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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 SPAIN**

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## 1. EXECUTIVE SUMMARY

The visit was well prepared by the Spanish authorities, and included meetings with the relevant actors with responsibilities in the field of preventing and combating environmental crimes as well as in the implementation and operation of European policies. The visit also included a meeting with a court judge who had acted previously as an investigating judge and therefore spoke about the role of investigating judges in Spain. However, the only information the evaluators were provided with related to his experience as pre-trial judges.

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

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

Environmental protection is included in Article 45 of the Spanish Constitution as a guiding principle of Spanish social and economic policy. It must be noted that the Spanish Constitution establishes not only the obligation to repair damage caused by those who break environment-protecting provisions but also provides expressly for criminal or administrative penalties.

Environmental protection legislation is fundamentally a national competence, but land-use planning powers are shared. Criminal prosecution, in contrast, is exclusively a national competence, as provided by Article 149(1)(5) of the Constitution.

Spanish legislation, particularly the penalties, both administrative and criminal, applicable to infringements, generally meets European requirements, i.e. that the penalties must be effective, proportionate and dissuasive. Only the most serious environmental violations are subject to criminal liability and penal sanctions.

The traceability of waste from production to final destination is provided for by provisions in national legislation requiring waste shipments to be accompanied by identification documents and producers and managers of waste to keep chronological records of the waste they manage, in accordance with the Waste Framework Directive and Waste Shipment Regulation.

At strategic level, there is the National Security Strategy approved by Royal Decree 1008/2017 of 1 December 2017 <sup>1</sup>. This document sets out general objectives for ensuring the security of Spain and the Spanish people, making only a generic reference to the protection of the environment.

There is an inspection plan at national level for cross-border shipments of waste, and there are several inspection plans relating to shipments of waste, as well as some environmental inspection plans at the level of the Autonomous Communities.

Despite the constitutional provisions, from the information acquired on the spot, the evaluation team clearly inferred that fighting waste crime is not considered a priority within environmental crimes, *at least not by the prosecution offices*. In contrast, town planning and land-use planning crimes are considered priorities, because the Spanish institutions think they have more connection to serious crimes such as corruption. However, *the relevance of waste crime, also the link between waste crime and corruption, is becoming increasingly clear to Spanish authorities within the law enforcement area, i.a. due to the administrative authorisation needed for managing waste and waste shipment, and efforts are being made to improve the situation especially the Guardia Civil*.

In contrast, town planning and land-use planning crimes are considered priorities, because the Spanish institutions think they have more connection to serious crimes such as corruption. However, the link between waste crime and corruption is becoming increasingly clear, due to the administrative authorisation needed for managing waste and waste shipment.

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<sup>1</sup> ([http://www.dsn.gob.es/es/estrategias\\_publicaciones/estrategias/estrategia-seguridad-nacional-2017](http://www.dsn.gob.es/es/estrategias_publicaciones/estrategias/estrategia-seguridad-nacional-2017))



No specific budget line is provided for the prevention of and fight against waste crime. Only the budget of the Directorate-General for Biodiversity and Environmental Quality contains lines for financing action under the National Waste Management Framework Plan and enforcing the waste management objectives (EUR 1 871 000 in this year's budget), but these are not specifically earmarked for preventing and suppressing waste crime.

As regards EU funding, the only EU funding that the Spanish authorities use is that provided for by the Internal Security Funds (ISFs) to fund the project Tackling Environmental Crime through Standardised Methodologies (TECUM).

Spain does not collect interlinked and integrated statistics on environmental crime. Even the statistics of each individual authority involved in preventing and combating waste crime seem to be maintained in an unusable way, as they do not distinguish between waste crime and other kinds of environmental crime.

The investigation of criminal cases is assigned to the investigating judge for all types of crime except those where minors are responsible. Nevertheless, Article 773 of the Criminal Procedure Act enables the Public Prosecutor's Office to cooperate with the judicial authority at the investigation stage of the criminal case.

Since 2006, in accordance with Article 20(2) of the organisational statute of the Public Prosecutor's Office, environmental prosecutor sections have been established in all the provincial public prosecutor's offices in Spain and the post of coordinating public prosecutor for the environment has been created to represent the Prosecutor General in this field.

A specialised unit including not only prosecutors but also police and technicians has been established in Madrid. Members of the National Police and the Guardia Civil, as well as forestry officers and local police, are assigned to the environment unit of the Office of the Prosecutor General. This unit has established a network throughout the territory of Spain to assist them with any possible need.

At judicial level, there are no specific chambers or judges at the criminal courts responsible for environmental / waste crime.

Both the police forces of the Autonomous Communities and those of the local authorities are involved in the maintenance of public security, including protection of the environment.

The national law enforcement authorities carrying out this role throughout Spain are made up of the National Police and the Guardia Civil, which are both competent for the investigation of waste crimes in the whole national territory.

The National Police is competent for the public security in the capitals of the provinces and in the municipalities and urban areas determined by the Government (Art. 11.2.a) of the Organic Law 2/1986). Within the Central Investigation Department of the Criminal Police, the specialist and violent crime unit (UDEV) in turn includes a consumer, environment and doping section, which coordinates the activities of the 28 peripheral groups all over Spain and also those of RE-LAB, a laboratory specialising in biological tasks.

The Guardia Civil is competent for the public security in the rest of the Spanish territory not assigned to the National Police and in the territorial waters (Art. 11.2.b) of the Organic Law 2/1986). Besides that, Guardia Civil has the specific duty to enforce the legal provisions intended to preserve nature and the environment (Art. 12.1.B).e) of Organic Law 2/1986) for which it has developed a whole nature protection service (SEPRONA), consisting of specialist officers trained to investigate environmental crime (including waste crime). At territorial level, SEPRONA has nature protection units with competence for the province in which they are located, while at national level the central operational environmental unit (UCOMA) has competence for Spain as a whole, with the task of carrying out or supporting investigations whose scope goes beyond the boundaries of a single Autonomous Community or that require complex investigative techniques or procedures.

Other authorities involved in the prevention of and fight against waste crime are the following:

MITECO (Ministry for the Ecological Transition, previously called MAPAMA) exercises the power of supervision and inspection and imposing penalties, within its area of competence. In addition, it is responsible for authorising shipments of waste to or from third countries which do not belong to the European Union and for performing the functions of inspection and penalty imposition arising from that shipment system. Furthermore, MITECO fulfils the functions of national authority in cases in which Spain is a transit state. Despite having these competences, MITECO does not have enough capacity to fulfil them. Due to the lack of inspectors at national level, the Ministry has drafted agreements with some regional authorities of the Autonomous Communities, which, at the date of the evaluation, were about to be signed before the end of the 2018.

The signature of such agreements may help to overcome the mentioned lack of inspectors in the concerned regions.

The Autonomous Communities are responsible for the authorising, supervision, inspection and imposition of penalties with respect to waste production and management activity and the granting of authorisations for waste shipments to or from European Union countries. The Customs and Excise Department, within the National Tax Agency, is responsible *inter alia* for the protection of the environment.

Local authorities and provincial councils also have their own competences where applicable.

From the information provided, the evaluation team received the impression that the number of inspections concerning waste production and management performed by the regional and local authorities, with the support of police and Guardia Civil, is not sufficient to prevent and tackle waste crime, taking into consideration the size and strategic position of the country. It is recommended that the number and quality of inspections be raised.

The national legal framework lays down a duty of cooperation between administrations within their respective areas of competence.

An important mean of cooperation is the assigning of members of the National Police, the Guardia Civil, forestry officers, local police and officials from MITECO's Subdirectorato-General for Waste to the environment unit of the Office of the Prosecutor General.

With a view to improving cooperation among the administrative authorities, Article 13 of Law 22/2011 sets up the *Comisión de coordinación en materia de residuos* (Committee for Waste Coordination).

Further instruments to enhance the cooperation are the Environmental Inspection Network (REDIA), made up of the heads of the environmental inspectorates of the public administrations and the Working Party on Shipments and Inspection, which operates within the framework of the Committee for Waste Coordination and meets annually.

According to the information provided by the Spanish authorities, over 2018 a series of agreements will be launched on cooperation between different administrative and environmental authorities, customs and inspection services, in order to facilitate MITECO's work on monitoring and inspecting cross-border waste shipments.

Spain is also very proactive in cross-border cases, cooperating mainly through SEPRONA and Customs. The former is involved in major bodies like Europol (EnviCrimeNet) and Interpol and has joined joint police operations and international projects like TECUM.

Bilateral protocols have been signed with Portugal and France.

Despite the above, the information cluster is fragmented and uneven, lacking an overall view of the waste landscape. Once the source of information is identified, cooperation with those authorities is assessed as generally satisfactory by the stakeholders. Nevertheless, the possibility of exchanging information in an investigative context, evident and exercised even between the National Police and the Guardia Civil, cannot be compared to the sharing of a single updated information supply, such as the police force data bank.

However, the future launching of e-SIR (Electronic Waste Information System), which will incorporate *inter alia* the waste production and management register, waste shipment procedures and communications between Autonomous Communities, will improve the transparency and traceability of waste, help increase harmonisation of shipments, and facilitate control of waste movements made by economic operators within Spain.

There is no single body responsible for training all the institution's staff on environmental crime, and each institution is in charge of training its own staff. However, the representatives of each body carrying out work related to this type of crime can attend training organised by another body.

NGOs conduct formal cooperation with the Guardia Civil (SEPRONA) and offer training courses for investigations for police and prosecutors. They also collaborate with SEPRONA by reporting waste crime to the authorities.

Despite this collaboration, NGOs suffer from a lack of information and feedback on the results of their complaints.

## 2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997<sup>2</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 5 May 2017 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 evaluation round covers three specific areas: waste crime, illegal production or handling of dangerous materials, and hazardous waste. It should provide a comprehensive examination of the legal and operational aspects of tackling environmental crime, cross-border cooperation and cooperation with relevant EU agencies.

