings in the fight against organised crime. In line with Article 2 of the Joint Action, the Working Party on General Matters including Evaluations (GENVAL) decided on 14 December 2016 that the eighth round of mutual evaluations should be dedicated to the practical implementation and operation of European policies on preventing and combating environmental crime.

The choice of environmental crime as the subject for the eighth mutual evaluation round was welcomed by Member States. However, due to the broad range of offences covered by environmental crime, it was agreed that the evaluation would focus on those offences which Member States felt warranted particular attention.

To that end, the eighth evaluation round covers two specific areas: illegal trafficking in waste and the illegal production or handling of dangerous materials. It should provide a comprehensive examination of the legal and operational aspects of tackling environmental crime, cross-border cooperation and cooperation with the relevant EU agencies.

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives<sup>2</sup> (date of transposition: 12 December 2010), Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law<sup>3</sup> (date of transposition: 26 December 2010) and Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste<sup>4</sup> (date of entry into force: 12 July 2007) are particularly relevant in this context.

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

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

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

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

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

Furthermore, Directive 2008/98/EC requires the Member States to create waste management plans and waste prevention programmes, the latter by 12 December 2013. The objective of these programmes is to present a coordinated national approach to waste prevention, defining targets and policies, and aiming to decouple economic growth from the environmental impact of waste generation.

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

Moreover, the Council conclusions of 8 December 2016 on countering environmental crime<sup>5</sup> recognise that combating environmental crime requires a comprehensive multidisciplinary approach at all levels, better cooperation and exchange of information between the competent authorities, including third countries, and enhanced dialogue and cooperation with relevant international organisations. Also, the Council conclusions of 18 May 2017 on setting the EU's priorities for the fight against organised and serious international crime between 2018 and 2021<sup>6</sup> establish the fight against environmental crime as one of the EU's priorities.

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

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

<sup>6</sup> 9450/17, COSI 107 ENFOPOL 247 CRIMORG 107 ENFOCUSTOM 133.

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

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

The experts charged with undertaking the evaluation of Estonia were Mr Werner Gowitzke (Germany), Ms Eleni Glypti (Greece) and Ms Michaela Poláčková (Slovakia). The observer from the General Secretariat of the Council, Mr Sławomir Buczma, was also present. The European Commission, Eurojust and Europol were not represented.

This report was prepared by the team of experts with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Tallinn between 17 and 19 October 2018, and on Estonia's detailed replies to the evaluation questionnaire, together with its detailed answers to ensuing follow-up questions.

### **3. GENERAL MATTERS AND STRUCTURES**

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

The framework for environmental protection and use of the environment is established in the Estonian Environmental Strategy 2030<sup>7</sup> and in its implementation plan, the National Environmental Action Plan of Estonia 2007-2013. Those documents set out long-term objectives in the areas of waste reduction, the reduction of residual pollution and the pollution load, water, mineral resources, energy, transportation, forestry, fisheries, hunting and maintaining landscape and biodiversity.

Furthermore, the development plan for the area of government of the Ministry of the Environment has been drawn up for the period 2019-2022. To ensure that the objectives of the strategic documents are achieved, the Ministry is undergoing constant organisational reinforcement. Management processes and knowledge-based management are being developed, and strategic planning is being improved. Regulatory impact assessments are being carried out and the quality of public services is being developed.

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

The National Waste Management Plan 2014-2020 is a development plan that encompasses the field of waste as a whole. It describes the most important waste development principles and measures, together with actions planned for the next seven years. In accordance with other relevant development plans in the field, its aim is to achieve the waste policy objectives set in the Waste Act. The waste management plan covers the entire territory of Estonia. It addresses waste categories (types of waste) that come under the scope of the Waste Act and the Packaging Act, including non-hazardous waste, hazardous waste and packaging waste; it assesses waste management at county level; and it addresses international waste cooperation, the import and export of waste and measures intended to reduce the depositing of biodegradable waste in landfills. The waste management plan also contains a section that deals with principles for preventing waste generation.

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<sup>7</sup> [https://www.envir.ee/sites/default/files/elfinder/article\\_files/ks\\_loplil\\_riigikokku\\_pdf.pdf](https://www.envir.ee/sites/default/files/elfinder/article_files/ks_loplil_riigikokku_pdf.pdf)



### 3.3. Statistics

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

In Estonian crime statistics, criminal offences and misdemeanours are recorded separately. The Ministry of Justice records and publishes statistics on criminal offences. The data can be found in the following sources: the Statistics Estonia database and the Ministry of Justice's publication 'Kuritegevus Eestis' ('Crime in Estonia'). Data on waste-related misdemeanours and environmental crime are collected by the body conducting proceedings, i.e. the Environmental Inspectorate (EI).

The figures provided by the EI focus primarily on infringements of environmental law. Due to the low number of criminal cases involving waste crime, particular trends in this type of crime could not be identified. Nevertheless, illegal dumping or tipping might be a problem, not least because after a period of three years a legal storage site can become an illegal landfill.

While environmental crime, including waste crime, is understood as being clearly linked to economic crime such as tax crimes and money laundering, Estonia has not found direct links to organised crime (OC), or has not been able to identify any. Only two environmental crime cases with links to OC were mentioned, neither of which was waste-related.

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

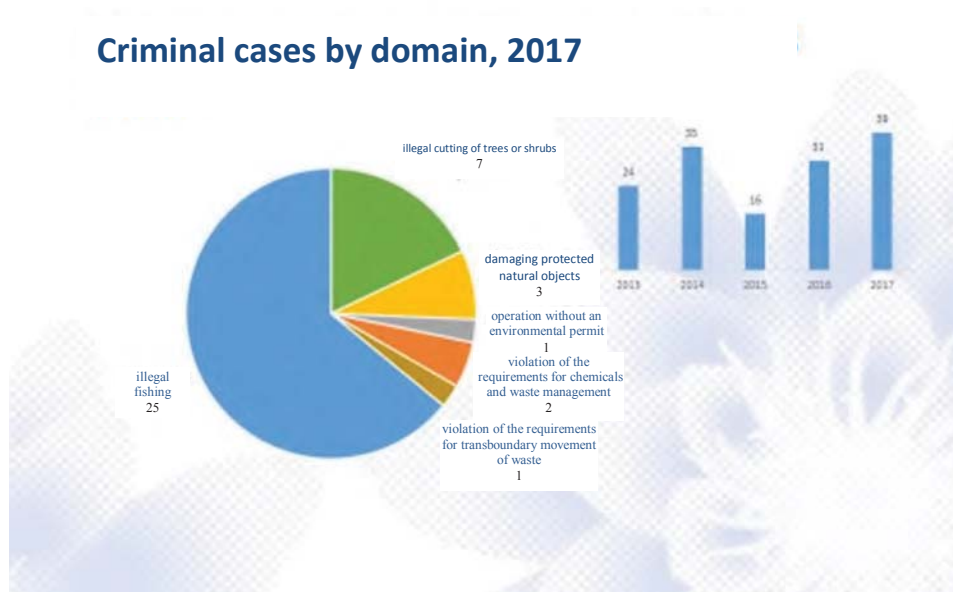
Registered waste crimes:

	2013	2014	2015	2016	2017
Section 363. Operation without an environmental permit	8	15			1
Section 364. Polluting the environment		1		1	
Section 365. Polluting the environment through negligence	1				

Section 365 <sup>1</sup> . Violation of the prohibition of pollutant discharges from ships into the sea					
Section 365 <sup>2</sup> . Violation of the prohibition of pollutant discharges from ships into the sea through negligence					
Section 366. Violation of the procedure for the utilisation of natural resources or the procedure for the maintenance of records on pollution					
Section 367. Violation of the requirements for chemicals and waste management	1	3	1		1
Section 368. Violation of the requirements for chemicals and waste management through negligence	1		1	1	2
Section 368 <sup>1</sup> . Violation of the requirements for the transboundary movement of waste		1	3	1	1
Section 368 <sup>2</sup> . Illegal plant operation					
Section 368 <sup>3</sup> . Operation of products prohibited in order to protect the ozone layer					
Section 368 <sup>4</sup> . Violation of the requirements for the transboundary movement of waste through negligence					
Section 368 <sup>5</sup> . Illegal plant operation through negligence					
Section 368 <sup>6</sup> . Operation of products prohibited in order to protect the ozone layer through negligence					

Source: Ministry of Justice, Crime in Estonia 2017.

Criminal proceedings initiated by the EI in 2017:



Misdemeanour procedures as qualified by the Waste Act, 2013-2017:

	2013	2014	2015	2016	2017
<b>Number of registered misdemeanour procedures</b>	<b>266</b>	<b>371</b>	<b>324</b>	<b>283</b>	<b>245</b>
<b>Number of fines</b>	<b>150</b>	<b>223</b>	<b>205</b>	<b>208</b>	<b>135</b>
<b>Average fine</b>	<b>307.93</b>	<b>449.84</b>	<b>391.97</b>	<b>599.96</b>	<b>592.81</b>
<b>Total fines</b>	<b>46 189</b>	<b>100 314</b>	<b>80 353</b>	<b>124 792</b>	<b>80 030</b>

For comparison – all misdemeanour procedures initiated by the EI, 2013-2017:

	2013	2014	2015	2016	2017
<b>Number of registered misdemeanour procedures</b>	<b>1 689</b>	<b>1 939</b>	<b>1 686</b>	<b>1 234</b>	<b>1 186</b>
<b>Number of fines</b>	<b>1 231</b>	<b>1 342</b>	<b>1 280</b>	<b>1 015</b>	<b>876</b>
<b>Average fine</b>	<b>152.36</b>	<b>197.28</b>	<b>210.60</b>	<b>324.64</b>	<b>365.76</b>
<b>Total fines</b>	<b>187 556</b>	<b>264 756</b>	<b>269 572</b>	<b>329 514</b>	<b>320 409</b>

Precepts issued in administrative proceedings:

	2013	2014	2015	2016	2017
<b>Precepts based on the Waste Act</b>	<b>5</b>	<b>5</b>	<b>17</b>	<b>14</b>	<b>40</b>
<b>All precepts issued by the EI</b>	<b>13</b>	<b>23</b>	<b>37</b>	<b>32</b>	<b>63</b>

Source: Environmental Inspectorate

As regards misdemeanour proceedings, the proportion involving hazardous waste was previously 2-4 % of all proceedings initiated under the Waste Act. In 2017, this percentage decreased to 1 %.

More details:

	2013	2014	2015	2016	2017
Hazardous waste	6	13	13	6	2
<b>Total</b>	<b>266</b>	<b>371</b>	<b>324</b>	<b>283</b>	<b>245</b>
%	2.26 %	3.50 %	4.01 %	2.12 %	0.82 %

Only a few waste crimes are registered each year – just six between 2013 and 2017. Most waste-related infringements do not legally qualify as a crime. Consequently, they are treated as misdemeanours. Since 2013 the average number of such cases has been 297.8 per year, with fines being issued in an average of 184.2 cases (the average fine across the five-year span was EUR 468.50). The average number of all misdemeanour procedures – including infringements of the Waste Act – initiated by the EI for the same time period was 1 546.8, the average number of fines 1 148.8 and the average fine EUR 250.13 (although this figure is increasing). The number of misdemeanour proceedings in relation to hazardous waste dropped to two in 2017 (from six the previous year). In comparison, about 7 700 inspections take place each year, 1 300 of which are waste-related. The overall number of infringements registered by the EI in 2017 was 2 035, the lowest figure since 2000. Of those cases, 403 were assessed as 'environmental', 444 as 'fisheries' and 339 as 'nature'. Fines were issued in 1 186 cases, totalling EUR 320 402. Fines in relation to waste amounted to EUR 80 000 for a total of 245 cases.

The EI registered 41 crimes in 2017: 25 in relation to fishing, eight forestry crimes, but only one case of illegal waste shipment. This case has not yet been prosecuted. There were two criminal cases in relation to hazardous waste.

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

No direct funding to fight against waste crime is provided from the national budget or EU funds, but indirect funding can be provided, for instance for the purchase of technical equipment. Authorities receive budgets to fulfil their mandated tasks.

Between 2010 and 2017, the staff of the EI was reduced by almost a quarter to 176. Those cuts have been reversed to some extent, and the EI currently has 191 employees.

### 3.5. Prevention of waste crime

The national strategy Sustainable Estonia 21, the Republic of Estonia Education Act, the Lifelong Learning Strategy 2020, the Estonian Environmental Strategy 2030, the Estonian Nature Conservation Development Plan 2020 and the national curricula for basic schools and secondary schools all indicate that the promotion of education in support of sustainable development, along with the shaping of green values and principles of sustainable consumption and production, is a priority for the Republic of Estonia. This priority is in line with the UN Sustainable Development Goals 2030 and the Global Action Programme on Education for Sustainable Development under the auspices of UNESCO, the aim of which is to reorient education and learning so that everyone has the opportunity to acquire the knowledge, skills, values and attitudes that empower them to contribute to a sustainable future.

### 3.6. Conclusions

- Estonia has adopted plans and projects on environmental crime issues (the development plan for the area of government of the Ministry of the Environment for 2019-2022, the Estonian Environmental Strategy 2030 and the National Waste Management Plan 2014-2020). The existing strategy and other plans are limited to the responsibilities and competencies of the Ministry of the Environment. Although measures against environmental crime are dealt with by those plans, they lack a horizontal approach across departments. As a consequence, there is no inter-departmental action plan addressing environmental crime.
- The Ministry of the Environment provides political input for the annual strategy. Consequently, in 2018, the chosen priority was waste in relation to its management, producer responsibilities and products of concern. While the National Waste Management Plan 2014-2020 and other development plans aim to achieve the waste policy objectives outlined in the Waste Act, no consideration seems to be given to waste crime as such.

- Therefore, prioritising the prevention of and the fight against environmental crime at central level – e.g. by developing a holistic approach involving all the relevant bodies dealing with environmental issues and/or by developing a national strategy and/or by establishing a national forum/working group to discuss and coordinate common efforts on environmental security) – could, in the evaluators' view, significantly strengthen the resilience of the fight against environmental crime.
- Criminal statistics are gathered by the Ministry of Justice; figures on misdemeanours are collected by the competent authorities, primarily by the EI. Despite the existence of individual statistical sources, which are certainly important for evaluating the effectiveness of each part of the system, the absence of a link between the different statistics leads to a lack of information on the entire flow of cases from the relevant authorities.
- The statistics show a small number of criminal cases relating to waste crime, while there is a much higher number of misdemeanours. It is likely that a significant amount of crime involving waste is going undetected, or there is a problem with measuring the extent of damage in waste crime cases. The criterion for determining the seriousness of waste crime is the extent of the environmental damage caused by the offence. Defining the terms 'environmental damage' and 'risk of damage' seems to pose a big challenge in Estonia. The same goes for the way in which the extent of damage in waste crime cases should be measured. This is because there is no legal definition of these terms, no sentencing guidelines and no case-law in that regard. In practice, the identification of environmental damage, risk of damage and the extent of damage is done on a case-by-case basis. That may be why there are more waste-related misdemeanours than criminal offences and why there is such a big difference between the number of misdemeanours and the number of criminal offences.

- The Estonian authorities indicated that the illegal import and export of end-of-life vehicles (ELVs) from and to EU Member States may be linked to organised crime groups. However, evidence showed that in most cases such offences were committed by individuals, not by organised crime groups. Linking individuals involved in smuggling ELVs to organised crime is rather challenging and difficult in most cases, which requires all the tools needed to combat organised crime. Typically this involves sharing intelligence and using special investigation techniques. The EI, and by extension its investigation unit, is not suited to this task. Whether the Estonian customs services are in a better position could not be established.
- A domestic budget is allocated to each authority involved in the fight against waste crime, but it is not specifically earmarked for preventing and combating waste crime. Estonia acknowledged that previous cuts to the EI's staff were counter-productive, and this led to a slight increase in the number of its employees.
- There was little evidence provided in relation to the prevention of waste crime, which in fact is hardly registered in Estonia. However, recent actions related to ELVs and an increase in checks and controls do have preventative effects. Future national strategies might benefit from explicit consideration of actions for the prevention of waste crime. There is support for sustainable development in general, which presumably includes avoidance and reduction of waste.



## 4. NATIONAL STRUCTURES

### 4.1. Judiciary (prosecution and courts)

#### 4.1.1. *Internal structure*

Waste crime is investigated in Estonia by ordinary prosecutors' offices and dealt with by ordinary courts. There are neither specialised courts nor specialised prosecutors' offices to investigate and handle waste crime cases.

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

The Estonian authorities identified 'environmental damage' and 'risk of damage' as the most challenging terms to define in waste crime cases. There are no sentencing guidelines or case-law relating to these matters. In practice, the identification of environmental damage, risk of damage and the extent of damage is done by means of a case-by-case assessment.

Considering the extremely low number of prosecuted environmental crimes in general, and waste crimes in particular, the current capacity for prosecution appears to be sufficient. However, the prosecution and sanctioning of waste crimes is obviously linked to the definition of waste crime.

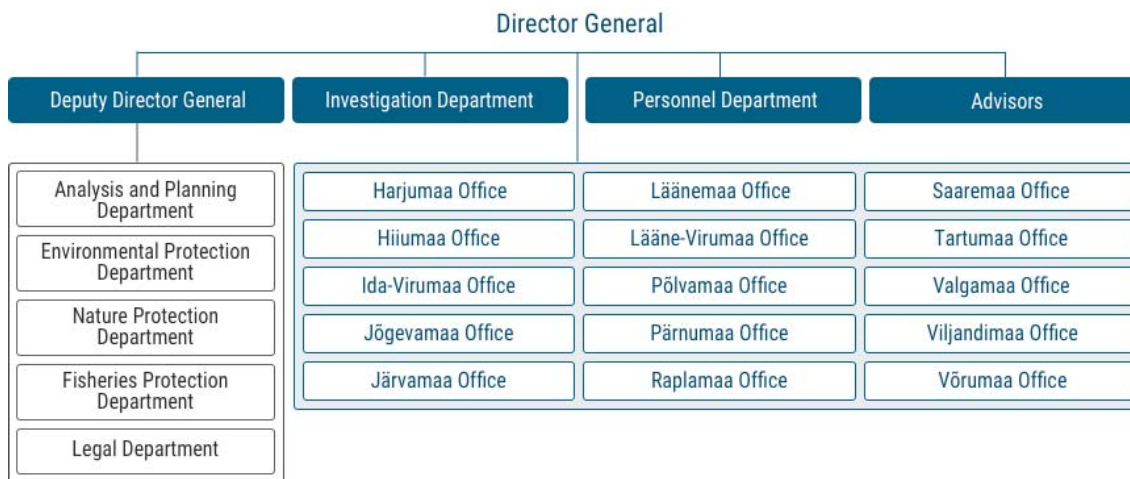
### 4.2. Law enforcement authorities

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

In Estonia, all environmental offences are investigated by the Environmental Inspectorate (EI). An investigation unit has been set up within the EI to investigate environmental crime, including waste crime. It comprises a head of unit and five investigators and is responsible for investigating all waste crime. It conducts extrajudicial misdemeanour proceedings as well as pre-trial criminal proceedings.

However, the overwhelming majority of infringements remain below the 'crime threshold' and are handled as misdemeanours without prosecutorial permission by the EI, which also decides on the fines. The EI evaluates complaints and decides in each case whether it is a crime, misdemeanour, administrative violation (of a permit or licence issued by the Environmental Board) or nothing.

The EI consists of a central authority and 15 county offices employing a total of 191 staff.



Pre-trial criminal proceedings are directed by a prosecutor's office.

There are a few circumstances where fines can be issued by municipal police or other authorities. However, Estonia sees it as an advantage that the EI is the primary agency issuing fines.

The EI cooperates closely with other national law enforcement authorities, especially with the Police and Border Guard Board (PBGB), the Maritime Administration and the Tax and Customs Board (TCB). There are regular meetings with the PBGB, at both central management and unit level. A cooperation agreement has been concluded and a separate cooperation plan is set up for each year. Joint inspections are organised in all fields of activity. If necessary the PBGB, with the permission of a prosecutor's office or court, carries out special or exceptional surveillance activities in cases dealt with by the EI. The Prosecutor's Office directs pre-trial proceedings, ensures the legality and efficiency of the proceedings and represents the public prosecution in court. Therefore, there is constant cooperation between the Prosecutor's Office and the EI in criminal matters.

Cooperation with the TCB takes place at the borders on a case-by-case basis. The EI and the TCB participate jointly in various Interpol operations, e.g. Thunderbird and Thunderstorm. The EI also cooperates with other institutions, such as the Estonian Maritime Administration. According to the Estonian Code of Criminal Procedure, setting up joint investigation teams with the different institutions, e.g. the PBGB, is optional.

In addition to the EI, the TCB, the Consumer Protection Board and the PBGB also have powers to investigate certain waste-related misdemeanours.

#### *4.2.2. Investigative Techniques/Tools*

In investigating waste crime, the EI makes use of all methods and tools approved and provided for by law, such as inspections, hearings, searches, expert analyses, etc. Their choice depends on the particular case and the instructions given by the Prosecutor's Office. Surveillance is permitted only in the case of one type of waste crime, namely polluting the environment (Section 364 of the Penal Code).

Legal provisions governing the investigation of waste crime are otherwise the same as for any other criminal investigation. There are no special rules or procedures to follow during the investigation and prosecution of waste crime cases.

According to the Code of Criminal Procedure (Section 126<sup>1</sup> and Section 126<sup>2</sup>), surveillance activities are permitted if collection of data by other activities or gathering of evidence by other procedural acts is impossible, is impossible on time, is especially complicated or may damage the interests of criminal proceedings. In the case of waste crime, surveillance activities may be conducted only in relation to the offences specified in Section 364 of the Penal Code, if one of the four conditions listed above is met. The EI does not have the right to conduct surveillance activities itself; only the PBGB can conduct them at the EI's request. Therefore, collection of evidence by means of surveillance activities, such as covert surveillance, covert collection of comparative samples and conduct of initial examinations, covert examination and replacement of things, wire-tapping or covert observation of information, is rather rare in environmental crime cases (and in waste crime cases in particular).

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

One of the major obstacles mentioned by the Estonian authorities is the lack of case-law relating to crimes involving polluting the environment, violation of requirements for chemicals and waste management, and violation of requirements for transboundary movement of waste where the criminal elements of the act include a risk of significant damage and significant quantities. Pursuant to Article 3(c) of Directive [2008/99/EC](#), violation of requirements for transboundary movement of waste should be regarded as a criminal offence when the activity is undertaken in a non-negligible quantity. However, what constitutes a non-negligible quantity in the case of violation of requirements for transboundary movement of waste should be established by means of an EU legal act, as the definition of the term should be the same in all Member States.

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

In Estonia, administrative authorities are not involved in investigating waste crime. However, the Ministry of the Environment has a role in the prevention of environmental crime, including raising awareness and education.

The same role is performed by the Environmental Board. In principle it is the regulating administrative body, which for example issues permits for hazardous waste and waste regulated by international agreements. It plays a role in water monitoring, and takes its own samples using a risk-based approach. The Board is authorised to use CCTV to monitor sites but almost always asks the EI to handle this task. The Board collects information on transboundary waste shipments where no permit is required, as well as other annual data. It also deals with the notification procedures. However, the Environmental Board is not responsible for checking the compliance of permits, etc. This is a task for the EI and the customs agency. The Board has almost twice as many staff as the EI.

The Environmental Board sometimes has to deal with conflicting interests or problems with legislation, which is not always aligned. The conditions under which waste storage licences are granted is one example. Consideration is being given to combining the Environmental Board and the EI to form one agency. In this case, what is currently known as the EI would need to be a comparatively independent department. Investigations into environmental crime can easily lead to investigations into permits: what permits were issued, how and when this was done and under what circumstances. This would be more than difficult if the investigating department were 'subordinate' to the issuing one. Also, the EI (or rather a future inspectorate department) should retain its status as a law enforcement body. In a few exceptional circumstances, such as an oil spill at sea, in addition to the General Prosecutor's Office (for the criminal aspects) the Crisis Commission within the Prime Minister's Office might handle the case.

Furthermore, local governments also have some tasks and responsibilities. They operate on the basis of the Local Government Organisation Act. Their responsibilities include the development of waste handling, sorting of waste, drawing up and adopting a local government waste management plan, coordination of draft local government waste management plans, updating the local government waste management plan, organising hazardous waste management, organising waste transport, choosing a waste transport operator, recovery and disposal of waste, establishing local government waste handling rules, keeping a register of waste holders, and issuing opinions on applications for waste permits. Pursuant to Section 119 of the Waste Act, local governments should also exercise constant supervision over compliance with the local government waste management rules within their administrative territories.

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

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

The main authorities involved in the exchange of information and intelligence on environmental crime are the EI, the PBGB, the TCB and the Prosecutor's Office. The principal responsibility lies with the EI, which meets regularly with the other authorities mentioned above and collects, processes and distributes the relevant information.

The cooperation between the EI and the prosecutors' offices for the purpose of fighting crime is based on the rule of law. The prosecutor directs investigations to a certain extent and, to a greater extent, prosecutors also decide whether an infringement detected by the EI is to be seen as a crime or as a misdemeanour.

With the exception of the PBGB, which has a cooperation agreement with the EI, cooperation with other agencies such as the TCB takes place on a case-by-case basis, without agreements. Cooperation is consequently rather informal and comparatively difficult to coordinate. Without agreements environmental investigators rely on their personal contacts and the 'good will' of colleagues in other agencies. The EI gave a few examples of good cooperation, not only with the PBGB but also with the TCB. Nevertheless, a formalised, structured approach is likely to increase and improve cooperation. Communication between EI investigators and the Environmental Board is considered to be good by both authorities.

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

In general, access to information is considered to be good by the Estonian authorities, only limited by the number of personnel available to process the information. The EI has linked its own database for inspections with various registers (e.g. traffic, population, commerce) and has access to shipping databases such as THETIS. Although the EI's investigation unit has a contact point within the Intelligence Management Unit of the PBGB, it has only limited access to information held by other LEAs, such as the police and customs.

In the evaluators' view, the limited access to information may be seen as problematic considering the proven links between waste crime and organised crime groups in other countries. Sharing of information and intelligence is not provided for as a standard measure. Nonetheless, a few positive examples of customs-based intelligence provided to the EI were given. This, however, cannot remedy the absence of a national environmental crime platform, not necessarily identical but similar to the National Environmental Security Task Forces (NESTs) recommended by Interpol. Such a platform or a working group could be used to exchange information and intelligence or could at least recommend and advise on setting up a focal point on environmental-crime-related intelligence in Estonia.

#### 4.5. Training

There is no targeted training on environmental crime or specifically on waste crime for LEAs, the judiciary and other authorities. However, regular two-day practical training/consultation sessions have been organised twice a year, totalling four training days (i.e. 32 hours), in cooperation with the Prosecutor's Office and the EI's investigation unit. The training sessions focus on analysing current issues in the investigation of environmental crime, harmonising understanding of the laws, discussing problems related to environmental crime and how to get positive court judgments, studying the performance of procedural acts and addressing questions concerning the implementation of legislation.

During the period 2016-2018 there were specific seminars ('round tables') on environmental crime for prosecutors once a year:

- in 2016 and 2017 a seminar on environmental crime was arranged and conducted by the EI;
- in 2018 a seminar on environmental crime was arranged and conducted by the Prosecutor's Office.

All offices in Estonia involved in the investigation of environmental offences (both misdemeanours and crimes) participate in the seminars. At the seminars case-law and best practice are communicated, problems are tabled and discussed, legislative interpretation issues are discussed, and legislative changes are notified and explained.

In addition, prosecutors working on environmental crime attend various seminars and meetings organised on environmental crime topics.

In 2017 a prosecutor attended a seminar on environmental crime organised by the European Network of Prosecutors for the Environment (ENPE) and the LEA in the United Kingdom.

In both 2017 and 2018 a prosecutor attended the meeting of the Network of Prosecutors on Environmental Crime in the Baltic Sea Region in Norway.

A prosecutor intended to attend the ENPE's annual conference in Greece at the end of October 2018.

There are no targeted training modules on environmental crime for financial investigators or computer forensics examiners. The process of providing environmental training for the staff of local authorities has started, especially on practical waste topics and on the resolution of cases in this field.

The EI has organised practical training on the Law Enforcement Act for its staff, grouping participants on the basis of the specificities of the topics and work they handle. The focus is on studying surveillance tactics and surveillance operations. This is a one-day training course (eight hours in total). The theoretical part of the training covers the measures in the Law Enforcement Act and their use, raids related to waste and mining, entering the premises of enterprises that need to be checked, discovering facts during surveillance and recording those facts. The practical part of the training covers the planning of surveillance operations, documentation of surveillance measures, resolution of cases and situations and any questions raised.

The general training provided for EI employees (inspectors/first responders) consists of six judicial training modules delivered over one year by the Centre for Continuing Education of the Estonian Academy of Security Sciences:

module I: administrative procedure;

module II: the General Part and the Special Part of the Penal Code;

module III: procedural law on offences and offence proceedings;

module IV: practical training on offence proceedings (resolution of cases) and the use of self-defence and special equipment;

module V: practical training on penal and procedural law and introduction to forensics + self-defence;

module VI: comparative analysis of administrative and misdemeanour proceedings, self-defence and special equipment.



The legal unit provides staff with regular training on misdemeanours and administrative proceedings, to keep them up to date with legislative changes, new regulations and European Union regulations. In the period from 2016 to mid-2018 EI employees participated in 396 judicial training events in total (i.e. 4 533 training hours).

The EI is a member of the CEPOL Estonian network and participates actively in all environmental training provided by CEPOL. Over the last year environmental inspectors have taken part in training organised in Spain and France.

In 2017 an information day for judges was organised. Although the number of criminal cases is low, the judges who deal with criminal proceedings are also competent in cases where fines for misdemeanours are challenged and brought to court. In some of the few cases which were brought to court, judges asked to be informed about the environmental background.

It was reported that judges could request training if they wished. So far this has not happened.

#### **4.6. Conclusions**

- There is no specialisation among judges and prosecutors on environmental crime in Estonia. Public prosecutors typically work on a range of crimes, including environmental crimes. In each of the four districts there is at least one prosecutor covering environmental crime among other types of crime, according to the work division plan.
- Judges are not specialised either. They deal with files assigned to them. This may be due to the small number of environmental crime cases and the perception that there is no need for specialised judges in this specific area. Due to the complexity of the subject-matter, in the evaluators' view it would be useful to incentivise judges to follow specific training courses focused on environmental crime. Their skills and knowledge of environmental crime could thus be improved. More specialised knowledge could help judges in handling waste crime cases (in particular in defining the severity of the environmental damage).