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives<sup>3</sup> (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>4</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>5</sup> (date of entry into force: 12 July 2007), are particularly relevant in this context.

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

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

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

<sup>5</sup> OJ L 190, 12.07.2006, p. 1.

On 30 May 2018, the Council and the European Parliament adopted the waste package legislation, consisting of, *inter alia*, Directive (EU) 2018/851 of 30 May 2018 amending Directive 2008/98/EC on waste<sup>6</sup> (date of transposition: 5 July 2020) and Directive (EU) 2018/849 of 30 May 2018 amending Directives 2000/53/EC on end-of-life vehicles, Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and Directive 2012/19/EU on waste electrical and electronic equipment<sup>7</sup> (date of transposition: 5 July 2020).

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

Furthermore, Directive 2008/98/EC requires the Member States to create waste management plans and waste prevention programmes 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 impacts of waste generation.

Experience from past evaluations show that Member States will be in different positions regarding the implementation of relevant legal instruments and programmes, and the current process of evaluation could also provide useful input 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>8</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.

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<sup>6</sup> OJ L 150, 14.6.2018, p. 109–140

<sup>7</sup> OJ L 150, 14.6.2018, p. 93–99

<sup>8</sup> 15412/16, ENFOPOL 484 ENV 791 ENFOCUSTOM 235.

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 also and mainly on the relevant operational aspects in the Member States. Therefore, it will encompass cooperation among environmental, police, customs and judicial authorities at national level, as well as with Europol, Interpol and Eurojust. The evaluation will also cover operational practices in the Member States with regard to waste treatment operations and establishments and undertakings which collect and transport waste.

The order of visits to the Member States was adopted by GENVAL on 5 May 2017. Spain was the seventeenth 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 as observers.

The experts charged with undertaking the evaluation of Spain were Ms Ylva Lindén (National Environment Protection Agency, Sweden), Mr Thomas Böx (Prosecution Office, Germany) and Mr Col. Marco Avanzo (Arma dei Carabinieri, Italy). The following observers were also present: Mr. Miroslav Angelov (Commission) , Mr Enrique Esteller (General Secretariat of the Council), Mrs Carmen Giuffrida (General Secretariat of the Council).

This report was prepared by the expert team with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Spain between 26 and 29 June 2018, and on Spain's detailed replies to the evaluation questionnaire, together with its detailed answers to ensuing follow-up questions.



### 3. GENERAL MATTERS AND STRUCTURES

#### 3.1. National strategy or similar strategic documents against waste crime

Environmental protection is included in Article 45 of the Spanish Constitution as a guiding principle of Spanish social and economic policy.

Pursuant to Article 149(1)(23) of the Spanish Constitution, basic environmental protection legislation is a matter of national competence. However, pursuant to Article 148(1)(3), town planning is an Autonomous Community competence that confers powers over land-use planning, town planning and housing. It is therefore fundamentally a national competence, but land-use planning powers are shared.

In contrast, criminal prosecution is exclusively a national competence, as provided by Article 149(1)(5) of the Constitution.

No strategic documents specifically focused on tackling waste crime have been drafted with the involvement of all relevant institutions. In fact, the only existing document at central level is the National Security Strategy approved by Royal Decree 1008/2017 of 1 December 2017 which, while setting out general objectives for ensuring the security of Spain and the Spanish people (<http://www.dsn.gob.es/es/estrategias-publicaciones/estrategias/estrategia-seguridad-nacional-2017>), makes only a generic reference to environmental preservation as an area of interest, with the objective of *'ensuring the conservation of a quality environment and the protection of natural heritage and biodiversity, as a means of improving quality of life and contributing to sustained and sustainable development, particularly in combating climate change'* and underlines the need to strengthen the enforcement of the commitments made

to preserve the environment in the EU, enhancing coordination between the various components of the public sector with a view to facilitating the creation of the necessary synergies between those charged with conserving and improving the environment and strengthening and broadening general and specialist capabilities for combating environmental damage that poses a genuine threat to the natural world and people's quality of life.

The national law enforcement authorities (National Police and Guardia Civil) have their own and separate Strategic Plans 2017-2020 (restricted) including action lines and objectives directly linked to protecting the environment and investigating environmental crime, specifically illegal waste management.

Nor do any waste strategies that include all the relevant authorities exist at Autonomous Authorities level, but only the following inspection plans:

- Inspection Plan on Cross-Border Shipments of Waste in the Autonomous Community of Andalusia (PITTRA) 2017-2019.  
[https://www.juntadeandalucia.es/medioambiente/portal\\_web/web/temas\\_ambientales/calidad\\_ambiental/inspeccion\\_ambiental\\_eccas/inspeccion\\_traslado\\_residuos/documento\\_pittra\\_2017\\_2019.pdf](https://www.juntadeandalucia.es/medioambiente/portal_web/web/temas_ambientales/calidad_ambiental/inspeccion_ambiental_eccas/inspeccion_traslado_residuos/documento_pittra_2017_2019.pdf)
- Sectoral environmental inspection plans for 2017 in Andalusia.  
<https://www.juntadeandalucia.es/medioambiente/site/portalweb/menuitem.7e1cf46ddf59bb227a9ebe205510e1ca/?vgnextoid=3880d386cfbce310VgnVCM2000000624e50aRCRD&vgnextchannel=a44f887b35427310VgnVCM2000000624e50aRCRDhttps://www.juntadeandalucia.es/medioambiente/site/portalweb/menuitem.7e1cf46ddf59bb227a9ebe205510e1ca/?vgnextoid=3880d386cfbce310VgnVCM2000000624e50aRCRD&vgnextchannel=a44f887b35427310VgnVCM2000000624e50aRCRD>
- Castile-La Mancha Inspection Plan on Cross-Border Shipments of Waste 2017-2020.  
[http://docm.castillalamancha.es/portaldocm/descargarArchivo.do?ruta=2017/01/25/pdf/2017\\_560.pdf&tipo=rutaDocm](http://docm.castillalamancha.es/portaldocm/descargarArchivo.do?ruta=2017/01/25/pdf/2017_560.pdf&tipo=rutaDocm)

- Galicia Environmental Inspection plan 2013-2018.  
[http://cmaot.xunta.gal/c/document\\_library/get\\_file?file\\_path=/portal-web/Documentos\\_SXCAA/Inspeccion\\_ambiental/2017\\_Actualizacion\\_Plan\\_de\\_inspeccion\\_ambiental\\_Galego.pdf](http://cmaot.xunta.gal/c/document_library/get_file?file_path=/portal-web/Documentos_SXCAA/Inspeccion_ambiental/2017_Actualizacion_Plan_de_inspeccion_ambiental_Galego.pdf)
- La Rioja Environmental Inspection Plan 2013-2018.  
<https://ias1.larioja.org//cex/sistemas/GenericoServlet?servlet=cex.sistemas.dyn.portal.ImgServletSis&code=oumCvWlIgBUF6lChv9ZDgP%2FhXhSM%2FFmcHKNGamwWvdpXApHyqPVxRsoD%2BHW0E2YV6LEXZYSr1AOFg%0ATiSSaU47DH5mfOYlhF8H&&>
- Valencian Community inspection plan on cross-border shipments of waste (2017-2022).  
[http://www.dogv.gva.es/datos/2017/01/12/pdf/2017\\_177.pdf](http://www.dogv.gva.es/datos/2017/01/12/pdf/2017_177.pdf)

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

National-scale projects are direct consequences of the distribution of competences between the Ministry of Ecological Transition, the Autonomous Communities and the local authorities.

In more detail, at national level the following have been issued:

- a National Waste Prevention Programme (2014-2020)
- a National Framework Plan for Waste Management (2016-2022)

a National Inspection Plan on cross-border shipments of waste 2017-2019 Specific internal training activities on waste have been developed under the specific training plans of SEPRONA, so as to provide the required skills to the personnel deployed.

National Plans are the framework on the basis of which the Autonomous Communities produce their own regional plans, with due respect for their autonomy and functions as an authority.

### 3.3. Statistics

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

According to the Public Prosecutor's Office , the most significant types of environmental crime in Spain are considered to be crimes relating to town planning and land use (in terms of numbers committed) and forest fires (in terms of seriousness, owing to their effect on the environment and public safety). However SEPRONA, based on a recent intelligence-led approach, has become more and more aware of the seriousness of waste crimes and the illegal profit associated to them, having put a lot of efforts exclusively dedicated to conduct and support operations regarding this kind of crimes (operations ROTAMM, REGUMATO and TECUM, for example).

From the information acquired on the spot, it seemed clear to the evaluation team that town planning and land-use planning crimes are considered priorities, because the Spanish institutions have clearly established their connection to serious crimes such as corruption. Waste crimes have of this reason not been a priority within environmental crime. However, as mentioned before, *the relevance of waste crime, also the link between waste crime and corruption, is becoming increasingly clear to Spanish authorities within the law enforcement area,*

In fact, the Spanish authorities, mainly SEPRONA have observed in the most recent waste crime operations the existence of organised crime groups that typically commit offences related to this kind of organised crime, such as money laundering, falsification and tax fraud.

Furthermore, the link between waste crime and corruption is becoming increasingly clear, as the majority of waste proceedings and formalities require administrative authorisation, which leaves the door open to malfeasance, falsification, influence peddling and bribery.

The trend in the period 2008 – 2016 seems quite stable, according to the data provided with the answers to question 5 of the questionnaire: there is no specific information concerning waste crimes but a generic 'environment' indication, which also covers this specific topic.

The data provided by SEPRONA seem more precise and, according to those data, crimes punished by administrative penalties have fallen by a quarter in the 2014 – 2018 period (data is naturally incomplete for this year). In contrast, the number of complex operations increased over the same period, while the peak number of reported/arrested subjects registered in 2014 has not been equalled, with the trend fluctuating.

No information was provided by the Customs or the National Police.

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

Spain does not collect interlinked and integrated statistics. Even the statistics of each individual authority involved in preventing and combating waste crime seem to be maintained in a way that leaves room for improvement, since they do not make specific reference to waste crime. Guardia Civil is already aware of this problem and is planning to split its environmental crime data into different categories, one of them being waste crime.

More detailed statistics on waste crime were provided by SEPRONA, specifically concerning Operation 'Tyson', with the objective of detecting illegal trafficking of hazardous waste between countries, illegal (hazardous and non-hazardous) waste landfills, and other irregular recycling activities. A total of 4 027 inspections were carried out on means of transport, treatment centres, production centres, landfills and ports. On the basis of inspections carried out over 30 days, 1 477 complaints were filed, 17 of which proved to concern crimes.

The law enforcement authorities' statistics are forwarded to the Ministry of the Interior for entry into the Crime Statistics System (SEC), where they can be consulted in statistical yearbooks (<http://www.interior.gob.es/documents/642317/1204854/Anuario+Estadistico+2016.pdf/6c02fffa-93c4-4838-b1d5-a882971c2cdc>).

The Prosecution Office's statistics are published on the following page:

<http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial>. However, these statistics again do not specify the nature of the environmental crimes committed; thus, no specific statistics are kept on waste crime.

Only the report prepared by the Office of the Prosecutor General provides such information (<http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Datos-penales--civiles-y-laborales/Delitos-y-condenas/Actividad-del-Ministerio-Fiscal>).

Finally, statistics on actions taken by AEAT's Customs and Excise Duties Department are arranged by specific type.

Data displaying the changes in the numbers of investigative proceedings, judicial proceedings, indictments, convictions and acquittals from 2008 to 2016 are given below:

INVESTIGATIVE PROCEEDINGS	2008	2009	2010	2011	2012	2013	2014	2015	2016
ENVIRONMENT	545	664	507	556	514	385	398	397	479
TOWN PLANNING AND LAND USE PLANNING	2266	1729	1551	1219	968	943	1210	1089	893
HISTORICAL HERITAGE	50	55	76	70	71	53	60	52	83
FLORA AND FAUNA	249	373	528	448	446	386	349	289	439
FOREST FIRES	752	565	457	433	614	437	579	242	486
CRUELTY TO DOMESTIC ANIMALS	15	17	17	25	42	38	75	163	119
<b>TOTAL</b>	<b>3877</b>	<b>3403</b>	<b>3136</b>	<b>2751</b>	<b>2655</b>	<b>2242</b>	<b>2671</b>	<b>2232</b>	<b>2499</b>

JUDICIAL PROCEEDINGS	2008	2009	2010	2011	2012	2013	2014	2015	2016
ENVIRONMENT	602	526	596	615	552	560	520	534	528
TOWN PLANNING AND LAND USE PLANNING	1734	1737	1710	1754	892	1265	910	853	922
HISTORICAL HERITAGE	278	190	231	261	317	432	500	527	220
FLORA AND FAUNA	551	676	786	719	696	837	759	777	707
FOREST FIRES	1257	2170	1780	2306	2671	2466	2160	1729	865
CRUELTY TO DOMESTIC ANIMALS	108	205	181	309	504	515	681	912	774
<b>TOTAL</b>	<b>4530</b>	<b>5504</b>	<b>5284</b>	<b>5964</b>	<b>5632</b>	<b>6075</b>	<b>5530</b>	<b>5332</b>	<b>4016</b>

INDICTMENTS *	2008	2009	2010	2011	2012	2013	2014	2015	2016
ENVIRONMENT					73	80	65	82	102
TOWN PLANNING AND LAND USE PLANNING					535	607	485	436	552
HISTORICAL HERITAGE					13	27	16	31	30
FLORA AND FAUNA					222	256	266	210	350
FOREST FIRES					135	158	177	180	233
CRUELTY TO DOMESTIC ANIMALS					83	68	89	186	205
<b>TOTAL</b>					<b>1061</b>	<b>1196</b>	<b>1098</b>	<b>1125</b>	<b>1472</b>

\* Data compiled since 2012

CONVICTIONS	2008	2009	2010	2011	2012	2013	2014	2015	2016
ENVIRONMENT	32	30	33	55	44	41	49	37	54
TOWN PLANNING AND LAND USE PLANNING	303	389	427	408	472	504	465	455	394
HISTORICAL HERITAGE	7	13	10	9	16	13	12	16	21
FLORA AND FAUNA	84	80	96	80	119	145	171	220	263
FOREST FIRES	90	86	97	92	116	119	170	133	140
CRUELTY TO DOMESTIC ANIMALS	11	19	28	32	32	60	62	68	103
	527	617	691	676	799	882	929	929	975

ACQUITTALS	2008	2009	2010	2011	2012	2013	2014	2015	2016
ENVIRONMENT	21	18	32	20	26	27	27	23	21
TOWN PLANNING AND LAND USE PLANNING	96	127	165	161	248	150	155	137	141
HISTORICAL HERITAGE	3	3	16	7	8	10	6	11	4
FLORA AND FAUNA	43	45	23	61	55	64	57	44	28
FOREST FIRES	21	51	34	30	44	39	35	28	29
CRUELTY TO DOMESTIC ANIMALS	6	3	12	10	9	8	17	16	28
	190	247	282	289	390	298	297	259	251



The number of cases investigated (in which waste crime is also included refers to investigations carried out by the prosecution office. This number is lower than the number of judicial proceedings because judicial proceedings can be initiated not only by investigations by the prosecution office but also by complaints filed by citizens or NGOs, law enforcement reports or judicialized administrative proceedings.

On the other hand, not all judicial proceedings lead to an indictment since they can be filed or turn into administrative proceedings. The number of convictions is high if compared with the number of indictments.

According to the information from the Prosecution Office, no convictions were made relating to waste crime.

As mentioned, waste-related offences can also be handled administratively and with the use of administrative penalties. Illegal waste shipments may also have been reported and investigated as smuggling crimes or frauds. Smuggling is not always a crime according to the Spanish legal framework. Instead, depending on the value of the goods smuggled, it can be an administrative offence or a criminal offence. As a consequence, to investigate a waste related offence as smuggling doesn't necessarily imply opening a criminal file.

Spanish authorities consider the administrative approach can sometimes be more effective and have a bigger deterrence effect than the criminal one.

According to information provided no administrative penalties concerning waste related offences have been applied in the last five years.

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

No specific budget line is provided for the prevention of and fight against waste crime.

The national law enforcement authorities finance their work on preventing and suppressing environmental crime from their own budgets, although there is no specific budget line for that purpose.

Nor does MITECO have any specific budget allocation for preventing and suppressing environmental crime; it does, however, participate - although without a special budget - by collaborating with the national law enforcement authorities on training programmes.

Only the budget of the Directorate-General for Biodiversity and Environmental Quality contains lines for financing action under the National Waste Management Framework Plan and enforcing waste management objectives (EUR 1 871 000 in this year's budget), but these are not specifically earmarked for preventing and suppressing waste crime.

As regards EU funding, the only EU funding that the Spanish authorities use is the funding provided by the ISFs to fund the Tackling Environmental Crime through Standardised Methodologies (TECUM) project, led by the Italian Carabinieri, the main focus of which is acquiring the necessary information for developing police strategies and compiling manuals to assist European police forces in their efforts to combat waste trafficking.

### 3.5. Prevention of waste crime

The programmes of the Customs Department of the National Tax Administration Agency (AEAT) cover preventive action and enforcement, cooperation and coordination with the competent authority in the area of waste, as well as investigation and the need to intervene in certain types of serious crime with a cross-border dimension in coordination with the law enforcement authorities.

The main dissuasive measure envisaged by the Spanish legal system is laid down in Articles 325 to 329 of the Criminal Code (detailed below), which contain penalties for various waste management and shipment practices, and unlawful practices on the part of authorities and officials who allow such offences to be committed.

Spanish criminal legislation is supplemented at administrative level by Law 22/2011 of 28 July 2011 on waste and contaminated soil, several Royal Decrees which develop it on a sectoral basis, and various rules at Autonomous Community level. These legal acts can be consulted via the link <http://www.MITECO.gob.es/es/calidad-y-evaluacion-ambiental/temas/prevencion-y-gestion-residuos/normativa-y-planificacion/>.

As well as providing guidelines that ensure appropriate action is taken in the area of waste management, these rules are essential to the implementation of the Criminal Code.

### 3.6. Conclusions

- There is no action plan or strategic plan on environmental crime at national level. There is an inspection plan in place at national level for cross-border-shipments of waste and there are several inspection plans on shipments of waste as well as some environmental inspection plans at the level of the Autonomous Communities. The existence of several national/regional plans of inspection concerning waste crimes can be considered a good practice. Nevertheless, the lack of a strategic plan involving all the relevant institutions shows a lack of strategic vision of the issue, probably related to the fact that waste crimes are not considered a priority.
- No specific budget line is provided for the prevention of and fight against waste crime.
- The statistics provided by the Spanish authorities are not sufficiently detailed to enable relevant conclusions to be drawn. The overall impression of the evaluators is that Spain does not collect interlinked and integrated statistics. Even the statistics of each individual authority involved in preventing and combating waste crime seem to be maintained in an unusable way, as they do not distinguish between waste crime and other kinds of environmental crime. *Confronted with this impression of the evaluators, the Spanish authorities added, without describing the efforts in detail, that they are aware of the problem and they are working on a solution*
- Within the responsibility of 'the public prosecutor's office for the protection of environment and land planning', only 6 % of cases concern environmental crime (the number of cases involving waste is even smaller). The figures provided imply that rather less attention is devoted to offences involving waste than to other issues such as, in particular, town planning and land planning, flora and fauna and forest fires. This leads to a lack of information concerning the entire flow of cases from the administrative authorities, the police, prosecutors office and courts.
- It seems that in many of the institutions involved, the database is non-existent or not well organised. The establishment of organised databases directly accessible by the LEAs is strongly encouraged, where legally possible.