- The police, customs and the EI are the LEAs responsible for investigating and preventing waste crime. However, in practice neither the police nor customs seem to work on any environmental crime cases, which might be due to the extremely low number of cases. Currently, the EI's investigation unit is effectively the main structure dealing with environmental crime in Estonia. The unit, consisting of a head of unit and five investigators, is responsible for the investigation of all waste (and other environmental) crimes across Estonia. All investigators are recruited from the police. If necessary, the investigation unit can request expertise and support from other EI units and departments. The investigators are former police officers who are specialised in investigating criminal activities, in particular environmental crime. In the evaluators' opinion, recruiting police officers as environmental inspectors and taking advantage of their knowledge and experience in fighting crime is an example of best practice.
- Estonia's capacity to investigate waste crime is sufficient if only the current figures are taken into account. Like most environmental crimes, waste crimes are so-called victimless control crimes. Whether the 191 staff of the EI (the PBGB has over 6 000) will be able to increase the detection rate of waste crime is not clear. Typically, this would be preceded by an increase in detected infringements, from which analysts and investigators can build their criminal cases. The EI already appears to have a flexible approach regarding resources, with support for their investigators from inside the Inspectorate, and from police and customs. Still, from a mid- to long-term perspective the EI's investigation unit, with its limited human resources, seems too small, bearing in mind that its staff are also involved in international activities. The EI does not employ forensic scientists. Forensic examinations have to be outsourced to private laboratories, which so far has not been seen as a problem.

- In general, the EI investigators have the same powers as their police counterparts. They can conduct inspections, use force, enter premises and take samples. The use of such powers requires suspicion of criminal activity. From then on, search warrants and other court orders are needed. Scientific specialisation and rotation of environmental inspectors should be considered best practice. In the evaluators' view, the special role played by the current EI and its achievements justify the maintenance of its capacity and functionality, so as to ensure that its tasks will continue to be conducted effectively in the future.
- According to the Estonian Code of Criminal Procedure (Section 126), surveillance activities are permitted if collection of data by other activities or gathering of evidence by other procedural acts is impossible, impossible on time, especially complicated or may damage the interests of criminal proceedings. In the case of waste crime, surveillance activities may be conducted only in relation to the offences specified in Section 364 of the Penal Code, if one of the four conditions listed above is met. The EI does not have the right to conduct surveillance activities itself; only the PBGB can conduct them at the EI's request and following the approval of the Prosecutor's Office (PPO) or of a court. This means that collection of evidence by means of surveillance activities, such as covert surveillance, covert collection of comparative samples and conduct of initial examinations, covert examination and replacement of things, wire-tapping or covert observation of information, is rather rare in environmental crime cases, and waste crime cases in particular.
- As environmental inspectors are not authorised to use special investigation techniques on their own, the use of covert investigative measures, which are essential for combating organised crime, is rare. Currently such measures are only possible for one particular type of waste crime and three other unspecified environmental crimes: pollution of the environment (Section 364 of the Penal Code). In the evaluators' view, providing environmental investigators with a full range of powers comparable to those of police investigators in respect of detecting and investigating environmental crime could enhance Estonia's capacity to combat environmental crime more effectively.
- Pre-trial criminal proceedings are directed by a prosecutor. After the statement of charges has been prepared, the criminal case is dealt with by the court.

- There is a cooperation agreement between the EI and the PBGB which allows the organisation of joint inspections. The PBGB carries out activities for the EI which require special investigation techniques, if those are permitted by the PPO or the court. The police supports the EI by taking over the surveillance parts of the investigation once the activities endanger society or the environment or are conducted by organised crime groups. Nevertheless, in the evaluators' view, more structured cooperation should be considered in order to rely less on coincidence and personal contacts, e.g. through formal cooperation agreements supported by setting up a NEST-style platform.
- The TCB is responsible for checking goods crossing the border or arriving in ports and airports. For transboundary movements of waste, the TCB conducts proceedings on misdemeanours on its own. As in most countries, the customs authorities are in a strong position with regard to investigations and international cooperation (possible use of Naples II Convention for information exchange). Under the Law Enforcement Act, the EI and the TCB have the same mandate in relation to environmental protection measures. The customs authorities, though, are legally obliged to involve the EI and inform the Environmental Board about their findings. Currently there is no automatic process for sharing data with the EI. In more minor cases the TCB asks the EI for advice on how the case can be handled.
- The EI cooperates with the TCB, primarily on a case-by-case basis at the borders or in the context of participation in Interpol operations. The EI recognises that the customs authorities have more sophisticated data systems and tries to learn from them. So far no formal agreement has been concluded between the two authorities. The same goes for cooperation with the Maritime Administration. In the evaluators' view, better use of the existing capacity of the police and customs in relation to intelligence-led policing (tailored for the EI) should be considered.

- There is no targeted training on environmental crime. The PPO and the EI's investigation unit have a joint two-day seminar twice a year. According to the statistics, not many environmental crimes are recorded, so the need for trained prosecutors comes across as limited. Also, there seems to be some rotation or fluctuation within the PPO's ranks. For 2019 a training plan for the PPO is drafted with annually changing trainers and lecturers. One of the reasons is that environmental law is not included in the law degree syllabus in Estonia. As few training opportunities are available to prosecutors, in the evaluators' view consideration should be given to increasing the specialisation of prosecutors, for example by providing some of them with more training.
- The EI has introduced some training for local authorities, with a focus on waste-related issues. It also organises waste-related training for customs and the police. In cooperation with the police, the EI has also begun to provide one-day training for some of its own staff, with a view to carrying out joint raids and surveillance (covert investigation techniques).
- While there are some training opportunities in relation to environmental crime, they all seem to rely on the willingness and capacity of the EI. The evaluators were not presented with evidence that structured and organised training is available at central and local level. Therefore, in the evaluators' view, a more structured and multi-agency approach should be considered in order to provide training on environmental crime to a wide range of practitioners involved in preventing and fighting waste crime.

## 5. LEGAL ASPECTS

### 5.1. Substantive criminal law

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

All environmental infringements which are considered a criminal offence are covered by the Estonian Penal Code. Waste crimes are set out in Chapter 20 of the Penal Code, in Sections 363 to 365, 367, 368, 368<sup>1</sup>, 368<sup>2</sup>, 368<sup>4</sup> and 368<sup>5</sup>, and include the following illegal acts:

Section 363. Operation without an environmental permit

Section 364. Polluting the environment

Section 365. Polluting the environment through negligence

Section 365<sup>1</sup>. Violation of the prohibition of pollutant discharges from ships into the sea

Section 365<sup>2</sup>. Violation of the prohibition of pollutant discharges from ships into the sea through negligence

Section 366. Violation of the procedure for utilisation of natural resources or the procedure for maintenance of records on pollution

Section 367. Violation of the requirements for chemicals and waste management

Section 368. Violation of the requirements for chemicals and waste management through negligence

Section 368<sup>1</sup>. Violation of the requirements for the transboundary movement of waste

Section 368<sup>2</sup>. Illegal plant operation

Section 368<sup>3</sup>. Operation of products prohibited in order to protect the ozone layer

Section 368<sup>4</sup>. Violation of the requirements for the transboundary movement of waste through negligence

Section 368<sup>5</sup>. Illegal plant operation through negligence

Section 368<sup>6</sup>. Operation of products prohibited in order to protect the ozone layer through negligence.<sup>8</sup>

Both natural and legal persons can be held liable. In the Estonian Penal Code waste crimes are second-degree offences for which the punishment is imprisonment for up to five years or a pecuniary punishment. As also laid down in Section 44, the penalties for natural persons are pecuniary punishment or imprisonment and, for legal persons, a pecuniary punishment. Pursuant to Section 44 the court may impose a pecuniary punishment of 30 to 500 daily rates. The court should calculate the daily rate of a pecuniary punishment on the basis of the average daily income of the offender. The court may reduce the daily rate due to special circumstances or increase the rate on the basis of the standard of living of the offender. The daily rate applied should not be less than the minimum daily rate. The minimum daily rate is EUR 10. In the case of a legal person, the court may impose a pecuniary punishment of EUR 4 000 to EUR 16 000 000.

For a misdemeanour the punishment may be a fine of three to 300 fine units or detention (up to 30 days). A fine unit is the base amount of a fine and is equal to EUR 4. For a legal person a fine of EUR 100 to EUR 400 000 is imposed.

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<sup>8</sup> Due to the large number of pages involved, a description has not been included in Annex D to the report.

In accordance with the Special Part of the Penal Code, the aggravating circumstance in a criminal case is the scope of the damage to the environment. The penalty depends on whether the violation has caused:

1. a danger to human life or health or a risk of significant damage to the environment or a risk of significant damage to the quality of water, soil or ambient air, or to individuals of animal or plant species or parts thereof;
2. significant damage to the environment or significant damage to the quality of water, soil or ambient air, or to individuals of animal or plant species or parts thereof;
3. major damage to the quality of water, soil or ambient air, or to individuals of animal or plant species or parts thereof.

Significant damage and major damage are defined in Section 12<sup>1</sup> of the Penal Code, where it is stated that, if causing of proprietary damage is laid down as a necessary element of an offence or the extent of an offence can be determined pecuniarily, the damage or extent of offence are appraised pecuniarily as follows:

1. damage or an extent of offence which exceeds EUR 4 000 is significant damage;
2. damage or an extent of offence which exceeds EUR 40 000 is major damage.

The following general aggravating circumstances are provided for in Section 58 of the Penal Code:

- self-interest or other base motives;
- commission of the offence by taking advantage of a public accident or natural disaster;
- commission of the offence in a manner which is dangerous to the public;
- causing of serious consequences;
- commission of the offence in order to facilitate or conceal another offence;
- commission of the offence by a group;
- taking advantage of an official uniform or badge in order to facilitate commission of the offence.



The following general mitigating circumstances are provided for in Section 57(1) of the Penal Code:

- prevention of harmful consequences of the offence, and provision of assistance to the victim immediately after the commission of the offence;
- voluntary compensation for damage;
- appearance for voluntary confession, sincere remorse, or active assistance in detection of the offence;
- commission of the offence due to a difficult personal situation;
- commission of the offence under threat or duress, or due to service, financial or family-related dependent relationship;
- commission of the offence in a highly provoked state caused by unlawful behaviour.

There are no administrative sanctions in the Estonian legal system.

### 5.1.2. Other rules or judiciary instructions

Non-binding judiciary instructions on **how to define the term 'waste'** are included in Supreme Court judgment No 3-1-1-94-16, paragraph 13:

*'Determining the reasonability of discarding property entails a subjective assessment on the part of the holder and different holders may give different assessments. However, discarded property that is valuable and usable may also cause a hazard to the environment comparable to that caused by unusable property when there is a breach of handling requirements. The college is of the opinion that the definition of the term "discarding" set out in Section 2(2) of the Waste Act should therefore be understood to mean that in treating movable property as waste, it is important to assess the impossibility of use for technical reasons or the unreasonableness of use due to economic or environmental considerations (i.e. the perspective of use) only when the holder does not actually use the property (third alternative). In such cases it may be complicated to establish what the holder intends to do with the property next and, therefore, it is important to take into account the property's perspective of use as well. In other cases (removal from use or refusal to commence use) it is not justified to rely only on the perspective of use, as the exclusion of discarded usable property from the scope of the Waste Act is not in accordance with the objective of the Waste Act to prevent the health and environmental hazards arising from waste.'*

Furthermore, Tartu County Court issued non-binding judiciary instructions on the definition of the term 'waste' (linking the act of discarding of movable property to whether its use is 'impossible for technical reasons or unreasonable due to economical or environmental circumstances') and the determination of the principal offender in cases of international waste transport.

The Ministry of Justice reviewed the Penal Code two years ago. After the implementation of Directive 2008/99/EC, which criminalised many infringements previously regarded as misdemeanours, it was expected that certain aspects of the Code would be clarified by future case-law. However, due to the low number of prosecuted crimes, this did not happen. In 2019 the General Prosecutors' Office, in cooperation with the Environmental Inspectorate (EI), intends to release some guidelines to tackle identified shortcomings and to aid common understanding of elements of environmental crime. This will include threats and risks as well. In addition, the guidelines come across as a tool which even new prosecutors will be able to use. Nevertheless, all environmental crimes will remain within the Penal Code.

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

All types of criminal offence are set out in the Penal Code and waste crimes are classed as second-degree offences. Environmental misdemeanours are also dealt with in many other environmental acts (e.g. the Waste Act). The criterion for determining the seriousness of a waste crime is the extent of the environmental damage caused by the offence.

There is no case-law on how the courts define the term 'substantial/significant damage'. No sentencing guidelines or guidance on gravity factors to help judges in the determination of sanctions have been drawn up.

The severity of a waste crime, as well as whether an act constitutes a criminal offence or a misdemeanour, is determined by assessing whether it has caused a threat to human life or health or whether there is a risk of substantial/significant damage to the quality of water, soil or ambient air or to individuals of animal or plant species or parts thereof.

There are no national criteria for establishing the existence and degree of the risk of substantial/significant damage posed by waste crimes to the quality of water, soil or ambient air or to individuals of animal or plant species or parts thereof.

For some types of offence, the assessment criteria also include the consequence of the act, i.e. whether substantial/significant or major damage has been caused to the quality of water, soil or ambient air or to individuals of animal or plant species or parts thereof. Section 12<sup>1</sup> of the Penal Code specifies that damage which exceeds EUR 4 000 is significant damage and damage which exceeds EUR 40 000 is major damage. The extent of the damage can be determined as a point of fact.

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

According to the Estonian authorities, environmental crime – including waste crime – is essentially a form of economic crime, as its aim is to gain a benefit. It is clearly linked to economic crimes such as tax crimes and money laundering. At the same time, no direct links to organised crime have been identified.

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

NGOs can report crimes. In Estonia, whenever there is an indication of a criminal offence, an investigation must be initiated and it does not matter who has reported the crime.

An NGO cannot be *parte civile* in criminal proceedings. Pursuant to Section 38<sup>1</sup>(1) of the Code of Criminal Procedure, only a victim has the right to file a civil action against a suspect, accused or defendant if: 1) the objective of the claim is to restore or remedy the well-being of the victim infringed by an act which is the object of the criminal proceedings if the factual circumstances which are the basis for the claim overlap to a substantial degree with the facts of the criminal offence and if such claim could also be heard in civil proceedings; 2) it is a claim for compensation for damage against a public authority which could be filed in administrative court proceedings.

Pursuant to subsection (2) a public authority may, in addition to the provisions of subsection (1), file as a victim a proof of claim in public law for determination of financial obligations in public law claimed from the accused, if the factual circumstances which are the basis for such obligation overlap to a substantial degree with the facts of the criminal offence on which proceedings are being conducted. A proof of claim in public law may be filed by an administrative authority which would be entitled to determine the same financial obligation in administrative proceedings.

Under Section 30(1) and (2) of the General Part of the Environmental Code Act, a non-governmental organisation that conforms to the characteristics listed in Section 31 of the same Act has the right to file an appeal or a challenge in administrative proceedings against an administrative act or measure of an administrative authority.

Insofar as Section 195 of the Code of Criminal Procedure does not restrict the range of persons who may report criminal offences, NGOs have the right to file such reports.

According to Section 37(1) of the Code of Criminal Procedure, a victim is a natural or legal person whose legal rights have been directly violated by a criminal offence aimed at the person or by an unlawful act committed by a person not capable of guilt. Section 38(1) of the Code of Criminal Procedure states that a victim has the right to file a civil action in criminal proceedings. Thus, in order for a person to be entitled to file a civil action and join the proceedings as a civil party, he or she should have suffered damage as a direct result of the criminal offence. Non-governmental environmental organisations, as defined in the General Part of the Environmental Code Act, represent collective interests and they themselves have no concrete legal rights that could be directly violated by a criminal offence. Therefore, an NGO cannot participate as a civil party in criminal proceedings.

## 5.2. Procedural, jurisdictional and administrative issues

### 5.2.1. Difficulties encountered with regard to evidence

No difficulties were reported by the Estonian authorities with regard to sampling and presenting evidence in court or in administrative proceedings.

Nonetheless, the evaluators observed that the Estonian authorities have difficulties in identifying environmental damage, the risk of damage and the extent of the damage, particularly in cases of waste crime. The most challenging problems are linked to waste, chemicals and oils. Another type of difficulty relates to proving the intention of the accused person, if in doubt by evidence.