- No convictions seem to have been issued under the specific penal provisions on waste crime and illegal waste shipments.
- In some cases, waste-related offences are handled administratively and with the use of administrative penalties. Hitherto, illegal waste shipments may also have been reported and investigated as smuggling crimes or frauds. Also smuggling can be handled as an administrative offence. The administrative approach sometimes can be more effective and have a bigger deterrence effect than the criminal one. However beyond administrative cases there could be criminal activities to be investigated. No administrative penalties have been applied in the last five years.

## 4. NATIONAL STRUCTURES

### 4.1. Judiciary (prosecution and courts)

#### 4.1.1. *Internal structure*

In Spain, the investigation of criminal cases is assigned to the investigating judge for all types of crime except those where minors are responsible. Nevertheless, Article 773 of the Criminal Procedure Act enables the Public Prosecutor's Office to cooperate with the judicial authority at the investigation stage of the criminal case. This article authorises the Public Prosecutor's Office to autonomously launch and proceed with investigations relating to illegal activities in order to ascertain the facts and perpetrators. If it appears from the initial proceedings that there are adequate reasons to continue with the case, and if the police investigation or operation initiated by the public prosecutor has not been completed, the Public Prosecutor's Office has to convey the actions taken to the judicial authority, requesting that the appropriate criminal proceedings be started. The public prosecutor in turn must convey those actions to the judge, as they stand at the time when criminal proceedings are started in respect of the acts concerned. There are no specialist judicial bodies at the investigation stage or during the trial for those offences.

Since 2006, in accordance with Article 20(2) of the organisational statute of the Public Prosecutor's Office, environmental prosecutor sections have been established in all the provincial public prosecutor's offices in Spain, and the post of coordinating public prosecutor for the environment has been created to represent the Prosecutor General in this field.

Article 20(2) of the organisational statute of the Public Prosecutor's Office reads as follows:

*'In the Office of the Prosecutor General there shall be a public prosecutor of crimes concerning land use planning and the protection of historical heritage, the environment and forest fires, with the rank of special prosecutor, who shall carry out the following duties:*

*(a) carry out the proceedings referred to in Article Five to take part, directly or through instructions to representatives, in particularly important criminal prosecutions as assessed by the Prosecutor General's Office, relating to offences involving land use planning, the protection of historical heritage, natural resources and the environment, the protection of domestic flora, fauna and domestic animals, and forest fires;*

*(b) institute criminal prosecution in any type of proceedings, directly or through instructions to representatives, when the various environmental laws and rules so prescribe, holding the responsible parties to account as required;*

*(c) supervise and coordinate the activity of the specialist environmental units and obtain the appropriate reports, leading the network of environmental prosecutors by delegation for the Prosecutor General;*

*(d) coordinate the public prosecutor's offices on environmental matters and harmonise their operational standards, for which purpose he or she may propose to the Prosecutor General that the relevant instructions be issued and convene meetings of the public prosecutors who make up the specialist units as necessary;*

*(e) draw up a report each year on procedures followed and activities carried out by the Public Prosecutor's Office on environmental matters, and submit it to the Prosecutor General; the report shall be incorporated into the annual report produced by the Prosecutor General.*

*To facilitate adequate operation, he or she shall be allocated a unit of the Guardia Civil's Nature Protection Service, and also, as appropriate, the necessary personnel from the other law enforcement authorities with environmental competences, in accordance with Framework Law 2/1986 of 13 March 1986 on the law enforcement authorities.*

*Likewise, he or she may be allocated the professionals and technical experts necessary to provide permanent or ad hoc support. The Public Prosecutor's Office may draw on the support of forestry or environment officials of the relevant public administrations, within the duties legally assigned to those organisations.*

Since the establishment of the special unit, the number of specialist prosecutors has risen over the years to a total of 174 prosecutors, as stated in the 2016 annual report of the Public Prosecutor's Office.

Mention must be made of the existence of a specialized unit in Madrid and at local level that includes not only prosecutors but also police and technicians. In fact, members of the National Police and the Guardia Civil, as well as forestry officers, local police and MITECO, are assigned to the environmental unit of the Office of the Prosecutor General. The specialized unit consists of an Attached Unit of 8 persons (1 captain, 1 sergeant, 2 corporals and 4 agents, all of them from SEPRONA) and a Technical Unit of 9 persons (4 from MITECO, 1 from Guardia Civil, 2 from National Police, 1 from the Local Police of Madrid and 1 forestry officer). According to the information provided by the chief prosecutor, this unit has established a network throughout Spanish territory to assist them with any possible need. As the only unit that includes technicians, it sends staff to support all the prosecution offices in their investigations requiring expertise. Taking into consideration that this unit is the only one in Spain so composed, and that the number of persons dealing with technical issues is small, it seems inadequately staffed to cover all the territory.

The main tasks of the above unit include analysing complaints and maintaining direct contacts with the relevant delegated provincial public prosecutors on environment and town planning, with MITECO's authorities and departments and those of the Autonomous Communities and, where appropriate, with customs, port and airport authorities. It also produces reports for evaluation by public prosecutors with a view to their possible submission to the courts for the prosecution of ecological crimes. All this is laid down in the last paragraph of Article 22(2) of the organisational statute of the Public Prosecutor's Office.



There are no specific chambers / judges at the criminal courts responsible for environmental / waste crime.

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

The main challenges in the prosecution and penalising of waste crime are seen in cross-border cases by the Spanish authorities.

With international waste shipments, according to the Spanish authorities, it is difficult to definitively identify the perpetrator of the crime, between the owner of the waste and its actual recipient, as they usually use intermediaries, which makes investigation more difficult. Frequently, once the perpetrator has been identified, according to the Spanish authorities, he or she is outside Spanish territory, so active extradition procedures are launched if his or her whereabouts are known.

In the event of a conviction there can be difficulties collecting fines, since the funds are not held in Spain and inquiring about them presents problems.

However, the main challenge is that it is difficult for the court to interpret some concepts used in the crime description.

Some measures have been taken to strengthen capacity to prosecute and penalise waste crimes in Spain. First of all, the Criminal Code was amended in 2003, 2010 and 2015, and the Criminal Procedure Act was amended in 2015 with this aim. Secondly, the role of coordinating public prosecutor for the environment has been established, representing the Prosecutor General in this area, and environmental prosecutors' sections have been set up in all the provincial public prosecutor's offices in Spain, and the number of public prosecutors has been increased.

A good practice is the availability of laboratories of the National Toxicology and Forensic Science Institute (Ministry of Justice) or the Guardia Civil, which makes it possible to obtain fast and specialised responses to the technical questions posed by the investigators.

## 4.2. Law enforcement authorities

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

Framework Law 2/1986 of 13 March 1986 indicates that both the police forces of the Autonomous Communities and the police forces of the local authorities are involved in the maintenance of public security.

The national law enforcement authorities carrying out this role throughout Spain are the National Police and the Guardia Civil.

Article 11(1) of the Framework Law addresses the duties common to both bodies, one of which is: '*(g) to investigate offences in order to discover and arrest the suspected offenders, ascertain the instruments, effects and evidence of the offence and place them at the disposal of the competent judge or court, and to draw up the necessary technical and expert reports*', which under Article 11(3) can be carried out by both forces throughout the Spanish territory.

Investigation of waste crime falls within the competence of both National Police and Guardia Civil, both within the Ministry of the Interior, Article 12 of Framework Law 2/1986 addresses the specific duties of each force, among which Point B(e) of Article 12(1) lays down that one of the duties of the Guardia Civil is to '*ensure compliance with the provisions intended to preserve nature and the environment...*'.

## **National Police**

The National Police is competent for the public security in the capitals of the provinces and in the municipalities and urban areas determined by the Government (Art. 11.2.a) of the Organic Law 2/1986).

At regional and local level, approximately 64. 000 police officers of the National Police are serving all over the country. As the local units are in some cases small, there are specialist officers but usually no officers exclusively responsible for waste crime / environmental crime.

The central services of the National Police include the Central Investigation Department of the Criminal Police, whose responsibilities include investigating and prosecuting supra-territorial offences, especially crime related to drugs, organised economic, financial and technological crime, monitoring of gambling and cooperation with other countries' police.

To fulfil its remit, the Central Investigation Department of the Criminal Police is organised into a number of central units, all operating throughout Spain. One of these is the specialist and violent crime unit (UDEV), which in turn includes a consumer, environment and doping section that coordinates the activities of the 28 peripheral groups all over Spain and also those of the RE-LAB, a laboratory specialized for biological tasks.

That section has an Environment Group, responsible for investigating environment-related crimes, such as ecological crime related to waste management, environmental malfeasance, illegal tree-felling and trafficking in protected species, disturbance of the biological equilibrium, illegal hunting and fishing and mistreatment of animals, as well as for investigating criminal organisations and networks that perpetrate such crimes.

According to the information the evaluators obtained during the visit, this central unit consist of five experts, but counts on the support of many territorial units of the National Police, and handles approximately five complex cases (environmental crimes overall, not only waste crimes) per year . If needed, this group also collaborates with other specialized police Units at central level on investigations on money laundering or tax fraud, in order to get the adequate resources and provide with a comprehensive response to tackle environmental crimes in all the territory of Spain.

The National Police also deal with sampling and have signed operational protocols with other institutions for specific issues concerning environmental crimes. If they need specific expertise on environmental crimes they ask for the cooperation of the Autonomous Communities, acting as joint teams.