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

#### In the case of misdemeanours:

Pursuant to Section 129<sup>1</sup> of the Waste Act, a court or the EI may, under Section 83 of the Penal Code, apply confiscation in respect of the instrument by which the misdemeanour provided for in Sections 120, 120<sup>1</sup>, 120<sup>3</sup>-120<sup>5</sup>, 122, 124<sup>5</sup>, 126<sup>2</sup> and 126<sup>5</sup> of the Waste Act was committed or in respect of the waste or products which were the direct object of such misdemeanour.

#### In the case of criminal offences:

Pursuant to Section 83(1) of the Penal Code, a court may confiscate an object which was used or intended to be used to commit an intentional offence, if it belongs to the offender at the time of the judgment or ruling.

Pursuant to Section 83<sup>1</sup> a court shall confiscate of the assets acquired through an offence object if these belong to the offender at the time of the making of the judgment or ruling. For the purposes of this section, assets acquired by an offence are the assets directly acquired by an offence and anything acquired for account of these assets.

In Estonia, it is possible to confiscate the proceeds of a waste crime.

According to Section 83<sup>1</sup> subsection 2 the court shall impose the confiscation previously mentioned to the assets which belong to a third person at the time of making the judgment, if: 1) these were acquired, in full or in the essential part, on account of the offender, as a present or in any other manner for a price which is considerably lower than the normal market price; or 2) the third person knew that the assets were transferred to the person in order to avoid confiscation.

In the case of administrative proceedings:

Pursuant to the Substitutive Enforcement and Penalty Payment Act (Sections 10 and 11), in the case of failure to comply with a precept, a competent administrative authority may impose a penalty payment. In addition, it is also possible to carry out substitutive enforcement with regard to the addressee of a precept, i.e. a third party may be used to bring an activity or an operation into compliance with the requirements of the Waste Act. Subsequently, the addressee of the precept who violated the requirement in the Waste Act will be required to pay the costs of such substitutive enforcement.

*5.2.3. Treatment of seized objects*

During the preliminary investigation, the investigative body bears the costs in most cases. Later arrangements depend on the court judgment.

Physical evidence which cannot be stored in a physical evidence storage facility of an investigative body, prosecutor's office or court or on other premises in its possession or in a location guarded by it or in a forensic institution, and with regard to which the measures prescribed in the Code of Criminal Procedure cannot be applied in the interests of the criminal proceedings before a court judgment becomes final or the termination of the criminal proceedings, are put into storage with liability on the basis of a contract. A person with whom physical evidence is deposited but who is not the owner or legal possessor thereof has the right to receive compensation for the storage fee, which is included in the expenses of the proceedings. The storage costs are compensated for on the basis of a contract between the body conducting the proceedings and the depositary. In the event of a conviction, the expenses of the proceedings are compensated for by the convicted offender.

Highly perishable physical evidence which cannot be returned to its lawful possessor is given to a national or local health care or social welfare institution free of charge, transferred, or destroyed in the course of the criminal proceedings on the basis of an order or ruling of the body conducting the proceedings. The proceeds from the sale are transferred into public revenues.

If physical evidence cannot be returned to its legal possessor and the cost of keeping it is unreasonably high, such evidence may be transferred at the request of the prosecutor's office and on the basis of an order by a preliminary investigation judge. The proceeds from such transfer are seized.

### **5.3. Environmental restoration**

Pursuant to Section 128(1) of the Waste Act, damages related to the release of waste into the environment and to the pollution created by waste, including the costs related to waste management and to the remedy of the effects of environmental pollution caused by waste, are covered by the person who released the waste into the environment. If within one year this person has not been established, then the waste management and remedy of the effects of pollution are organised, on the basis of a precept, by the landowner on whose land the waste is located or the pollution took place (Section 128(4) of the Waste Act).

### **5.4. Jurisdiction**

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

The penal law of Estonia applies generally to acts committed within the territory of Estonia. Under Section 9(2) of the Penal Code, the penal law of Estonia applies to acts which damage the environment and were committed within the economic zone or on the high seas, in accordance with the requirements and rights of international maritime law, regardless of whether they are offences or misdemeanours.



Pursuant to Section 25(2) of the Code of Criminal Procedure, if a criminal offence is committed abroad, the criminal matter is heard by the court of the residence of the suspect or accused in Estonia. National legislation provides for jurisdiction with regard to waste crimes committed entirely or partially outside the territory of Estonia.

The penal law of Estonia applies only to an act committed outside the territory of Estonia if such act constitutes a criminal offence pursuant to the penal law of Estonia and is punishable at the place of commission of the act, or if no penal power is applicable at the place of commission of the act and the offender is a citizen of Estonia at the time of commission of the act or becomes a citizen of Estonia after the commission of the act, or if the offender is an alien who has been detained in Estonia and is not extradited. In this case the criminal matter is heard by the court of the residence of the suspect or accused in Estonia. If the suspect or accused does not have a residence in Estonia, the criminal matter is heard by Harju County Court.

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

Estonia has implemented Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings. No other mechanisms to resolve conflicts of jurisdiction with other Member States have been established to address specifically cross-border waste crime cases.

## 5.5. Conclusions

- All waste-related crimes are set out in the Estonian Penal Code, specifically in Sections 363 to 368. The constituent element of most violations is 'significant damage'. Section 12<sup>1</sup> of the Penal Code provides a legal definition of 'significant damage'. Damage which exceeds EUR 4 000 is significant damage and damage which exceeds EUR 40 000 is major damage. The extent of the damage can be determined as a point of fact.
- The criterion for determining the seriousness of a waste crime is the extent of the environmental damage caused by the offence. The severity of a waste crime, as well as whether an act constitutes a criminal offence or a misdemeanour, is determined by assessing whether it has caused a threat to human life or health or whether there is a risk of significant damage to the quality of water, soil or ambient air or to individuals of animal or plant species or parts thereof.
- In the evaluators' view the criteria for determining the existence and degree of the 'risk of substantial/significant damage' posed by waste crimes to the quality of water, soil or ambient air or to individuals of plant or animal species or parts thereof are not sufficiently precise. In the majority of cases the EI struggles to prove the existence of significant damage or the risk of such damage. Particularly in the area of waste crime the EI rarely manages to substantiate the 'direct damage'. This finding is supported by the actual number of investigated cases and, by extension, prosecuted crimes.
- Taking into consideration the fact that the terms 'environmental damage' and 'risk of environmental damage' are not defined in the Estonian Penal Code, as well as the fact that the EI does not have the right to conduct surveillance activities in most cases, the detection of environmental crime seems to be very difficult in Estonia.

- The maximum penalties provided for by the Penal Code are either pecuniary punishments or imprisonment of up to one, two or three years. This gives the impression that waste crime is not considered a particularly serious type of crime.
- No binding judiciary instructions are in place on the definition of 'waste' when determining whether an act constitutes a criminal offence or a misdemeanour. The prosecutor decides this on a case-by-case basis. Therefore, in the evaluators' view better delineation between criminal offences and misdemeanours is needed to combat waste crime more effectively. The terms/constituent elements of crimes can be defined by laws, regulatory tools or binding or non-binding instruments (e.g. Article 368 – significant quantities and threat to the environment).
- In the evaluators' opinion, there is a need to review the criminal law and, specifically, those provisions dedicated to the fight against environmental crime, in particular waste crime, in order to allow for more efficient detection, investigation and prosecution of environmental crime (waste crime is not listed in the catalogue for surveillance). The EUR 4 000 threshold, which hampers the fight against environmental crime, should be reconsidered.
- On top of that, investigators could take into account the financial and economic dimension of environmental crimes. Such an attitude gives rise to better understanding of the background of the crime, provides strong support for efforts to pursue criminals behind the scenes and helps convince judges of the seriousness of the crime.
- When sanctioning environmental crimes, judges can rely on previous judgments handed down in cases involving other types of criminality, as aggravating circumstances are exhaustively listed in the Estonian Penal Code (Section 58) and they apply equally to all types of criminal offence, including waste crime. Penalties can also be applied in respect of legal persons, albeit in the form of pecuniary punishment only. These penalties appear to be higher than those for natural persons.

- Legal provisions for the investigation of waste crime are generally the same as those for any other crime. Investigations are steered and supervised by the prosecutor of the district where the court proceedings will take place. In exceptional cases, such as an oil spill at sea, the General Prosecutors' Office might take over the case.
- Estonia acknowledges links between environmental crime and other serious criminal offences. The EI seems to be aware of potential links between environmental crime and organised crime and of a proximity between profit-driven environmental and other crimes such as economic crime or money laundering. Nevertheless, there is no evidence that this knowledge is exploited at operational level. The police has seemingly withdrawn from the investigation of environmental crimes and the EI's investigation unit has few powers to successfully conduct large-scale and/or covert investigations.
- Estonian law allows confiscation of waste and by-products, and also of instruments in the case of misdemeanours, even if they were only intended to be used, as well as of proceeds of crime. It is useful that instruments can be confiscated in the case of misdemeanours and that this also applies to instruments which were only intended to be used.
- While NGOs can report crimes, including environmental crimes, they are not allowed to be *parte civile* in the criminal proceedings, this being limited to victims. While victims can be natural or legal persons, NGOs as defined by the Environmental Code Act represent collective interests and do not have legal rights that could be directly violated. The direct violation of legal rights is a legal precondition for participating in criminal proceedings as a civil party (Section 37 of the Code of Criminal Procedure).
- As far as administrative procedures are concerned, NGOs which fulfil the requirements of Section 31 of the Environmental Code Act can, pursuant to Section 30, file an appeal or a challenge in administrative proceedings against an administrative act or measure of an administrative authority.

- In terms of criminal law, the offender has primary responsibility for restoration of the environment. The state is involved in environmental restoration and damage repair in the event that the offender does not have sufficient resources.
- Estonia has an extensive legal basis for jurisdiction in relation to acts committed on its own territory and outside its territory.

## 6. COOPERATION

### 6.1. International cooperation

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

Cooperation is carried out through various networks, e.g. correspondents have been designated in line with Regulation (EC) No 1013/2006 to exchange operational information about transboundary movements of waste. A representative of the Environmental Board has been designated as the correspondent.

In the field of monitoring, the IMPEL cooperation network is used for multi-level communication, either through official representatives or through points of contact, within the framework of ongoing projects. Communication takes place by email or phone. In urgent cases, inquiries can be answered very quickly; however, it may take up to several months to receive a reply regarding an issue of a more general nature, depending on the country. Representatives of the Environmental Inspectorate (EI) attend annual meetings of the IMPEL national contact points and participate in more specialised project-based meetings once or twice a year.

Further cooperation has been conducted with neighbouring countries. For example, the Baltic states have held annual meetings on waste issues, carried out joint site visits and discussed problems and challenges concerning our region and monitoring. Furthermore, bilateral cooperation with other countries has also been developed, including with Sweden, Finland and the Netherlands. As a rule, at least one collaborative project in the field of waste has been initiated every year either in Estonia or in another country with Estonia's participation. In 2018, Estonia led a project in cooperation with the Netherlands focused on REACH and the CLP Regulation in connection with the inspection of waste oil handlers. This project created new contacts and a network for dealing with dangerous substances and chemicals. In May 2018, Estonian environmental inspectors visited a Latvian light bulb waste management facility, where they learned about compliance with recovery requirements and discussed topical issues related to transboundary movements of waste. Closer cooperation is expected to be developed with Finland in the fields of handling products of concern and transboundary movements of waste.

International cooperation is deemed important and of great practical value, which encourages Estonia to develop it every year. It helps countries to prevent problematic situations, such as possible infringements, and to acquire urgently necessary information. As an example, when a Finnish company intended to transport residual fuel oil to Estonia for additional treatment, the Finnish customs authorities contacted the Estonian customs authorities. Thanks to the operational cooperation between the Estonian Tax and Customs Board (TCB) and the EI, it was discovered that suspicious goods were involved, which turned out to be waste. The consignor of the goods did not consider them to be waste and therefore had not initiated a procedure of prior written notification. Thanks to the authorities' prompt intervention, the shipment was suspended and meetings were later held with the parties concerned to explain the situation and the corresponding legal solution. On another occasion, when an Estonian facility due to receive and handle a shipment of waste suspended operations, thereby potentially necessitating the return of the shipment or alternative treatment, the EI avoided problems by notifying the competent authorities in Sweden and in Finland. In 2017, the Estonian EI was notified by its Latvian counterpart that a vessel on its way to Estonia had been refused entry to a port in Latvia on the grounds that it was presumed to be transporting waste and involved in illegal waste trafficking. The information was received early enough to prepare for an inspection. The shipment was suspended and subsequently treated as required.

The evaluation team was informed that some police cooperation has been established between Estonia and the Russian Federation. The EI exchanges inspectors with the Russian Federation along the border, but the main focus appears to be on fisheries.



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

The Environmental Board has been designated as the authority responsible for written consents and information exchange with regard to transboundary movements of waste. Similarly, the EI has been nominated to handle monitoring. Information is exchanged by email or phone and through regular meetings. In addition, the EI has designated a contact person to communicate with the Intelligence Management Unit of the Estonian Police and Border Guard Board (PBGB) as well as with Europol and Interpol.

Estonia uses databases created by IMPEL to monitor movements of waste and to exchange information. In addition, participants in IMPEL projects can access the Basecamp environment where other countries share information and best practices.

It is expected that in the very near future the EI's investigation unit will be linked to Europol's SIENA communication system, which is currently accessible only for the PBGB. For the exchange of non-operational information, the investigation unit already has access to the relevant Europol Platform for Experts (EPE).

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

No specific practical problems in judicial cooperation relating to waste crime were reported by the Estonian authorities.

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

While JITs are considered a valuable cooperation tool, Estonia has not used any in environmental cases. The Estonian authorities have processed cross-border cases using direct contacts.

## 6.2. Cooperation with EU Agencies and networks

### 6.2.1. Cooperation with Europol and Eurojust

According to the information provided by Eurojust, Estonia has opened three operational environmental crime cases at Eurojust as the requesting country between 1 January 2004 and now. These cases are already closed: two of them dealt with environmental pollution at sea; no details relating to the third case are available in the Eurojust Case Management System. The three cases were referred to Eurojust to facilitate cooperation, coordination and exchange of information on the ongoing investigations and prosecutions between the concerned Member States and the third state, and to facilitate the execution of requests for mutual legal assistance and extradition.

Estonia has been involved in seven operational environmental crime cases in the same period as the requested party. Five cases are currently ongoing and the other two are already closed. All the cases are multilateral, i.e. Estonia is one of multiple requested countries. Most of the cases (five out of the seven) deal with air pollution, one with illegal waste trafficking, and the other with trafficking in protected plant species. The cases were referred to Eurojust to facilitate cooperation, coordination and exchange of information between the concerned Member States, third states and, in one case, OLAF, in relation to the ongoing investigations and prosecutions.

Estonia has not identified any cooperation problems when Eurojust has been approached for support. Cases involving different types of crime are referred to Eurojust whenever a cross-border dimension emerges. Based on the Estonian authorities' experience of cooperating with Eurojust, prosecutors appreciated working with this agency in cross-border cases and will continue to approach it for support in criminal cases with an international dimension, due to their effective and fluent cooperation over the years.

Environmental crime themes included in the policy cycle are dealt with by the EI. The EI participates both in the development of multi-annual strategic plans (MASPs) and, through the European Multidisciplinary Platform Against Criminal Threats (EMPACT), in work related to operational action plans (such as the analysis project, the Nordic countries project, the fisheries crime project etc.) to implement the policy cycle/priorities, coordinated by Europol. The EI has participated in consultations, seminars and workshops organised by both Europol and Interpol.