The National Police carry out three or four major investigations per year, but no precise data were provided to the team.

### **Guardia Civil**

The Guardia Civil is competent, for public security in the rest of the Spanish territory not assigned to the National Police and in the territorial waters (Art. 11.2.b) of the Organic Law 2/1986).

A nature protection service (SEPRONA) has been set up in the Guardia Civil, consisting of specialist officers trained to investigate environmental crime (including waste crime). In addition, point (g) of Article 4(6) of Royal Decree 952/2018 of 27 July 2018, on the basic organisational structure of the Ministry of the Interior, assigns SEPRONA the status of 'specific criminal police body of the Guardia Civil on environmental matters'.

Specifically, as regards environmental investigation, which includes waste crime, SEPRONA has central-level units with responsibility for the whole of Spain and units at branch organisation level with responsibility within the territorial bounds of their location. Thus, to prosecute waste crime, without prejudice to the actions of any Guardia Civil unit, at territorial level SEPRONA has nature protection units with competence for the province where they are located, while at the national level the central operational environmental unit (UCOMA) has competence for Spain as a whole, with the task of carrying out or supporting investigations whose scope goes beyond the boundaries of a single Autonomous Community or that require complex investigative techniques or procedures.

SEPRONA has at its disposal not only a central investigation unit and a central investigation laboratory available to all branches, but also 54 regional and local investigation units having in total 1884 specialist officers responsible exclusively for environmental protection tasks.

In addition to specialist personnel, it has technical/scientific equipment making it possible to carry out inspections promptly and with special tools for detecting irregularities in the environmental field generally and in the field of waste in particular. This makes possible targeted and effective counter-actions with outcomes of great significance.

SEPRONA has a multidisciplinary approach to waste crimes: as it is considered a complex criminal phenomenon, it undergoes thorough multidisciplinary analysis, based on an intelligence-led approach. Other factors beyond the traditional ones are taken into account, in particular financial flows, both as risk factors (objective selection, analysis of complex scenarios, etc.) and as evidence of financial crimes (revealing the structure of the criminal network, preventing organised crime organisations from obtaining money, and finally allowing payment in the event of civil liability). This approach is backed up by the possibility of using specialist SEPRONA personnel during inquiries into and analysis of financial crimes, capable of addressing most scenarios successfully. Where internal resources are not sufficient, collaboration with highly specialized units from the Guardia Civil is requested.

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

Investigative techniques in Spain appear to be advanced in the European context. The same techniques and tools are used in investigating waste crime as for other forms of organised crime: interception of communications, monitoring and electronic surveillance of the various targets or vehicles, computer analysis of devices, production of information and covert surveillance, and technical analysis of paperwork.

Since 2013 the use of undercover agents, which is a very important option for organised crime investigations, has also been permitted.

Police forces also have the special resources and organisation required to collect samples; this can very often be a decisive tool for waste crime investigations.

The availability of internal resources within the Guardia Civil and the National Police dedicated to forensic financial investigations and computerised analysis is also a very important resource for combating environmental crime and waste crime in particular.

Among these investigative tools, the more intrusive, in which questions of fundamental rights arise, are subject to prior authorisation by a court decision that is well founded and subject to appeal, in accordance with the provisions of the Criminal Procedure Act. Thus the investigating judge is the authority empowered to allow any intrusive police actions in which questions of fundamental rights arise; the police cannot proceed on their own discretion in such cases.

The problems arising with the use of these tools are the same as in investigating other types of crime.

Given the current trend for ever-increasing use of technological means in the perpetration of this type of crime, and always against an economic backdrop, since illegal profit is the ultimate aim, it is usual to use all the available resources of the organisation including of course forensics, financial and cyber-crime units.

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

The main strengths of Spain's investigative activities are the following:

- Environmental prosecutors sections have been established in all the provincial public prosecutor's offices in Spain.
- Specialization has been established within the involved authorities (SEPRONA, National Police, Customs Agency, environmental inspectors).

- Certain units of the Guardia Civil (UCOMA and some of SEPRONA's investigation units) and of the National Police have their own resources in forensics, financial analysis and computerised analysis, which allow them to fully investigate the case without having to ask for external support. In addition, SEPRONA itself can call on the support of any department of the Guardia Civil's forensics service, mainly chemical, environment, engineering and IT; and outside the Guardia Civil it can call on laboratories attached to the Ministry of Justice (toxicology) or to other ministries, Autonomous Communities and other bodies.
- The police forces have a multidisciplinary approach to specific criminal contexts. SEPRONA specifically has an intelligence-led approach.
- Many effective investigative methods (wire-tapping, financial investigations) are available.

The main obstacles are:

- There is a lack of shared specific data banks (concerning both waste transportation and linked companies, and police data banks, that would probably be of greater help if unified).
- The data concerning transboundary shipping (each regional authority has its own data bank concerning waste transportation within the EU) are excessively fragmented.
- There is an ever-increasing link between waste crime and organised crime, which entails the existence of complex financial networks with numerous intermediary legal persons, many current accounts and assets to be analysed, and complex money-laundering cycles, at both national and international level.
- There is a need for uniformity in waste identification and for document standardisation.
- There are difficulties with on-site waste inspection, making it necessary to conduct investigation via documents, and with the plethora of existing administrative rules on which the types of offence are based.
- One major problem regarding cross-border waste crime cases is obtaining information on cross-border waste shipments where Spain is a transit country or the destination country. The Spanish authorities explain these difficulties in terms of the complexity resulting from the number of entities involved in the various countries at international level and the lack of interconnection between databases of different judicial, police and customs institutions in Spain.

In the evaluators' view, some of the problems that the Spanish authorities encounter may result from the lack of an overall strategy in the fight against waste crime at national level. As there is neither a strategic document nor meaningful, informative integrated statistics, there exists – as a result – no reasonable basis for creating risk analyses and formulating detailed targets in order to create effective inspection plans, which can be carried out by appropriately trained staff.

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

Other national authorities involved in the prevention of and fight against waste crime are MITECO, the Autonomous Communities, the local authorities, or provincial councils where applicable, and Customs.

Article 12 of Law 22/2011 sets out the administrative competences in the administrative area as follows:

- The Council of Ministers approves the National Waste Management Framework Plan, on the basis of a proposal from the ministry responsible for environmental issues, now MITECO.
  
- The National State Administration, through MITECO, exercises the power of supervision and inspection and the power to impose penalties, within its area of competence. In addition, it is responsible for authorising shipments of waste to or from third countries which do not belong to the European Union and for performing the functions of inspection and penalty imposition arising from that shipment system, without prejudice to such cooperation as may be provided by the Autonomous Community in which the relevant site of operations is located. Furthermore, MITECO fulfils the functions of national authority in cases in which Spain is a transit state for purposes of the provisions of Article 53 of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.



It must be noted that, despite having the competences concerned, MITECO does not have enough capacity to fulfil them. Due to the lack of inspectors at a national level, the Ministry has drafted agreements with some regional authorities of the Autonomous Communities, which, by the time of the evaluation, were supposed to be signed before the end of the year 2018 .

- Under Article 12 of Law 22/2011, the Autonomous Communities are responsible for the authorising, supervision, inspection and imposition of penalties with respect to waste production and management activity and the granting of authorisations for waste shipments to or from European Union countries, which are governed by Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006, and for shipments within Spanish territory. They are also assigned the power of supervision and inspection and the power to impose penalties, within their area of competence.
- Local authorities, or provincial councils where applicable, are responsible for exercising the power of supervision and inspection and the power to impose penalties, within their area of competence.

In accordance with the provisions of the Union Customs Code (Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013), the Customs and Excise Department, within the National Agency for Tax Administration, is responsible *inter alia* for the protection of the environment, where appropriate in close cooperation with other authorities. It is responsible for facilitating and monitoring international trade and reducing the risks and threats. The Department has access to the Customs Supervision Area, a police-type service which plays its part in the fight against smuggling and which constitutes a criminal police and special administrative police entity.

In the event of an illegal waste shipment connected to the cross-border transfer of hazardous waste, the Customs and Excise Duties Department, through Customs Supervision, has the legal capacity to act, under the above-mentioned smuggling rules.

It must be noted that, in the majority of cases, Customs seek legal and technical support from the environmental authorities, since they do not have sufficient expertise in dealing with illegal waste. This, in the absence of immediate replies by environmental authorities, can lead to enormous costs. In fact, despite the fact that the costs for stopping a transport are passed on to the transporter, the latter can always request reimbursement of the costs if found not responsible for criminal or administrative illegal behaviour.

Whenever the Administration detects acts which may constitute waste crime, those acts must be brought to the attention of the Public Prosecutor's Office so that the appropriate action can be taken.

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

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

The national legal framework lays down a duty of cooperation between administrations within their respective areas of competence.

In the Ministry of the Interior, CITCO (Intelligence Centre against Terrorism and Organised Crime) is in charge of coordinating investigations by the security forces but limited to organised crime and terrorism. It uses an investigation recording system called SRI for the purpose, which manages and detects correlations of objective data in organised crime investigations being conducted by police services, in order subsequently to coordinate them and deal with them in an integrated way.

An important means of cooperation is the assignment of members of the National Police and the Guardia Civil, as well as forestry officers, local police and MITECO staff to the environment unit of the Office of the Prosecutor General. All this is laid down in the last paragraph of Article 22(2) of the organisational statute of the Public Prosecutor's Office (see question 18 below).

Notable examples of combined operations involving different police forces and directed by the Public Prosecutor's Office include Operation Rapiña.

Cooperation is also effected through direct contacts maintained by this unit with the relevant delegated provincial public prosecutors on environment and town planning, with MITECO's authorities and departments and those of the Autonomous Communities and, where appropriate, with customs, port and airport authorities.