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

In 2011, the EI joined the Environmental Crime Network (EnviCrimeNet) and has since participated in its work, using the EPE to source information. The EI is also involved in the work of the IMPEL network, attending the meetings of its General Assembly and the annual meetings for contact points, and taking part in IMPEL projects relating to risks. In 2018, the EI participated in a WEEE monitoring project and a project focused on the circular economy and landfills. With the help of the IMPEL network, the EI has obtained fruitful information and instructional materials that it has used to improve work methods. Visits to management facilities in other countries and participation in joint inspections have also been very valuable. These create a strong basis for international cooperation outside the framework of the network as well as within it, and enables information of interest to be transmitted much more effectively and problems to be solved more quickly.

Meetings of the European Network of Prosecutors for the Environment (ENPE) are attended, albeit not always by the same people.<sup>9</sup>

No judges from Estonia attend the EU Forum of Judges for the Environment (EUFJE) meetings. Participation in the work of this network and the opportunity to exchange information and knowledge (case-law) with judges from other countries about environmental crime could improve the Estonian judiciary's capabilities.

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<sup>9</sup> After the on-site visit, the evaluation team was informed that as of November 2018, Estonia participated in the Baltic Public Prosecutor's Office Network, which also includes the Russian Federation and Poland. A PPO intends to participate in the ENPRO (Network of Prosecutors on Environmental Crime in the Baltic Sea Region) seminar to be held in Poland in June 2019.

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

The EI has participated in consultations, seminars and workshops organised by both Europol and Interpol, and also in joint operations organised by Interpol.

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

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

The private sector can contribute by providing environmental information via the EI's emergency hotline, 1313, which is managed by the Emergency Response Centre and is answered 24/7 by a duty officer in each region.

A platform for cooperation with civil society has been established and has about 20 members (experts from universities, NGOs, government, parliament, etc.). They meet frequently to exchange views and information about environmental issues, and once a year they produce an advisory report.

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

In the event of failure to comply with waste management requirements or to submit data, administrative coercion can be implemented, substitutive enforcement carried out or a penalty of up to EUR 32 000 imposed.

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

The Estonian authorities gave an example of private sector cooperation involving a case of metal theft, which was handled by the EI, as it demonstrated the EI's good relationship with national scrapyards.

## 6.5. Conclusions

- Estonia has designated national correspondents from the Environmental Board to exchange operational information regarding transboundary transportation of waste in accordance with Regulation EC No 1013/2006.
- Through one of these designated correspondent, Estonia participates in various networks, including IMPEL, of which the EI is also a member. Annual IMPEL meetings are attended, as well as project-based ones, such as the Baltic states annual meetings on waste issues. IMPEL information appears to be used for risk-based inspections and checks. Estonia also participates in other forms of bilateral and multilateral cooperation and projects. Estonia values international cooperation. A few successful cases were highlighted which were only solved thanks to cooperation with other countries.
- Estonia is well connected internationally. The EI is a member of the informal EnviCrimeNet and is therefore informed about relevant trends outside of Estonia. There is cooperation with Europol, in particular at technical level. The EI's investigation unit has access to the relevant EPE and will soon be directly linked to the operational communication system SIENA.
- There appears to be advanced cooperation between LEAs (in particular with the EI) at international level. In the opinion of the evaluators, communication between the relevant authorities (and across the departments) involved in fighting against waste crime should be encouraged.
- The Prosecutor's Office highlighted very good cooperation with Eurojust in cross-border cases. Nonetheless, Estonia has not yet participated in JITs involving waste crime.

- Estonian judges do not participate in international cooperation fora. So far no judges have attended any of the meetings of the EUFJE, and the reason given is the lack of specialisation among judges. Given that there are judges who are currently dealing with environmental crime cases, and considering the need to determine the extent of environmental damage to establish criminal liability, in the opinion of the evaluators, judges need to be encouraged to become more involved in activities focused on environmental crime at national and international level (e.g. through the EUFJE).
- Taking into account the many forms of cooperation and the different environmental crime areas covered, it was not always clear to the evaluation team whether all relevant persons and agencies were sufficiently informed about the latest developments in the field. Therefore, in the evaluators' view, the Estonian agencies should evaluate whether they are making optimal use of their contacts for operational purposes.
- There are examples of the involvement of the private sector in the fight against waste crime. There is an advisory board consisting of about 20 persons, including representatives of universities, NGOs and public agencies, set up on the initiative of the Environmental Board. This meets once a year and has a wide setup without any focus on particular priorities. So far five to six meetings have taken place and the feedback has been positive. The idea of setting up a platform for cooperation with the private sector involving experts from various fields is, in the evaluators' view, very valuable and beneficial, as civil society can actively participate in the prevention of and fight against environmental crime.

## 7. ILLEGAL TRAFFICKING OF WASTE

### 7.1. National structure

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

Preventing and combating illegal shipment of waste (including through inspections, prosecutions and sanctioning) is the responsibility of the Environmental Inspectorate (EI), the Tax and Customs Board (TCB), the Environmental Board, the Prosecutor's Office and the courts.

The Environmental Board issues transport permits for hazardous waste and waste regulated by international agreements and keeps records of all permits issued. It also collects information on any transboundary transport of waste for which a transport permit is not required.

The TCB carries out border controls, in which it checks that a transport permit has been obtained and that the waste shipment complies with the terms and conditions of the transport permit. If violations are detected, the TCB informs the EI.

As an investigative body, the EI checks that waste shipments comply with transport permits. If there is evidence of a misdemeanour or grounds for criminal proceedings, the EI conducts the necessary pre-trial proceedings.

The Prosecutor's Office manages the pre-trial proceedings conducted by the investigative bodies in relation to criminal offences involving waste shipments. Courts conduct criminal proceedings and exercise jurisdiction over waste shipment crimes.

Responsibilities and activities in the field of the transboundary movement of waste are divided between several bodies in Estonia. The Environmental Board is the competent authority and supervision is mostly performed by the EI and the TCB. The tasks and mandates are divided as shown below.



- a) The Environmental Board has been designated under Article 53 of Regulation (EC) No 1013/2006 as the competent authority tasked with reviewing applications for transport permits and issuing consents or making decisions on refusals. In addition, the Environmental Board maintains records of movement documents for transboundary movements/shipments of waste (Annexes IB and VII) and reports to the European Commission on the implementation of Regulation (EC) No 1013/2006. It also organises the return of illegal waste shipments, or on-site management if return is not possible.
- b) The EI has been designated under Regulation (EC) No 1013/2006 as the supervisory authority, which, according to the Waste Act, conducts proceedings involving environmental misdemeanours, including misdemeanours related to transboundary movements of waste, and, as of 1 September 2011, environmental crimes. The EI is tasked with establishing an inspection plan pursuant to Article 50 of the abovementioned Regulation and with leading the implementation of the plan. It performs inspections both in ports and on roads. It also carries out on-site inspections of transboundary shipments of waste and provides waste-related advice to the TCB.
- c) The TCB performs customs controls on goods crossing the border. Waste transport is inspected both on roads and in ports. Under the Waste Act, the TCB is mandated to conduct proceedings involving misdemeanours related to the transboundary movement of waste.

In the context of the transboundary movement of waste, the supervisory authority (the EI) and the law enforcement authority (the TCB) have the same mandates as those arising from the Law Enforcement Act:

- to implement measures laid down in the law with the aim of preventing illegal activities and implementing mandatory environmental protection measures;
- to stop any unlawful activities that harm or endanger the environment, or any lawful activities related to the use of natural resources if they endanger people's lives, health or property;
- to use physical force on the basis of and pursuant to the procedure provided for in the Law Enforcement Act.

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

Illegal shipment of waste is usually detected during routine inspections. The TCB acts on the basis of a set of risk criteria that define goods that need to be inspected in connection with possible waste-related requirements. Waste management inspections are also carried out in ports and on roads, where illegal waste shipments can also be detected. Equally important are planned inspections of companies, where illegal shipments can be detected through document and reporting checks. Sometimes complaints are received from well-informed companies (usually competitors) or the competent authorities of foreign states. Pre-notified shipments are occasionally inspected in order to make sure that the transboundary movement of waste is carried out pursuant to the conditions set out in legal acts and in the written consent.

One of the obstacles reported by the Estonian authorities is the lack of information about intelligence leads. This should be developed both domestically and in liaison with other countries. Another obstacle is the decreasing number of investigators, which results in fewer investigations being carried out in ports and on roads. In addition, the risk criteria mentioned above need to be regularly assessed and efficiently updated in order to react to changes in how waste is moved.

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

In certain periods there are more frequent movements of some specific types of waste. For example, illegal importing of end-of-life vehicles (ELVs) from the United States of America (US) to the Community and of waste oil from the Community to Estonia has intensified in recent times. It is difficult to estimate the involvement of organised crime groups in these imports as there is no factual evidence, but their involvement cannot be ruled out. There is some information indicating that the illegal importing of ELVs to and from the Community is linked to organised crime groups, but most offences have been committed by individuals with no links to such groups.

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

In the written consent procedure, conditions are set out and the individuals applying need to demonstrate that they have the competence and authorisation to act in an environmentally sound manner. The consignee must then carry out waste management operations in line with the written consent and the environmental permit. In the case of transboundary movements of waste, for example, where the person concerned only provides the transport service, that person must have a waste permit and a hazardous waste management licence even if he or she is not the waste holder. This guarantees that the person has the necessary competence and suitable technology to carry out waste management operations. For certain types of waste, e.g. products of concern, the Estonian authorities cooperate with other countries to ensure that the waste is also managed in line with the requirements when it reaches its final destination, and that the data provided as proof of recovery are correct.

In practice, situations have occurred where the Estonian authorities have informed the country of origin about problems regarding the management of a waste shipment and have either suspended the transboundary movement of the waste (i.e. by suspending the written consent) until the environmental requirements have been fulfilled, or cautioned them that the management of the waste may cause problems and that the sender should not send it.

In 2018, a case occurred involving pre-notified waste oil, in which the consignee did not fulfil the best available technology (BAT) requirements and the sender was informed that it was unlikely that the waste would be managed in an environmentally sound manner. The suggested solution was that the sender cancel the shipment, which the sender then did. The environmental permit of the consignee/waste operator was later suspended, thus avoiding a situation where the waste received might not have been managed in an environmentally sound manner.

After an illegal shipment of waste has been detected, safe depositing must be ensured. The Environmental Board is in the process of drawing up agreements with waste operators who could, on the basis of a waste permit, take illegal shipments away and safely store them until the necessary proceedings have been concluded. Currently the EI, as the supervisory authority, is responsible for the safe storage of waste shipments.

## 7.2. Inspections

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

Waste shipments are inspected on the basis of risk criteria. The TCB inspects shipments on the basis of customs declarations/documents provided, focusing on certain types of goods. The TCB also uses two kinds of scanning device – stationary and mobile - both equipped with X-ray technology; the mobile device enables to inspect shipments in places where physical access would be complicated and time-consuming. Physical inspections of goods are also carried out. A goods inspection document is drawn up and the necessary documents are collected to serve as a basis for an opinion as to whether the goods in question are waste or not, whether the accompanying documents have been drawn up correctly and whether the waste shipment is lawful. The EI can be contacted for consultation or expertise on waste and the relevant applicable requirements. Their hotline is 1313; urgent messages are forwarded to a duty inspector. A representative of the EI can thus react immediately and, if necessary, travel to the location to observe the evidence. More effort could be invested in risk criteria, which should be updated more frequently to reflect the rapid changes in how waste is moved. X-ray technology and information derived from it should also be used more often.

When carrying out inspections in ports or on roads, the EI uses specially designed buses equipped with scales, a workstation with an internet connection, a printer and other devices enabling on-site inspections. Drones are also used at the sites of waste operators, making it possible to inspect shipments and how waste is stored and deposited. Drones could be used in ports or on roads to allow faster and more efficient inspections of open-top shipments, but their use is restricted by exclusion zones and weather conditions.

All inspection results are entered in the EI's database of object inspections; this database provides users with quick access to information and a variety of data sets (e.g. traffic register, population register, commercial register). For waste shipments carried out by sea, shipping databases (THETIS, etc.) are also used, allowing users access to information on vessel routes and goods carried.

The methods used thus far do ensure that Estonia's objectives are achieved, but more effort should be made to use risk analysis and technology in order to automate shipment inspections and rely less on the human factor.

Example: illegal trafficking of waste from Finland to Estonia



Example: illegal trafficking of batteries on the Estonian-Latvian border



When irregularities are detected, the TCB or the EI informs the competent authority, who must then liaise with the country of origin, if possible, and agree on further action (return of waste, treatment at destination, etc.). It has already been agreed with countries in Estonia's vicinity that certain types of waste (e.g. lead-acid batteries) will be treated in Estonia. This also applies to transit. For these types of waste, it has been found that, as a rule, treating it in Estonia will be cheaper or environmentally safer than returning it. In their summary on the waste in question, a contact person of the competent authority (the Environmental Board) describes the next steps. If the waste is needed as evidence, it is provisionally deposited or left with the waste operator, on the basis of an agreement.

At the same time, the Environmental Board is informed as to any measures that need to be taken. Once the evidence has been inspected and the waste is no longer needed, it is transferred to a facility designated by the Environmental Board for management. This transfer can be ordered by the body conducting proceedings before a decision on the offence is made. In certain cases, however, the waste remains with the waste operator until a decision on the offence is made, and it can be legally confiscated only after the decision. Any revenue arising from productive waste is transferred to the state.

The most common types of confiscated waste are plastic packaging (deposit packaging), lead-acid batteries and scrap metal. In some cases there are multiple waste operators involved and the waste holder can then decide which one of them should receive the waste for processing.

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

No specific inspection activities or analyses are used to detect illegal WEEE flows. Risk criteria and standard inspection activities are used instead. Correspondents' Guidelines No 1, as agreed by the Member States, is used to determine whether an item should be classified as WEEE or as used equipment. Estonia mostly faces problems with WEEE imports from the Community, either into Estonia itself or in transit to Russia; there are few exports to third countries. WEEE that has been used in Estonia has had a long life cycle and retains little value for a new market elsewhere. Instead, equipment is repeatedly repaired until it is transferred to a waste treatment plant. This is followed by a controlled transfer of equipment to waste operators, who either dismantle it or export it for further management. Such waste flows are subject to scheduled inspections (usually once a year). Waste operators who export WEEE to the Community undergo inspections to make sure that their shipments are carried out with written consent and pursuant to Regulation (EC) No 1013/2006. Since WEEE management is related to producer responsibility, checks are also conducted to determine, as far as possible, whether waste has actually been treated and if the recovery data provided is accurate. For example, Estonian inspectors visited a waste management plant in Latvia, where it was discovered that WEEE had been left untreated and was being kept in storage, thus violating the requirements of the abovementioned Regulation. The two competent authorities subsequently liaised and the sender and the consignee were subject to inspections.

No specific inspection activities or analyses are used to detect illegal flows of ELVs. Instead, risk criteria and standard inspection activities are used. In 2018, vehicle imports to Estonia increased, becoming the main form of illegal waste flow. Work is in progress to develop instructions for importers and joint criteria for deciding if a vehicle is to be considered an ELV. The EI cooperates with the Road Administration for this purpose. Plans are in place to publish the instructions on the authorities' websites and also to organise outreach activities. The Estonian authorities rely on the assessment criteria laid down in Correspondents' Guidelines No 9.