Meanwhile, the Guardia Civil has the support of the other units and services for its investigations, including the Traffic Group for road checks, the Maritime Service for inspections at sea and the Fiscal Department for actions in ports and airports.

Examples of such actions include:

- Operation Tyson, carried out in the Interpol framework, which investigates irregularities in waste management at any stage of its processing.
- Operation TECUM, carried out in the Europol framework, which centralises investigation of criminal organisations trafficking in waste.

According to the information provided by the Spanish authorities, over 2018 a series of agreements will be launched on cooperation between different administrative and environmental authorities, customs and inspection services, in order to facilitate MITECO's work on monitoring and inspecting cross-border waste shipments:

- Framework cooperation agreement between the National Agency for Tax Administration and the Ministry for Ecological Transition on the inspection of waste shipments. This agreement aims to establish a general framework for cooperation between the AEAT, through the Customs and Excise Duties Department, and MITECO, through the Directorate-General for Biodiversity and Environmental Quality for the appropriate exercise of their respective powers to inspect cross-border waste shipments.

For this purpose, appropriate cooperation between their departments will be established, in order to guarantee optimum supervision of cross-border waste shipments, preventing the occurrence of adverse effects that may negatively affect human health, and of the environment, in accordance with the relevant legislation in force. The framework agreement will apply to inspections arising from compliance with the national inspection plan and the resulting annual programmes of waste shipments to and from third countries not belonging to the European Union.

- Operational procedure for cooperation between the Directorate-General of the Guardia Civil and MITECO's Directorate-General for Biodiversity and Environmental Quality, which was preceded by the Order published on 21 October 1997, and currently in force, on cooperation between the Ministry of the Environment (now MITECO) and the Ministry of the Interior, for the protection of nature and the environment. The purpose is to establish a general framework for cooperation between the Ministry of the Interior, through the Directorate-General of the Guardia Civil, and MITECO, through the Directorate-General for Biodiversity and Environmental Quality, for the appropriate exercise of their responsibilities regarding the inspection of waste shipments, and to supervise proper compliance with the waste management legislation in force at national level, in accordance with Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.
- MITECO inter-administration management delegation agreement with each Autonomous Community, for the carrying out of inspections of shipments to or from third countries in the Autonomous Community's territory. Through the signing of the management delegations between MITECO and each Autonomous Community, the latter will be assigned the task of carrying out certain actions in support of the inspection of waste coming from or going to third countries outside the EU, at the centres of activity within their respective territories, which may make such actions more effective.

There is a noteworthy working group in the waste field that brings together representatives of MITECO, the Autonomous Communities and the Guardia Civil, with the aim of facilitating mutual support and coordination. The Working Party on Shipments and Inspection operates within the framework of the Committee for Waste Coordination and meets annually.

It is composed of experts in inspection and shipments from the Autonomous Communities. Staff from the Guardia Civil and Customs also participates in the meetings. Among other matters, the agreement concerning inspections of export and import of waste is dealt with in this group.

There is also another group, the Working Party on Standardization and Electronic Processing, in which the Autonomous Communities experts on waste are gathered to deal with the ongoing work with the e-SIR database. This group meets more often.

In 2017 the meeting was held on 15 November, dealing with the following topics:

- Summary of activities in 2017
- Presentation of the Tyson report by SEPRONA (Guardia Civil's nature protection service)
- Situation of the Autonomous Communities' inspection plans
- Presentation of the annual national inspection programme
- Management delegation agreement with the Autonomous Communities
- Work proposed for 2018 (MITECO and Autonomous Communities)
- Other topics of interest.

A further instrument for enhancing cooperation is the Environmental Inspection Network (**REDIA**), made up of the heads of the environmental inspectorates of the public administrations (Autonomous Communities and National State Administration), the purpose of which is to help protect the environment by constantly developing and improving the environmental inspectorates.

With a view to improving cooperation among the administrative authorities, Article 13 of Law 22/2011 sets up the **Comisión de coordinación en materia de residuos** (Committee for Waste Coordination):

- 1. The Committee for Waste Coordination, attached to the Ministry of the Environment and Rural and Marine Affairs (MARM), shall be established as a body for technical cooperation and partnership between the competent administrations on waste issues.*
- 2. This Committee shall perform the following tasks: (a) boost cooperation and partnership between the government departments with competence in waste matters; (b) draw up reports, opinions and studies requested of it by its members or at its own initiative; (c) draw up recommendations, inter alia, on the sustainability, effectiveness and efficiency of waste flow management systems, recycling quality requirements and labelling; (d) analyse the application of waste regulations and their repercussions; (e) analyse and assess the information available on waste, with the aim of keeping knowledge of Spain's waste situation in the European Union context up to date and available to the administrative authorities. In particular, information on packaging and packaging waste shall be analysed and appropriate recommendations drawn up in order to prevent the generation of packaging waste and contribute to more efficient management thereof; (f) exercise the responsibilities conferred upon it by this Law in relation to sub-products, loss of end-of-waste status, reclassification of waste and the receipt of shipment notifications; (g) analyse the justifications for changes in the order of priorities in the waste hierarchy based on a life-cycle approach; (h) any other task of information exchange or advice on questions relating to the matters covered by this Law that could be entrusted to it by the Ministry of the Environment and Rural and Marine Affairs or the Autonomous Communities; (i) the tasks conferred upon it by this Law or others; (j) exchange information and make recommendations on the application of provisions concerning the authorisations relating to collective systems for the producer's broadened responsibility; (k) prior to drawing up the waste management plans, including the framework National Plan, propose contents and guidelines.*

3. *The Committee for Waste Coordination shall be chaired by the Director-General for Environmental Quality and Assessment, and one of the representatives of the Autonomous Communities shall be vice-chair. By order of the Minister for the Environment and Rural and Marine Affairs, the 30 members making up the Committee shall be appointed, including one member designated by each of the Autonomous Communities, one member by each of the cities of Ceuta and Melilla, three members of the local authorities designated by the most well-established national association and eight members representing the ministerial departments, or bodies attached to them, with responsibilities having a bearing on this subject, at Deputy Director-General or equivalent level. An alternate shall be designated for each of the Committee members. An official of the Ministry of the Environment and Rural and Marine Affairs shall act as secretary, with the right to speak but not to vote.*

4. *The Committee for Waste Coordination may set up specialised working parties to provide support for the performance of the tasks conferred by this Law. Technicians or experts in the subject concerned, originating from the public sector, private sector or civil society, may take part in these working parties.*

5. *The Commission shall approve its operating rules, which shall be adapted to the provisions governing collegiate bodies contained in Chapter II of Title II of Law 30/1992 of 26 November 1992 on 'Legal System of Public Administrations and of the Common Administrative Procedure'. (\*)*

*\* Currently regulated in Section 3 'Collegiate bodies of the different public administrations' of Chapter II, Introduction, of Law 40/2015 of 1 October 2015 on 'Legal System of the Public Sector'.*

The Guardia Civil takes part in both the above-mentioned Committee for Waste Coordination and in the REDIA Network (also referred to above) in which representatives of the departments of environmental inspectors from all the Autonomous Communities meet. Furthermore, the **Centro de Inteligencia contra el Terrorismo y el Crimen Organizado** (Intelligence Centre against Counter-Terrorism and Organised Crime - CITCO) is the EMPACT national coordinator and also collaborates with the Customs and Excise Duties Department.

Currently REDIA is working on developing a protocol for cross-border waste shipment inspections.

Within the area of the Ministry's competence, different IT platforms and tools are being developed, which may be used by the officers involved in the chain of consumption, production and recycling, with the aim of monitoring waste prevention and management. The future launching of e-SIR (Electronic Waste Information System), which will incorporate *inter alia* the production register, waste shipment procedures and communications between Autonomous Communities, should improve the transparency and traceability of waste, help increase harmonisation of shipments, and facilitate control of waste movements made by economic operators within Spain. The e-SIR system will also have a module in which cross-border waste shipments to third countries will be registered. This module will connect to the IT systems of the National Agency for Tax Administration, the Guardia Civil and the Autonomous Communities, with a view to facilitating communication between the different administrations, thus contributing to improved traceability of waste shipments and increased supervision of movements.

According to what the evaluation team was told, no practical obstacles have been encountered by the Spanish authorities within the field of competence of the national law enforcement authorities, although the dispersed administrative responsibility for waste may slow down the process of obtaining information. Nor have any obstacles been detected within the field of competence of MITECO.

However, the evaluation team observes that this statement seems to be inconsistent with the problems identified in relation to investigations (see 4.2.3) which – according to the Spanish authorities - are caused partly by *'the lack of interconnection between databases of different judicial, police and customs institutions in Spain'*.

What comes to light as critical is the information cluster, which is at present fragmented and uneven, and fails to give an overall view of the waste landscape. The possibility of exchanging information in an investigative context, evident and exercised even between the National Police and the Guardia Civil, cannot be compared to the sharing of a single updated information supply, such as the police force data bank.



From the point of view of prevention, in addition to data from single authorities, which appear not to be particularly focused on waste traffic, there is not an exhaustive information supply and — also important — it is never a real-time supply, more or less formal requests being necessary for information exchange.

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

The lack of a unified data base concerning waste is a potentially limiting factor. Information is not organised in a standardised way, instead being organised according to the needs of each authority, making it hard to use it for purposes other than originally conceived.

Because of the above, according to the Spanish authorities, it is not easy to identify all the information available at each level of administration. Nevertheless, once the source of information is identified, cooperation with those authorities is assessed as generally satisfactory by the stakeholders. Spanish authorities considered access to data adequate and effected in accordance with the provisions of the Framework Law on Protection of Citizens' Security and the Framework Law on Protection of Personal Data.

Nonetheless, a particular effort by the Guardia Civil on the study of the waste phenomenon under different aspects was noted, as already covered in point 4.4.

It must also be pointed out that collaboration requests generally consistently receive positive responses, leading to widespread cooperation that limits data fragmentation.

Concerning the exchange of information between the relevant authorities on waste / waste crime, the Spanish authorities currently make efforts to facilitate exchange of and access to information.

Currently, within the area of MITECO's competence, different IT platforms and tools are being developed, which may be used in the future by the officers involved in the chain of consumption, production and recycling, with the aim of monitoring waste prevention and management.

As mentioned in the previous paragraph, the future launching of e-SIR (Electronic Waste Information System) should improve the transparency and traceability of waste, help increase harmonisation of shipments, and facilitate control of waste movements by economic operators within Spain.

The national law enforcement authorities, particularly SEPRONA, the Customs and the Autonomous Communities will also have access to e-SIR once it is operational.

The same channels are used for all forms of organised crime; there is currently no specific focal point for waste.

#### **4.5. Training**

No single body is responsible for providing common training to all the institutions' staff on environmental crime. Each institution is responsible for training its own staff. However, the representatives of each body doing work related to this type of crime can attend training organised by another body. The Subdirectorate-General for Waste, within MITECO's Directorate-General for Biodiversity and Environmental Quality, the Autonomous Communities, SEPRONA and the environmental unit of the Office of the Prosecutor General are the bodies responsible for offering training on environmental crime and more specifically on waste crime.

The **Guardia Civil's** SEPRONA participates in the training courses administered by CEPOL, not only as students but also as trainers. For members of the Guardia Civil, in addition to individual actions implemented by some forces through their specific training plans, training on waste takes the form of participation in conferences, talks and seminars organised by the competent administrative authorities (MITECO and the Autonomous Communities), and private-sector entities.

As regards general training on environmental crime, SEPRONA, established in 1988, is highly specialised; it has been and continues to be the source of sound, specific training in this area: countless different types of training courses are provided by the Guardia Civil to specialists in this field.

Recently, other courses, designed to provide specialist training to staff in much more specific functions within environmental crime investigation (on intelligence analysis, financial investigation, obtaining open-source information, etc.) have been added to the courses that are already available (for teams, for patrols, an advanced course, etc.).

In 2016, a specific course for SEPRONA staff on the theory and practice of waste management was held and coordinated by the Subdirectorate-General for Waste, within MITECO'S Directorate-General for Biodiversity and Environmental Quality.

In 2018, training on inspections will continue in cooperation with SEPRONA, with the members of the Working Party on Shipments and Inspection and in the framework of REDIA, since this constitutes part of the agreements reached in the framework of the cooperation established with the Guardia Civil by the Order published on 21 October 1997 on cooperation between the Ministry of the Environment (now MITECO) and the Ministry of the Interior, for the protection of nature and the environment.

With regard to members of the Guardia Civil, in addition to individual actions implemented by some forces through their specific training plans, training on waste takes the form of participation in conferences, talks and seminars organised by the competent administrative authorities (MITECO and the Autonomous Communities), and private sector entities.

The frequency and target audience of each of these courses varies greatly: some are held annually, others on a one-off basis, and some are held several times each year. Equally, the target audiences range in type from specific agents for the more specialist and costly training courses (financial investigation, for example), to dozens or even hundreds of professionals each year for courses in other areas.

In the sphere of **customs administration**, there is a training module on environmental crime for probationer officials.

The **General Council of the Judiciary** offers general training in various fields where these are requested by the judges themselves. Since 2014, environmental issues have been included as a subject area in the continuous training provided to members of the legal profession. However, no specific training has been provided on waste crimes. In fact, in 2016 and 2017 the following activities were organised:

- Event on environmental crimes. Environmental liability. Criminal and administrative aspects (April 2016 and May 2017).
- Town planning and protected natural areas (May 2016 and April 2017).
- Residential course on the environment: Planning for the prevention of forest fires and floods (October 2016 and October 2017).

Decentralised training courses are also available: the Superior Court of Justice of each Autonomous Community decides on the training courses to offer its judges.

The **Centro de Estudios Jurídicos** (CEJ - Centre for Legal Studies) is an autonomous body accountable to the Ministry of Justice, which organises targeted courses and training for members of the public prosecution services, judicial personnel, State Legal Department personnel, and specialist courses for the criminal police within the national security forces and bodies. It administers training courses on environmental crimes. However, only a few of them deal specifically with waste crime, as can be seen from the training activities listed below.

Training implemented regularly:

- (a) Included in the specialised training courses provided to the Criminal Police, and particularly to the Guardia Civil, is a one-hour talk (around six are held annually) on 'Crimes against the environment and historical or cultural heritage'.
- (b) Each year training is provided to the public prosecution services in the context of the annual conference for public prosecutors specialising in the environment and town planning.

- (c) In the targeted courses in the selection process for the public prosecution services, the special prosecutor for the Environment gives a one-hour talk to probationer public prosecutors and there is a visit to the Environment Department at the National Institute of Toxicology and Forensic Sciences (presentation of evidence and reports).

Training implemented in 2016 and 2017:

- (a) Thirty public prosecutors attended the 'Mistreatment of animals' activity organised in 2016.
- (b) Thirty-five public prosecutors attended the 'Pollution and waste' activity organised in 2017.
- (c) In 2016, public prosecutors participated in the following international activities: 'How to enforce EU legislation on biodiversity and wildlife trafficking', held in Tréveris with the participation of one public prosecutor, and the 'Workshop on how to handle court proceedings invoking non-compliance with EU waste law' held in Thessaloniki with the participation of four public prosecutors.
- (d) In 2016 the international activity 'How to enforce EU legislation on biodiversity in wildlife trafficking' (CEJ, Madrid), attracted 40 international participants (judges and criminal prosecutors).
- (e) As part of the special course of the 56th class of the public prosecution services, held in 2017, probationer public prosecutors participated in two one-hour talks with the Director of Public Prosecutions from the Technical Unit of the Coordinating Prosecutor's Office for the Environment and Town Planning, and a representative of the State Legal Department specialising in that area.

Training implemented in 2018:

- (a) In April the activity 'The new environmental crimes. Typology and analysis of legislation and case law. Practical experiences of investigation' was held.
- (b) MITECO's National Environmental Education Centre (CENEAM) in Valsaín (Segovia) has also administered courses to public prosecutors on an annual basis since 2002.

#### 4.6. Conclusions

- In the evaluators' view, the 'Public Prosecutor's Office for the protection of environment and land planning', composed not only of prosecutors but also members of the police and technicians, could have great potential to fight waste crime and as such it is to be considered as a best practice. Nevertheless, in the evaluators' view, Spain should consider enhancing the capacity of the public prosecutor's office in relation to the protection of the environment and land planning, either by appointing more technicians at central level or by including technical staff in the local specialised prosecution office.
- The Prosecution Office did not bring any waste crime cases to the attention of the evaluators and it is evident that priority is given to town-planning crimes, as they are considered to have more connection to serious crimes such as corruption. Nevertheless, as waste crimes are considered 'control crimes' - a crime phenomenon which a law enforcement agency must actively look at and search for, otherwise it might not be detected - and could themselves be related to serious crimes, this may also have its cause in the number and quality of inspections.
- There are no specific chambers / judges at the criminal courts responsible for environmental/ waste crime. Greater specialisation by criminal judges regarding environmental crime in general and waste crime in particular is assessed to be desirable by the Spanish authorities (especially by the General Council of the Judiciary), and the evaluation team agree with this assessment.
- Enforcement of environmental legislation is within the competence of the Autonomous Communities, local authorities, the National Police, Guardia Civil and the Customs.

- The Police Corps have established specialised units: SEPRONA for the Guardia Civil, TEDAX-NRBQ for the National Police and SEDEX-NRBQ for Guardia Civil. This is a good practice, considering that the personnel deployed has received specific training and that such specialisation means that environmental crimes will be properly and efficiently dealt with.
- Crime analysis concerning waste trafficking with a multidisciplinary approach to waste trafficking is in general handled well by SEPRONA, *inter alia* because of the large number of police officers deployed and the specific data collected. The analysis work carried out by Customs is remarkable and will be implemented in relation to waste.
- According to the Spanish authorities, necessary information can be exchanged between the authorities concerned when required, and cooperation between the authorities is generally satisfactory. However, the many different authorities with competences in the area of waste management and waste transportation/shipments complicate enforcement, coordination of inspections and access to information. The dispersed administrative responsibility for waste may slow down the process of obtaining information. For these reasons, cooperation and coordination between administrations concerned are essential. The development of the e-SIR database will probably improve this situation, since all law enforcement authorities, including SEPRONA, the Customs and the Autonomous Communities will have access to the system once it is operational.
- The planned signing of agreements between the Ministry and the Autonomous Communities, Customs and the Guardia Civil will improve capabilities with respect to inspection and detection of illegal exporting and importing of waste. These agreements will help the Ministry to fulfil its responsibilities as competent authority for shipments of waste to and from non-EU countries.
- The existence of a formal working group for authorities concerned with waste issues, the Committee for Waste Coordination, including the Working Party on Shipments and Inspection, is a best practice.

- The informal network of environmental inspectors of regional authorities (REDIA) is also a best practice.
- Information is not collected in an exhaustive and homogeneous manner, making analysis of the phenomenon of waste crime rather difficult.
- In the evaluators' view, some of the problems that the Spanish authorities detected regarding the successful investigation of waste crime may result from the lack of an overall strategy in the fight against waste crime at national level. As there is neither a strategic document nor meaningful, informative integrated statistics, there is no reasonable basis for creating risk analyses and formulating detailed targets in order to create effective inspection plans which can be carried out by appropriately trained staff.
- Even if in theory training could involve staff from different authorities, judges and prosecutors do not invite other institutions to attend their training activities. In the experts' view, regular joint training for judges, prosecutors, police and administrative units are essential, as such training allow not only exchanges of experience but also shared learning on the same issue seen from different perspectives. To invite members of other institutions as lecturers would partly address this idea and would be a step in the right direction.
- The training of customs officers on waste-related issues should be improved (at the moment they need the cooperation of other agencies to assess whether a good is waste or not).