In addition, importers are required to present information on repair expenditure by claims handlers, to make sure that the repairs are feasible and that the aim is not to dismantle the vehicle. Problems arise when vehicles with a certificate of destruction or vehicles destined for dismantling are imported with the intention of being restored, but the consignee does not have a waste management permit. Such cases are demanding as they usually involve the US market, where each US state has its own legal acts and documents. This can create situations where a seemingly unroadworthy vehicle is deemed restorable, or a vehicle with few defects is assigned for dismantling. The practice thus far shows that the more waste flows are inspected, the more the relevant information spreads among importers and the higher their awareness becomes. Returns are obviously difficult; management options therefore need to be found in Estonia. In certain cases, the state has to seize waste in the customs zone and transfer it for management because the consignee does not have the necessary permits and does not agree to surrender the waste for management. According to existing case-law, courts have accepted the assessment criteria laid down in Correspondents' Guidelines No 9 and have deemed a vehicle with a certificate of destruction to be waste.



### 7.2.3. *First inspection plan*

Estonia's first inspection plan has been drawn up and is freely accessible in Estonian on the Environmental Board's website<sup>10</sup>.

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

No illegal shipments of waste have yet been taken back from Estonia. Instead, it has been decided, in liaison with other competent authorities or senders of waste shipments, that waste will be managed at the destination. For example, agreements have been concluded with countries in the vicinity that all illegal shipments of lead-acid batteries should be managed in Estonia, because there is a regional BAT-compliant lead-acid battery waste management plant, and such waste should not be sent back. By contrast, ELVs originating from the US should not be directly managed in Estonia but should instead be returned. In reality, however, it is complicated to return them legally and in compliance with all the rules, since the US has not ratified the Basel Convention. Consequently, the consignees and holders of such waste have been obliged to manage it in Estonia.

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<sup>10</sup> [https://www.keskkonnaamet.ee/sites/default/files/jarelevalveasutuste\\_kontrollikava\\_wsr\\_final.pdf](https://www.keskkonnaamet.ee/sites/default/files/jarelevalveasutuste_kontrollikava_wsr_final.pdf)  
or <https://www.keskkonnaamet.ee/et/eesmargid-tegevused/jaatmed/jaatmete-riikidevahelise-veo-luba>

### 7.3. Conclusions

- Following the implementation of Regulation No 1013/2006, the EI is the competent authority for monitoring transboundary shipment of waste (supervisory authority), whereas the Environmental Board is the competent authority for the administrative obligations (e.g. licencing) and the maintenance of records and reports. The TCB (as LEA) conducts checks at the Estonian border. In some cases, the Maritime Administration, the Road Administration and even the police might be involved. If there is suspicion of criminal activity, the Prosecutor's Office will have to be contacted.
- Illegal shipment of waste is usually detected during routine inspections. The TCB acts on the basis of a set of risk criteria that define the goods that need to be inspected in connection with possible waste-related requirements. Waste management inspections are also carried out in ports and on roads, where illegal waste shipments can also be detected. Sometimes complaints are received from businesses or from foreign authorities.
- Big companies are subject to checks at least once a year, others every second or third year. Routine checks are legally compulsory. They include checks for compliance with issued licences, e.g. for handling or transporting hazardous waste. For non-obligatory checks, risk-based checks are favoured. In most cases checks are announced, even though this is not obligatory.
- One of the main problems noted in Estonia is the verification of waste declarations, in particular verifying whether something can already be considered waste or is still a good that can be sold. The TCB has set up a specialised unit to monitor goods and companies using the risk criteria, but the evaluators have doubts regarding whether these inspection criteria are regularly assessed and efficiently updated. Therefore, in the evaluators' view, the risk criteria need to be more regularly assessed and updated, and the use of national and international intelligence leads needs to be further developed.

- Furthermore, the decreasing number of personnel available for investigations in ports and on roads is reducing the number and efficiency of inspections. Although routine cross-border inspections are scheduled every year, the decrease in the number of inspectors undermines the adequate implementation of this routine annual programme. Therefore, in the evaluators' view it would be useful to assess the possibility of involving (traffic) police in the detection of illegal shipment of waste.
- In some cases, the Environmental Board could be of greater help with decision-making as regards the classification of waste, but – with the exception of one on-call staff member – they do not work 24/7.
- Estonia's use of advanced inspection techniques such as drones, X-ray technology and mobile scanning devices during transboundary inspections can be considered an example of best practice. However, in the evaluators' view, the detection rate could be increased by making more extensive use of X-ray devices and drones. While the use of X-ray technology seems to be primarily a question of available budget, the use of drones is restricted by flight exclusion zones and weather conditions.
- Estonia's illegal waste shipment detection rate appears to be low, for both mere infringements and actual crimes. While Estonia is part of the Schengen area and therefore has all the problems an open border presents to law enforcement, it also has some large seaports and a land (and river/lake) border with the Russian Federation. Its railway network also uses the Russian track gauge and this, too, has to be considered an important gateway into Russia. There was no indication, though, that Russia has played a relevant role in relation to (potentially illegal) waste transport, even though about 7 % of Estonian imports and exports are with the Russian Federation. However, while the Estonian customs authorities generally use a risk-based approach for their checks, this is different at the Russian border. There, 100 % of the goods are checked. Occasionally circuit boards or mixed fuels, which are not accepted by Russia, are discovered at the border, and this information is forwarded via IMPEL contact points. While the TCB and the Border Guard have agreements (e.g. on fisheries and water) with the Russian Federation, they no longer have liaison officers based there. However, the EI and its Russian counterpart do regularly exchange inspectors.

- The EI is potentially available 24/7 via its emergency hotline, 1313; this hotline is managed by the National Emergency Response Centre, which in turn is operated by the Ministry of the Interior. This hotline can be used for any kind of emergency. If a reported case involves environmental issues and requires an immediate response, the EI will respond straight away. In less urgent cases, the information will be processed during standard office hours. In each region, at least one EI inspector is on call 24 hours a day to deal with more serious infringements and calls from the public. In 2017, the hotline received 4 100 calls, 1 000 of which were caused by suspicious smells. The public creates about 25 % of the EI's inspectors' workload, be it through phone calls or emails. There are plans to introduce a 1313-style app in the near future. The hotline appears to be a very good idea; in the opinion of the evaluators, the existence of a national emergency hotline that allows the public to report environmental damage is an example of best practice.
- Estonia has adopted its first inspection plan. No specific inspection activities or analyses are used to detect illegal WEEE flows. Instead, risk criteria and standard inspection activities are used. The Estonian authorities stated that most problems with WEEE relate to imports from EU countries and transit to the Russian Federation. If necessary, items are repeatedly repaired and sold within Estonia alone. Estonia does not carry out any specific forms of cooperation with the Russian Federation with regard to cross-border shipment of waste.
- No specific inspection activities or analyses are used to detect illegal flows of ELVs either. Instead, risk criteria and standard inspection activities are used. Vehicle imports to Estonia have increased and are now the main form of illegal waste flow. Inspections of vehicles coming from the US focus primarily on whether they can be repaired in an economically feasible way in Estonia and therefore classified as goods rather than waste. In light of the increasing standard of living in Estonia, the number of such cases is expected to decline. The EI is working on a set of instructions for importers, including joint criteria for deciding if a vehicle is to be considered an ELV and information on handling ELVs. In the evaluators' view, Estonia could increase its detection rates and reduce its waste imports by enhancing and intensifying its cooperation with third countries.

## 8. MANAGEMENT OF HAZARDOUS WASTE

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

As regards hazardous waste dealt with in misdemeanour proceedings, the Estonian authorities recorded 2 to 4% of all the proceedings initiated under the Waste Act. In 2017 this percentage decreased to 1%. The table below shows the statistics in that regard:

	2013	2014	2015	2016	2017
Infringements including hazardous waste	6	13	13	6	2
All waste infringements	266	371	324	283	245
% of all waste infringements	<b>2.26%</b>	<b>3.50%</b>	<b>4.01%</b>	<b>2.12%</b>	<b>0.82%</b>

No problems were reported as regards misclassification of hazardous waste. This may, however, occur in cases where waste is initially received as hazardous waste as a precaution but subsequently the absence of hazardous properties is established and it is classified as non-hazardous waste. At the same time it is problematic that there is no evidence of the basis for classifying the waste as non-hazardous and it is impossible to ensure the legality of this activity. Misclassification may also occur when a partner enterprise lacks an appropriate waste code and a waste code is altered to avoid infringement. For example, in the reporting it is shown that waste sorting, mixing or other operations take place prior to recovery or disposal, making it possible to alter the waste code, while in reality there has been no physical treatment.

The hazardous waste consignment note information system is used in Estonia to ensure the traceability of hazardous waste. Upon transfer of hazardous waste to a waste operator, there is an obligation to draw up an electronic consignment note in the database, indicating the persons producing, transferring and transporting hazardous waste and its consignee as well as all information concerning its properties and further management. Consignment notes have to be electronically signed in the database. This is a database operating in real time and enabling the operative control of types and quantities of waste received by the management facilities.

According to the Waste Act, the labelling and packaging of hazardous waste is the responsibility of the waste holder. For the collection of hazardous waste, local authorities have the right to establish additional handling requirements in their waste management rules.

Waste operators handling hazardous waste have to submit an annual waste report indicating the types and quantities of waste stored at the beginning of the period, waste management operations, and the details (name/business name and origin) of persons receiving waste as well as of the persons to whom waste has been transferred.

According to the Estonian authorities, challenges faced in the area of environmental crime concern environmental hazards and establishing the gravity of such hazards, the identification of hazardous substances, and classification as waste. The assessment of environmental hazards is often very complicated as it is impossible to establish the extent of the impact or quantify the damage. For example, environmentally hazardous waste that ends up in water or soil may influence surface water and groundwater and pollution may be extensive. At the same time there may be a combination of factors and it is impossible to establish the impact or extent of an offence. Some examples are listed below:

- a) A large quantity of waste is stored illegally in the open; its holder has failed to treat the waste and has dumped it in the countryside. The waste is in a large pile and therefore it is impossible to directly investigate the type of waste present (i.e. the presence of hazardous waste cannot be excluded) or to establish its direct impact on the environment so as to quantify the damage and establish the gravity of the offence. Rainwater cannot be sampled and soil samples show historical pollution that cannot be directly linked to the dumping area. There is clearly a long-term impact influencing different environmental aspects (air, water, soil and adverse effects on the area's recreational and economical usability). However, in practice it is difficult to establish evidence and pin down the generally recognised facts.
- b) Waste management entails the continuous monitoring of organic pollutants, whose release into the environment after waste handling has to be excluded. There have been problems in relation to fuels, whereby the parameter monitored is polychlorinated biphenyls (PCB), which have over 200 homologues. In some cases homologues not specified by the standard were found or there were no laboratories in the area accredited to determine the correct homologue and the quantity thereof. On the other hand, if there is documentary evidence that, based on the content of PCB in the fuel, waste has to be regarded as PCB waste, and that this fuel has already been used for its intended purpose, it is difficult to establish the direct environmental impact, as these are pollutants that have an extensive impact on the environment and are not burned up by conventional engines. As a result the consequences are cumulative and the impact materialises over time (e.g. carcinogenicity). As this is a very specific area, it is difficult to explain it clearly for the purpose of the assessments regarding the administration of justice, the alleged fault and the gravity of its impact.

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

The Environmental Inspectorate (EI) is responsible for hazardous waste management inspections. Inspections are carried out according to an annual work plan. In accordance with Section 119<sup>2</sup>(2) of the current Waste Act, the EI is obliged to inspect persons (waste operators) whose annual hazardous waste handling capacity is 100 tons or more at least once a year. Depending on the year, there are between 130 and 150 such operators (undertakings) each year. Operators with more than one facility are inspected during a single national inspection, so that all the information can be pooled by one inspector who would then be able to draw broader conclusions. If necessary, the more problematic operators are inspected more frequently, also on an ex-post basis.

Example: management of hazardous waste.





Example: burying of hazardous waste.



The annual inspection plan is based on a risk assessment, i.e. the waste management situation is analysed and an assessment is made of any problems as well as the risks of problems arising and their gravity. Problems relating to illegal handling are also detected during this process. Thus a certain number of inspections regarding illegal handling (e.g. illegal handling of end-of-life vehicles) is planned. In addition, inspection visits are made based on complaints received.

For inspections concerning hazardous waste, inspection instructions and forms have been developed (e.g. hazardous waste inspection guidelines, inspection guidelines for garages). With regard to certain risks, in cases where it is expected to take several years to find a solution, project plans with strategic actions have also been drawn up. For example, a three-year project plan has been drawn up regarding waste oil handling. Each year, project actions are evaluated and monitored in order to see if the planned action is sufficient or if anything needs to be changed.

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

Under the Waste Act, there is a two-stage application procedure for hazardous waste management permits. First, one has to apply for a hazardous waste management licence. According to Section 99(1) of the Waste Act, this is an activity licence proving the relevant competence of a person and the suitability of the technology used by them, issued when:

1. the waste management facility, technology and installations comply with the environmental requirements, including the requirements of the best available techniques (BAT);
2. the person responsible for waste handling complies with the requirements for training and competence as provided for in subsection (5) of this section;
3. a valid insurance contract exists to cover the costs of eliminating the environmental pollution created as a result of accidents;
4. the duties, competence and responsibility of all the employees involved in the handling of hazardous waste are specified in the documents dealing with the organisation of the work carried out by the applicant for the hazardous waste management licence;
5. the technical means and possibility exist of certifying the consignment note specified in Section 64 of this Act by means of a digital signature and of forwarding it as an authorised user to the internet-based database indicated by the minister responsible for the area.

The second stage is applying for a waste permit, whereby it is possible to specify additional environmental conditions. For example, it is important to further specify the total quantities of waste stored at any one time (so that waste does not pile up), after-care requirements and any other additional requirements pertaining to a specific facility which may have an impact on the environment or population. Waste operators dealing with the transport of hazardous waste have to provide evidence that their vehicle fleet meets the ADR requirements. In addition, waste operators which have stored 1000 cubic meters of combustible material are required to draw up a storage plan and have it approved by the Rescue Board.

The third possible permit is an integrated permit within the meaning of the Industrial Emissions Act, whereby a facility's compliance with the BAT requirements is assessed and an action plan is established in the case of non-compliance. Permit requirements can also include mitigation measures that have been proposed in the course of an environmental impact assessment.

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

According to the Estonian authorities, hazardous waste management depends on what is happening in the global market, and this also influences waste management possibilities and the cost thereof. In recent years hazardous waste has started to pile up because earlier waste management capacity has decreased and new waste management possibilities have been neither sought nor found, or because the price is perceived as having multiplied. This results in a situation in which risks to the environment and fire safety increase, and eventually a person may go bankrupt and waste may be left untreated.

On the other hand, agreeing that recovery and more broadly the circular economy are necessary and to be encouraged, attempts are being made to recover as much hazardous waste as possible, which avoids having to store it in hazardous waste landfills or burning it in hazardous waste incineration plants. It is essential to establish indicators to be monitored in order to ensure that recovered hazardous waste, and even the products derived from such waste, are safe for both the environment and human health. According to Article 2(7)(d) of the REACH Regulation, a manufacturer of a substance using waste from a waste management process may resort to an exemption from the obligation to register a substance (substances) and apply less strict requirements as regards demonstrating the safety of substances. This seems to be a growing trend because the registration of substances is a long, thorough and very costly process. An important prerequisite for using the exemption is demonstrating the sameness of the substance. However, demonstrating sameness is often problematic – it has to be ensured that one is dealing with substances having the same composition and properties as the substances that received the primary authorisation to be placed on the market and whose safety has already been assessed. Waste, especially in the form of mixtures, contains additions and impurities, and physical or chemical changes may also occur during the service life of the substance. When waste is recovered and its impact and risks are not sufficiently assessed then there are hidden environmental and health hazards. Therefore the use of any exemptions should be better regulated and there should be minimal scope for interpretation. There are undertakings that would exploit a broader scope for interpretation and may, therefore, as a result of the recovery process, place on the market substances that have not been sufficiently assessed as regards environmental and health hazards and that may cause direct damage. Information concerning the possibility of adopting this approach has spread and risks may increase if it is abused.

## 8.5. Conclusions

- The holder of a substance or the waste holder is obliged to classify a given substance as hazardous. Classification as such is based on legal requirements, in this case Section 6(1) of the Waste Act. In general, hazardous waste is expected to stem not only from large chemical manufacturers or oil refineries but also from small businesses such as car workshops or dry cleaners.
- The number of infringements (including all misdemeanours) detected in Estonia seems to be low, also in relation to hazardous waste. In 2014 and 2015 only 13 cases were detected each year. That number decreased to six in 2016 and two in 2017. A reasonable explanation for such low numbers is that the authorities only inspect sites or transportation, where the handling or transportation of such waste is already indicated by an operator or freight forwarder. It is likely that the hidden figure of undetected cases is higher, e.g. because the transported waste or alleged good is not declared as (hazardous) waste.
- The Estonian authorities are aware of the potential problems relating to misclassification or altered waste codes. However, it seems that no solution has been forthcoming. Legally, the labelling and packaging of hazardous waste is the responsibility of the waste holder. Consequently, an operator or freight forwarder which claims that there is 'merely' a product or good to be shipped, or waste which is not hazardous, is less likely to be inspected. It would appear that inspections are focused on basically 'honest' operators. This would also explain the low number of infringements.
- Handlers of hazardous waste need to be licensed in accordance with Section 99(1) of the Estonian Waste Act. In addition to the Environmental Board for the permits and the EI for the inspections, local authorities have a role insofar as they can establish further handling requirements.

- There seems to be a strong focus on the major handlers of hazardous waste, which declare their annual handling capacity. Therefore, smaller operators seem to be subject of less-prioritised inspections, which opens up opportunities for abuse. In addition, the primary focus of inspections on (comparatively large) handling or management quantities of hazardous waste appears to be misplaced, considering the dangers of, for example, carcinogenic substances such as PCB. In the opinion of the evaluators, the EI should look into this potential problem.
- Inspections are carried out according to an annual work plan. The plan is based on risk assessment, i.e. the waste management situation is analysed and the problems as well as the risks of problems arising and their gravity are assessed. For certain risks, project plans with strategic actions have been drawn up. For example, a three-year project plan has been drawn up regarding waste oil handling. Project actions are evaluated and monitored each year in order to establish whether the planned action is sufficient or if anything needs to be changed. Inspections follow strict guidelines. In particular areas, such as waste oil handling, project plans have been drawn up covering a period of several years, which are assessed annually and amended if necessary.
- The fact remains that the main issues facing Estonia are establishing the gravity of environmental hazards, identifying hazardous substances and classifying such substances as waste. The authorities first have to assess the impact and quantification of damage. Only then will they be able to establish whether an infringement constitutes an offence, and the extent of that offence. Two examples were given. The first is the illegal tipping of mixed waste, where the presence of hazardous waste cannot be excluded and where the environmental damage is of a long-term nature. The second example refers to organic pollutants such as PCBs, particularly in relation to fuel. If burned up by conventional engines instead of incinerators, the pollutants released have a significant impact on the environment. As the consequences are cumulative, and the impact materialises over time (such as through an increase in cancer rates), the authorities have difficulty proving the 'direct' impact.

- The costs associated with handling any dangerous materials seized are typically charged to the offender at the end of the proceedings. In some cases, offenders have agreed from the outset to cover all handling-related expenses. The EI had experienced some cases where the provision of evidence posed a problem due to manipulated data, for example on company servers. The investigators were supported by the police and by Estonia's Forensic Science Unit.

## 9. ILLEGAL PRODUCTION OR HANDLING OF DANGEROUS MATERIALS

### 9.1. The concept of dangerous materials

Section 6(1) of the Waste Act defines the concept of dangerous waste. According to this provision, hazardous waste means waste which due to at least one of the hazardous properties specified in the Annex to Commission Regulation (EU) No 1357/2014 may cause a hazard to human health, property or the environment.

In the regulation of the Minister for the Environment on the procedure for the classification of waste and the list of waste, adopted in accordance with Section 2(5) of the Waste Act, a hazardous substance is defined as a substance that is classified as hazardous according to the criteria specified in Parts 2 to 5 of Annex I to Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, pp. 1-1355, hereinafter the 'CLP Regulation').

The concepts of hazardous waste and chemicals are governed by a number of legal acts. The handling of hazardous substances within the meaning of the CLP Regulation is governed in Estonia mainly by the Chemicals Act. According to Section 2(4) of the Chemicals Act, the terminology used in the act has the meaning specified in the relevant regulations of the European Union, unless otherwise provided for in that act.



The Chemicals Act includes the following definitions:

### Section 3. Chemicals, hazardous chemicals and handling of chemicals

1. For the purposes of this Act, a chemical is a substance or mixture for the purposes of the REACH Regulation.
2. A hazardous chemical is a substance or mixture that meets the physical, health or environmental hazard criteria set out in parts 2 to 5 of Annex I to the CLP Regulation.

The concept of hazardous substance has been defined in the Water Act:

### Section 265. Prevention and reduction of pressure and pollution caused by hazardous substances and other pollutants in catchment area

1. For the purposes of this Act, a 'hazardous substance' means an element or a compound that due to toxicity, stability or bioaccumulation causes or may cause danger to human health or damages or which may harm other living organisms or ecosystems.
2. 'Priority substance' means a hazardous substance that presents a significant danger to the aquatic environment or via the aquatic environment to human health or which harms or may harm other living organisms or ecosystems and the discharge of which into the aquatic environment is restricted in accordance with this Act for the purpose of reducing the discharge of the substances into the aquatic environment.
3. 'Priority hazardous substance' means a hazardous substance that presents a significant risk to the aquatic environment or via the aquatic environment to human health or which harms or may harm other living organisms or ecosystems and the discharge of which into the aquatic environment is prohibited or restricted in accordance with this Act for the purpose of terminating or progressively removing the discharge of the substances into the aquatic environment.

According to Section 60 of the Waste Act, the mixing of hazardous waste with other types of hazardous waste, non-hazardous waste or any other substances or materials is not permitted, except in the case provided for in Section 61 of that Act. According to Section 61(1) of the Waste Act, the mixing of hazardous waste with other types of hazardous waste or with non-hazardous waste or any other substances or materials is permitted if the provisions of subsections 29 (1) and (2) of the Act are complied with in order to prevent or, if prevention is not possible, reduce the health or environmental hazards resulting from the waste and if mixing is technologically and economically justified. According to the Waste Act a general restriction has been established to reduce the content of hazardous substances in materials and products (Section 21(2)(3) of the Waste Act). More specifically, producers are obliged to limit the use of hazardous substances (Section 24(1)(1) of the Waste Act):

When manufacturing products, the producers shall, as far as possible, limit the use of substances in order to prevent their release into the environment and the need to dispose of the waste as hazardous waste.

As a result of the need to regulate the possible illegal market in waste containing hazardous substances, restrictions have been imposed on the buying up of products of concern (Section 26<sup>9</sup> (1) of the Waste Act):

Products of concern containing hazardous substances or components separated from such products may be bought up as waste only from producers registered in the register of products of concern established on the basis of subsection 26<sup>1</sup>(2) of this Act or from producers' responsibility organisations or undertakings holding waste permits whose lawful activities produced the waste.

Pursuant to Directive 2011/65/EU of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment, a number of restrictions on the content of hazardous substances in electrical and electronic equipment have been transposed into Estonian legislation. More specific restrictions are set out in Regulation No 44 of the Minister for the Environment of 27 October 2016 on the dates of application of the prohibitions and restrictions regarding products of concern and on the values of maximum concentration of hazardous substances in products of concern.

In addition, according to Section 27 of the Waste Act, it is prohibited to place on the market the following products of concern within the European Economic Area:

1. products of concern containing prohibited industrial chemicals within the meaning of Regulation (EC) No 689/2008 of the European Parliament and of the Council concerning the export and import of dangerous chemicals (OJ L 204, 31.7.2008, pp. 1-35);
2. batteries and accumulators containing mercury or cadmium;
3. motor vehicles and parts thereof containing hexavalent chromium compounds, lead and its compounds, mercury and its compounds or cadmium and its compounds;
4. electrical and electronic equipment and parts thereof containing hexavalent chromium compounds, lead and its compounds, mercury and its compounds, cadmium and its compounds, polybrominated diphenyl ether or polybrominated biphenyls.

All the PCB/PCT-containing equipment that is historical and that has been used has also been prohibited by Section 27<sup>1</sup> of the Waste Act since 2011.

According to Section 26<sup>5</sup>(8) of the Water Act, the discharge into surface water of priority hazardous substances and the direct discharge into groundwater of the aforesaid substances and other pollutants is prohibited, except in exceptional cases on the basis of a permit for the special use of water. Discharge into surface water and groundwater of priority substances is permitted on the basis of a permit for the special use of water in accordance with Section 26<sup>11</sup> of that Act.

Environmental quality standards for hazardous substances and the limit values for concentrations of hazardous substances in the soil are established by the following regulations:

- Regulation No 76 of the Minister for the Environment of 30 December 2015 on the list of priority substances and priority hazardous substances, the environmental quality standards for priority substances, priority hazardous substances and certain other pollutants, and the methods of application of environmental quality standards, the environmental quality standards of river basin specific pollutants, and the watch list of substances;
- Regulation No 38 of the Minister for the Environment of 11 August 2010 on the limit values for concentrations of hazardous substances in the soil.

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

Pursuant to Section 367 of the Penal Code, any violation of the requirements applicable to chemicals or waste management, if such violation causes a danger to human life or health or a risk of significant damage to the quality of water, soil or ambient air, or to individuals of animal or plant species or parts thereof, is punishable by a pecuniary punishment or by up to three years' imprisonment.

The same act, if committed by a legal person, is punishable by a pecuniary punishment.

The declaration of the dangerous nature of waste is primarily the obligation of the holder of the dangerous substance, or of the waste holder in the case of hazardous substances contained in waste. If there are additional concerns regarding the classification of a substance or waste, the supervisory authority can by way of its proceedings conduct an additional analysis and make a decision.

For waste, the regulation of the Minister for the Environment of 14 December 2015 on the procedure for the classification of waste and the list of waste provides that the Environmental Board or Environmental Inspectorate (EI) shall request additional information if it does not agree with the waste holder's conclusions regarding the classification of waste or if it considers the justifications submitted insufficient, setting a deadline for the submission of such data. In setting the deadline, the Board or Inspectorate shall take into consideration the nature and availability of additional information. The waste holder shall submit the required materials to the Board either together with the materials submitted when applying for the waste permit or the integrated environmental permit, or to the Inspectorate at its request and in the manner determined by it.

### **9.3. Procedural aspects**

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

Registration, collection of evidence and proceedings take place in accordance with the usual procedure provided for by law.

The holder of the substance or the waste holder (in the case of hazardous substances contained in waste) decides whether or not a given substance should be regarded as dangerous material. If there are additional concerns regarding the classification of a substance or waste, the supervisory authority can conduct an additional analysis and make a decision.

As regards the cost of the manipulation of dangerous material, the initial costs are usually covered by the authority conducting the relevant proceedings, and those costs are later charged to the offender; in some cases it is agreed with the offender that he/she will bear all the handling-related costs.

Customs has technical equipment to check incoming materials for radioactivity.

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

Estonia participates in a REACH project on fuel oil and waste together with the Scandinavian countries and the Netherlands. This project resulted in the detection of an illegal waste shipment from the Netherlands, which was assessed as a misdemeanour in Estonia.

### *9.3.3. Techniques of investigation*

It was reported that each case is handled differently, and if necessary, all possible and necessary measures are used. No specific techniques are available in that regard. Registration, collection of evidence and proceedings take place in accordance with the usual procedure provided for by law.

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

The main problems reported with regard to the successful investigation and prosecution of cases involving dangerous materials concern the provision of evidence relating to the manipulation of data.

### *9.3.5. Training*

The EI does not organise any training in the handling of dangerous materials.

#### 9.4. Conclusions

- There is no integrated definition of 'dangerous material' in Estonian legislation; only the term 'hazardous waste' is defined, which may apply for the purposes of both the production and handling of dangerous materials. However, nuclear substances, which are not necessarily waste, are considered to be dangerous materials. Estonia has some naturally radioactive ground water, which might result in small amounts of waste.
- In general, the initial waste owner has to decide whether something is waste and/or whether it is of a hazardous nature.
- Registration, collection of evidence and proceedings take place in accordance with the ordinary procedure provided for by law. There are no specific techniques of investigation in the field of the illegal production and handling of dangerous materials. Each case is handled differently, and if necessary, all possible and necessary measures are used.
- One criminal case was recorded in Estonia in 2015 involving radiation, when it was discovered that an old Russian nuclear submarine station was being partially used as nuclear storage.
- The absence of cases may be a result of the low rate of detection of instances involving the illegal production or handling of dangerous materials, the lack of clear legislation addressing that problem or the lack of knowledge on this topic. Since training in the field of dangerous materials is not provided in Estonia, in the opinion of the evaluators this issue needs to be addressed by the Estonian authorities.

## 10. FINAL REMARKS AND RECOMMENDATIONS

### 10.1. Recommendations

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

Estonia 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 Estonian authorities. Furthermore, based on the various good practices, related recommendations to the EU, its institutions and agencies - Europol in particular - are also put forward.

#### *10.1.1. Recommendations to Estonia*

Estonia should:

1. consider prioritising the prevention of and the fight against environmental crime at central level e.g. by developing a holistic approach involving all relevant bodies involved in environmental issues which could be achieved e.g. by developing a national strategy and/or by establishing a national forum/working group to discuss and coordinate common efforts on environmental security; (cf. 3.1 and 3.6)
2. enhance the collection of comprehensive statistics in order to obtain an integrated and overall picture of the phenomenon of environmental crime, in particular waste crime, e.g. by gathering relevant figures enabling it to follow the development of cases at all stages of the proceedings, be they criminal or administrative; (cf. 3.3.2 and 3.6)



3. look into environmental crime from a broader perspective and also focus on the economic and financial aspects of this type of criminality, and use other methods of classifying the entire chain of actions performed by alleged perpetrators, e.g. by checking links with organised crime or other fraudulent activities; (cf. 3.6, 4.4.2, 4.6 and 5.5)
4. consider increasing the level of specialisation of prosecutors, e.g. by providing them with more training; (cf. 4.1.1, 4.1.2, 4.5 and 4.6)
5. establish a way to encourage judges to be more involved in activities focused on environmental crime at national and international level (e.g. EUFJE) and to offer them opportunities to increase their knowledge by undergoing more frequent training; (cf. 4.1.1, 4.5, 4.6 and 6.2.2 and 6.5)
6. consider providing environmental investigators with a full range of powers, comparable to those of police investigators, in respect of detecting and investigating environmental crime; (cf. 4.2.1, 4.2.2 and 4.6)
7. be encouraged to maintain the functionality of the current Environmental Inspectorate (EI) to ensure that its tasks are conducted in the future; (cf. 4.2.1, 4.6, 7.1.1, 7.2.1 and 7.3)
8. make better use of the existing capacity of the police and customs in relation to intelligence-led policing, by sharing information with the EI on alleged environmental crime, in particular waste crime; (cf. 4.4.1, 4.4.2 and 4.6)
9. better delineate between criminal offences and misdemeanours, and work on the terms/constituent elements of crimes to be defined by laws or specified in binding or non-binding instruments (e.g. in Article 363 through 368 - significant quantities and threats to the environment); (cf. 5.1.1 and 5.5)

10. consider reviewing the criminal law and, specifically, those provisions dedicated to the fight against environmental crime, in particular waste crime, to allow for more efficient detection, investigation and prosecution of environmental crime (waste crime is not listed in the catalogue for surveillance and the EUR 4 000 threshold which hampers the fight against environmental crime should be reconsidered); (cf. 5.1.1, 5.1.2 and 5.5)

11. be encouraged to strengthen cooperation with third countries to improve its capacity to combat the illegal shipment of waste; (cf. 7.1.3, 7.2.2, 7.2.4 and 7.3)

12. consider strengthening its capacity to detect and fight against the illegal management of dangerous substances, e.g. by dedicating special legislation to this area and expanding the training opportunities available to practitioners; (cf. 9.1, 9.2, 9.3.5 and 9.4)

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

1. Member States should also consider recruiting police officers as environmental inspectors/investigators to take advantage of their knowledge and experience of how to tackle criminal activities, in particular those activities with links to organised crime: this approach has been practiced by the EI in Estonia; (cf. 4.2.1 and 4.6)

2. Member States are encouraged to enhance their capacity to fight environmental crime more efficiently by vesting environmental agencies with investigative powers (such as LEAs); (cf. 4.2.1 and 4.6)

3. Member States are encouraged to develop cooperation with civil society to exchange views and information about environmental issues (e.g. involving universities, NGOs) as established in Estonia; (cf. 6.4.1 and 6.5)

4. Member States are encouraged to take advantage of national hotlines to provide an immediate response to reported incidents of environmental violations, as is the case in Estonia; (cf. 7.2.1 and 7.3)

5. Member States should consider improving communications between competent authorities (the police, customs, LEA's port authorities) between Member States and non-Member States; (cf. 6.5)

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

1. The European Commission is encouraged to work on clarifying the EU regulatory and legislative framework relating to the definitions and constituent elements of criminal activities related to waste (such as the term 'non-negligible quantity', which appears in Article 3 letter c of Directive 2008/99/EC); (cf. 5.1.1, 5.1.3 and 5.5)

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

**GENVAL 8th evaluation round****Evaluation visit to Estonia****17.-19.10.2018**

<b>DAY 1</b>	<b>DAY 2</b>	<b>DAY 3</b>
Location: Ministry of Justice Suur-Ameerika 1, Tallinn	Location: Environmental Inspectorate Kopli 76 3rd Floor, Tallinn	Location: Ministry of Environment Narva maantee 7a, Tallinn
10:00 – 12:00 Introduction, discussion with: Ministry of Justice Ministry of Environment Prosecutor's Office Environmental Inspectorate Police and Border Guard Board	10:00 – 12:00 Environmental Inspectorate Welcoming by the Director General Presentations Q & A	10:00 – 12:00 Conclusions
12:00 – 13:00 Lunch break	12:00 – 13:00 Lunch break	12:00 – 13:00 Lunch break
13:00 – 16:00 Continued	13:00 – 15:00 Continued	13:00 – 15:00 Conclusions, Q & A

## ANNEX B: PERSONS INTERVIEWED/MET

**Meetings on 17 October 2018***Venue: The Ministry of Justice*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Markko Künnapu	Adviser, Criminal Policy Department, Ministry of Justice
Kati Maitse-Pärkna	Senior Prosecutor, Northern District Prosecutor's Office in Tallinn
Rocco Ots	Head of Investigation Department, Environmental Inspectorate
Rene Rajasalu	Adviser, Ministry of Environment

**Meetings on 18 October 2018***Venue: Environmental Inspectorate*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Peeter Volkov	Director General, Environmental Inspectorate
Olav Avarsalu	Deputy Director General, Environmental Inspectorate
Allar Leppind	Head of Environmental Protection Department, Environmental Inspectorate
Väino Vaidla	Head of Legal Department Environmental Inspectorate
Rocco Ots	Head of Investigation Department, Environmental Inspectorate

Käthlin Keremäe	Investigator, Environmental Inspectorate
Marve Randlepp	Chief Specialist, Environmental Inspectorate
Rene Rajasalu	Adviser, Ministry of Environment
Kristel Lopsik	Adviser, Ministry of Environment
Raivo Terve	Head of the North Customs Point, Tax and Customs Board
Priit Ränk	Leading Inspector, Tax and Customs Board
Rainer Rahasepp	Leading Police Officer, Police and Border Guard Board
Kati Maitse-Pärkna	Senior Prosecutor, Northern District Prosecutor's Office in Tallinn
Triinu Olev	District Prosecutor, Northern District Prosecutor's Office

Meetings on 19 October 2018

*Venue: The Ministry of Environment*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Meelis Münt	Secretary General, Ministry of Environment
Rene Rajasalu	Adviser, Ministry of Environment
Peeter Volkov	Director General, Environmental Inspectorate
Olav Avarsalu	Deputy Director General, Environmental Inspectorate
Rocco Ots	Head of Investigation Department, Environmental Inspectorate

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

<b>LIST OF ACRONYMS, ABBREVIATIONS AND TERMS</b>	<b>ESTONIAN OR ACRONYM IN ORIGINAL LANGUAGE</b>	<b>ESTONIAN OR ACRONYM IN ORIGINAL LANGUAGE</b>	<b>ENGLISH</b>
BAT	<i>BAT</i>		best available techniques
EI	<i>EI</i>		Environmental Inspectorate
EMPACT	<i>EMPACT</i>		the European Multidisciplinary Platform Against Criminal Threats
EPE	<i>EPE</i>		Europol Platform for Experts
MASPs	<i>MASPs</i>		multi-annual strategic plans
NESTs	<i>NESTs</i>		National Environmental Security Task Forces
PBGB	PBGB		Police and Border Guard Board
PCB	PCB		polychlorinated biphenyls
PPO	PPO		Public Prosecutor's Office
TCB	TCB		The Tax and the Customs Board



## ANNEX D: NATIONAL LEGISLATION

**(1) (a) Penal Code Section 363**

- (b) Operation without an environmental permit, if such permit is required, and violation of the requirements set forth in the permit, if it causes a danger to human life or health or a risk of significant damage to the environment. Criminal in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of 30 daily rates (i.e. EUR 300) and the maximum penalty is a pecuniary punishment of 500 daily rates (i.e. EUR 5000) or up to one year of imprisonment. The same act, if significant damage is thereby caused to the environment, is punishable by up to three years of imprisonment. For legal persons, the minimum penalty is a pecuniary punishment of EUR 4000 and the maximum penalty is a pecuniary punishment of EUR 16 000 000.

**(2) (a) Penal Code Section 364**

- (b) Unlawful release of substances, energy or waste into the environment, or causing noise exceeding the established limits if it causes a danger to human life or health or a risk of significant damage to the quality of water, soil or ambient air, or to individuals of animal or plant species or parts thereof. Criminal in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of 30 daily rates (i.e. EUR 300) and the maximum penalty is a pecuniary punishment of 500 daily rates (i.e. EUR 5000) or up to one year of imprisonment. The same act, if it causes significant damage, is punishable by up to three years of imprisonment. For legal persons, the minimum penalty is a pecuniary punishment of EUR 4000 and the maximum penalty is a pecuniary punishment of EUR 16 000 000.

**(3) (a) Penal Code Section 365**

- (b) Unlawful release of substances, energy or waste into the environment, or causing noise exceeding the established limits through negligence, if it causes a danger to human life or health or a risk of significant damage to the quality of water, soil or ambient air, or to individuals of animal or plant species or parts thereof. Criminal in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of 30 daily rates (i.e. EUR 300) and the maximum penalty is a pecuniary punishment of 500 daily rates (i.e. EUR 5000). The same act, if it causes significant damage, is punishable by up to one year of imprisonment. For legal persons, the minimum penalty is a pecuniary punishment of EUR 4000 and the maximum penalty is a pecuniary punishment of EUR 16 000 000.

**(4) (a) Penal Code Section 367**

- (b) Violation of the requirements for chemicals or waste management, if it causes a danger to human life or health or a risk of significant damage to the quality of water, soil or ambient air, or to individuals of animal or plant species or parts thereof. Criminal in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of 30 daily rates (i.e. EUR 300) and the maximum penalty is a pecuniary punishment of 500 daily rates (i.e. EUR 5000) or up to three years of imprisonment. For legal persons, the minimum penalty is a pecuniary punishment of EUR 4000 and the maximum penalty is a pecuniary punishment of EUR 16 000 000.

**(5) (a) Penal Code Section 368**

- (b) Violation of the requirements for chemicals or waste management through negligence, if it causes a danger to human life or health or a risk of significant damage to the quality of water, soil or ambient air, or to individuals of animal or plant species or parts thereof. Criminal in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of 30 daily rates (i.e. EUR 300) and the maximum penalty is a pecuniary punishment of 500 daily rates (i.e. EUR 5000) or up to one year of imprisonment. For legal persons, the minimum penalty is a pecuniary punishment of EUR 4000 and the maximum penalty is a pecuniary punishment of EUR 16 000 000.

**(6) (a) Penal Code Section 368<sup>1</sup>**

- (b) Violation of the requirements for the transboundary movement of waste, if significant quantities of waste were moved. Criminal in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of 30 daily rates (i.e. EUR 300) and the maximum penalty is a pecuniary punishment of 500 daily rates (i.e. EUR 5000) or up to two years of imprisonment. For legal persons, the minimum penalty is a pecuniary punishment of EUR 4000 and the maximum penalty is a pecuniary punishment of EUR 16 000 000.

**(7) (a) Penal Code Section 368<sup>2</sup>**

- (b) Illegal plant operation, which causes, outside the plant, a danger to human life or health or a risk of significant damage to the quality of water, soil or ambient air, or to individuals of animal or plant species or parts thereof.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of 30 daily rates (i.e. EUR 300) and the maximum penalty is a pecuniary punishment of 500 daily rates (i.e. EUR 5000) or up to two years of imprisonment. For legal persons, the minimum penalty is a pecuniary punishment of EUR 4000 and the maximum penalty is a pecuniary punishment of EUR 16 000 000.

**(8) (a) Penal Code Section 368<sup>4</sup>**

- (b) Violation of the requirements for the transboundary movement of waste through negligence, if significant quantities of waste were moved. Criminal in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of 30 daily rates (i.e. EUR 300) and the maximum penalty is a pecuniary punishment of 500 daily rates (i.e. EUR 5000) or up to one year of imprisonment. For legal persons, the minimum penalty is a pecuniary punishment of EUR 4000 and the maximum penalty is a pecuniary punishment of EUR 16 000 000.

**(9) (a) Penal Code Section 368<sup>5</sup>**

- (b) Illegal plant operation through negligence, which causes, outside the plant, a danger to human life or health or a risk of significant damage to the quality of water, soil or ambient air, or to individuals of animal or plant species or parts thereof. Criminal in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of 30 daily rates (i.e. EUR 300) and the maximum penalty is a pecuniary punishment of 500 daily rates (i.e. EUR 5000) or up to two years of imprisonment. For legal persons, the minimum penalty is a pecuniary punishment of EUR 4000 and the maximum penalty is a pecuniary punishment of EUR 16 000 000.

**(10) (a) Waste Act Section 120**

- (b) Violation of the requirements for the prevention of waste generation or for waste management or deposit of waste outside of waste management facilities. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 3200.

**(11) (a) Waste Act Section 120<sup>1</sup>**

- (b) Handling of waste without a waste permit, if a permit is required, or in violation of the requirements of the permit or violation of the obligation to transfer waste to the person entitled to handle such waste. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 32 000.

**(12) (a) Waste Act Section 120<sup>2</sup>**

- (b) Handling of waste without a registration certificate, if a registration certificate is required. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 3200.

**(13) (a) Waste Act Section 120<sup>3</sup>**

- (b) Handling of waste without a management licence, if a licence is required, or in violation of the requirements of the licence. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 32 000.

**(14) (a) Waste Act Section 120<sup>4</sup>**

- (b) Transport of hazardous waste without consignment note, if a consignment note is required, or in violation of the requirements of the consignment note. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 32 000.

**(15) (a) Waste Act Section 120<sup>5</sup>**

- (b) Transboundary movement of hazardous waste or other waste subject to international control without the corresponding permit or note or in violation of the requirements of the permit. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 32 000.

**(16) (a) Waste Act Section 120<sup>6</sup>**

- (b) Failure to comply with the procedure for keeping records concerning waste or with the requirement to submit reports, or submission of incorrect data. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 200. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 13 000.

**(17) (a) Waste Act Section 120<sup>7</sup>**

- (b) Violation of the waste management requirements provided by local government waste management rules. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 200. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 20 000.

**(18) (a) Waste Act Section 121**

- (b) Violation of the procedure for establishment, utilisation or closure of waste management facilities or extractive waste facilities. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 32 000.

**(19) (a) Waste Act Section 124**

- (b) Violation of the obligation of producers and distributors to collect the waste resulting from their products pursuant to the established procedure or failure to comply with the recovery obligation. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 32 000.

**(20) (a) Waste Act Section 124<sup>1</sup>**

- (b) Non-performance of the registration obligation imposed on producer or failure to appoint authorised representative of producer upon placing a product of concern on the market in another Member State of the European Union. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 250. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 25 600.

**(21) (a) Waste Act Section 124<sup>2</sup>**

- (b) Submission of incorrect data to the register of products of concern. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 250. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 13 000.

**(22) (a) Waste Act Section 124<sup>3</sup>**

- (b) Failure to submit data to the register of products of concern. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 20 000.



**(23) (a) Waste Act Section 125**

- (b) Transfer of waste for handling to a person who does not hold a waste permit when such permit is required. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 250. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 32 000.

**(24) (a) Waste Act Section 126**

- (b) Landfilling of untreated waste or used tyres. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 32 000.

**(25) (a) Waste Act Section 126<sup>1</sup>**

- (b) Violation of the requirements for sorting mixed municipal waste or of the conditions for depositing waste. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 200. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 13 000.

**(26) (a) Waste Act Section 126<sup>2</sup>**

- (b) Violation of the special conditions for handling hazardous waste, except for requirements for packaging and labelling. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 32 000.

**(27) (a) Waste Act Section 126<sup>3</sup>**

- (b) Violation of the procedure for labelling hazardous waste or packaging thereof or the requirements for packaging hazardous waste. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 200. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 13 000.

**(28) (a) Waste Act Section 126<sup>4</sup>**

- (b) Incineration of waste on board a ship. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 32 000.

**(29) (a) Waste Act Section 126<sup>5</sup>**

- (b) Violation of the restrictions on buying up waste metal, the obligation to document a buying-up or the prohibition on cash settlement. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 32 000.

**(30) (a) Waste Act Section 126<sup>6</sup>**

- (b) Waste disposal at a place not complying with the environmental protection requirements. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 200. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 13 000.

**(31) (a) Waste Act Section 126<sup>7</sup>**

- (b) Violation of the requirements for transport of waste, except for the requirements for transport of hazardous waste. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 200. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 13 000.

**(32) (a) Waste Act Section 126<sup>8</sup>**

- (b) Failure to keep a required account of tyres of motor vehicles and trailers of motor vehicles. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 100. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 3200.

**(33) (a) Waste Act Section 126<sup>9</sup>**

- (b) Transfer of waste for handling not requiring a permit without convincing that the transferee is competent to handle the waste and has the relevant technical and environmental protection equipment. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 100. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 3200.

**(34) (a) Waste Act Section 126<sup>10</sup>**

- (b) Violation of special requirements for extractive mining waste management. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 32 000.

**(35) (a) Waste Act Section 126<sup>11</sup>**

- (b) Violation of the requirements for prevention of and reporting on major accidents. Misdemeanour in nature.
- (c) For natural persons, the minimum penalty is a pecuniary punishment of EUR 12. The maximum penalty is a pecuniary punishment of EUR 300. For legal persons, the minimum penalty is a pecuniary punishment of EUR 100. The maximum penalty is a pecuniary punishment of EUR 32 000

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