## 5. LEGAL ASPECTS

### 5.1. Substantive criminal law

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

Constitutionally there is provision not only for protecting the environment but also for penalising the party responsible. Article 45(3) of the Spanish Constitution not only lays down the obligation to repair the damage caused by those who violate environment-protecting provisions but also provides expressively for criminal or administrative penalties.

The legislation in place in Spain regarding waste crime is found in the Spanish Criminal Code.

Waste crimes are defined in Articles 325 to 329 of the Criminal Code.

Title XVI - On felonies concerning organisation of the territory and town planning, protection of the historical heritage and the environment

CHAPTER III - On felonies against natural resources and the environment

Article 325:

*1. Anyone who, in breach of the laws or other general provisions to protect the environment, causes or whose actions directly or indirectly give rise to emissions, discharges, radiation, extraction or excavation, silting, noise, vibrations, injections or deposits in the atmosphere, soil, subsoil, or inland, marine or ground waters, including the high seas and even affecting cross-border areas, or who undertakes water abstraction which, either individually or in combination with others, causes or is likely to cause substantial damage to the quality of air, soil or water, or to animals or plants, shall be liable to a term of imprisonment of between six months and two years, a fine payable over a period of ten to fourteen months and disqualification from exercising a profession or holding office for a period ranging from one to two years.*

*2. If the above practices, either individually or in combination with others, are likely to seriously upset the balance of natural systems, a term of imprisonment of between two and five years, a fine payable over a period of eight to twenty-four months and disqualification from exercising a profession or holding office for a period ranging from one to three years shall be applied.*

*If there is a risk of serious damage to human health, the term of imprisonment shall be in the upper half of the range, up to the maximum.*

#### Article 326:

*1. The penalties provided for in the previous Article shall be applied, in their respective cases, to anyone who, in breach of the laws or other general provisions, collects, transports, recovers, converts, disposes of or makes use of waste, or fails to adequately monitor or supervise such activities, such that they cause or are likely to cause substantial damage to the quality of air, soil or water, or to animals or plants, death or serious injury to any person, or are likely to seriously upset the balance of natural systems.*

*2. Anyone who, other than in the case referred to in the previous paragraph, ships a significant quantity of waste, either in a single shipment or in several shipments that appear to be linked, in any of the cases referred to under European Union waste shipment law, shall be liable to a term of imprisonment of between three months and one year, or a fine payable over a period of six to eighteen months and disqualification from exercising a profession or holding office for a period ranging from three months to one year.*

#### Article 326 bis:

*The penalties provided for in Article 325 shall be applied, in their respective cases, to anyone who, in breach of the laws or other general provisions, operates a plant in which a dangerous activity is carried out, or in which hazardous substances or preparations are stored or used, such that they cause or are likely to cause substantial damage to the quality of air, soil or water, or to animals or plants, death or serious injury to any person, or are likely to seriously upset the balance of natural systems.*

Article 327:

*The acts referred to in the three previous Articles shall be punishable by a penalty of a higher degree, without prejudice to those that may be covered by other provisions under this Code, when in the commission of any of the acts described in the previous Article any of the following circumstances arises:*

- (a) the industry or activity is operating clandestinely, without having obtained the required administrative authorisation or approval of its installations;*
- (b) express orders given by the administrative authority to correct or suspend the activities described in the previous Article have been disobeyed;*
- (c) information on the environmental aspects of the activity have been falsified or concealed;*
- (d) the administration's inspection work has been obstructed;*
- (e) a risk of irreversible or disastrous deterioration has occurred;*
- (f) water has been extracted illegally during a period of restrictions.*

Article 328:

*When, pursuant to the provisions of Article 31 bis, a legal person is responsible for the offences listed in this Chapter, they shall be liable to the following penalties:*

- (a) a fine payable over a period of one to three years, or double to quadruple the damages caused where the resulting amount is higher, if the crime committed by the natural person carries a penalty of more than two years' imprisonment;*
- (b) a fine payable over a period of six months to two years, or double to triple the damages caused if the resulting amount is higher, in all other cases.*

*Under the rules established in Article 66 bis, judges and courts may also apply the penalties listed in points (b) to (g) of Article 33(7).*

Article 329:

*1. Any authority or official who has knowingly permitted the award of clearly illegal licences authorising the operation of the polluting industries or activities referred to in the previous Articles, or in their inspections has ignored an infringement of the laws or general regulatory provisions governing them, or has failed to carry out mandatory inspections shall be liable to the penalty laid down in Article 404 of this Code in addition to a term of imprisonment of between six months and three years and a fine payable over a period of eight to twenty-four months.*

*2. Any authority or official who individually or as a member of a collegiate body has approved or voted in favour of this award in full knowledge of its unjust nature shall be liable to the same penalties.*

The common provisions laid down in Articles 338 to 340 also apply:

Article 338:

*Where the practices defined under this Title affect a protected natural area, penalties of a higher degree than those indicated shall be applied.*

Article 339:

*The judges or courts shall order the adoption, at the perpetrator's expense, of the necessary measures aimed at restoring the ecological balance disturbed, as well as any other precautionary measures required to protect the assets safeguarded under this Title.*

Article 340:

*If an offender who is guilty of any of the acts defined under this Title has voluntarily repaired the damage caused, the judges or courts shall apply a penalty of a lower degree than those indicated.*

Furthermore, Framework Law 12/1995 of 12 December 1995 on the suppression of smuggling also applies to the illegal shipment of waste.

Administrative offences are covered under Chapter II of Title VII of Law 22/2011 of 28 July 2011 on waste and contaminated soil.

Specifically, Article 46 thereof defines the offences, distinguishing between very serious, serious and minor, which will incur the imposition of some or all of the penalties set out in Article 47.

Article 48 sets out the level of penalties, while Article 53 lays down the provisional measures that the competent court may adopt once the process of imposing penalties has been initiated.

With regard to damage repair and compensation, Article 54 states that, without prejudice to any potential penalties, the offender is required to restore the disrupted situation to its original state, and to pay compensation for the damage and detriment caused.

Article 55 provides that if the offenders do not provide for restoration or compensation in accordance with the provisions of Article 54, and once the deadline indicated in the corresponding demand has expired, the investigating administration may order the application of coercive fines or subsidiary enforcement.

The relation between the systems of criminal and administrative penalties is governed [...] by Article 52 of Law 22/2011, which provides that:

- 1. No penalty may be imposed for acts which have already been the object of a criminal or administrative penalty, where subject, act and basis are assessed as identical.*
- 2. Where an alleged offending act may constitute an offence or misdemeanour, the incriminating part shall be passed to the Public Prosecutor's Office. The process of imposing penalties shall be suspended until the judicial authority has handed down a final judgment that closes the case or has dismissed or closed the case or the file is returned by the Public Prosecutor's Office. If no criminal offence or misdemeanour is deemed to have taken place, the competent administrative authority shall continue with the penalty proceedings. The acts declared as established in the final court judgment shall be binding on the administrative body.*
- 3. Where a single act constitutes two or more infringements under this Law, and any other applicable laws, the most serious of the applicable penalties shall be imposed on the perpetrator.*

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

Administrative offences are covered under Chapter II of Title VII of Law 22/2011 of 28 July 2011 on waste and contaminated soil.

Specifically, Article 46 thereof defines the offences, distinguishing between very serious, serious and minor offences, which will incur the imposition of some or all of the penalties set out in Article 47.

Article 48 sets out the level of penalties, while Article 53 lays down the provisional measures that the competent court may adopt once the process of imposing penalties has been initiated.

With regard to damage repair and compensation, Article 54 states that, without prejudice to any potential penalties, the offender is required to restore the disrupted situation to its original state, and to pay compensation for the damage and detriment caused.

Article 55 provides that if the offenders do not provide for restoration or compensation in accordance with the provisions of Article 54, and once the deadline indicated in the corresponding demand has expired, the investigating administration may order the application of coercive fines or subsidiary enforcement.

Other national rules relevant in the area of waste crime are Law 11/2012 of 19 December 2012 on urgent environmental measures and Law 26/2007 of 23 October 2007 on environmental responsibility.

In addition, the following national plans and programmes are also to be considered rules relevant in the sector.

- National Waste Prevention Programme 2014-2020
- National Framework Plan for Waste Management (PEMAR) 2016-2022
- National Inspection Plan on cross-border shipments of waste 2017-2019

The plenary session of the criminal division of the Supreme Court can adopt non-judicial agreements on environmental matters, which are not binding but which can fulfil an auxiliary function as guidelines in the investigation and prosecution of this kind of offence.

In addition, Circular 7/2011 of the Office of the Prosecutor General on criteria for the specialist action unit of the Public Prosecutor's Office for operations concerning the environment and town planning provides guidance for action and for interpreting such offences, for public prosecutors specialising in the subject.

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

The criteria for determining the seriousness of waste crime are governed by Article 327 of the Criminal Code, which provides that the acts referred to in Articles 325, 326 and 326 bis are punishable with a more severe penalty, when any of the acts described in the preceding article is committed in combination with any of the following circumstances:

- (a) the industry or activity is operating clandestinely, without having obtained the required administrative authorisation or approval of its installations;
- (b) express orders given by the administrative authority to correct or suspend the activities described in the preceding article have been disobeyed;
- (c) information on the environmental aspects of the activity have been falsified or concealed;
- (d) the administration's inspection work has been obstructed;
- (e) a risk of irreversible or disastrous deterioration has occurred;
- (f) water has been extracted illegally during a period of restrictions.

As to the concept of 'substantial damage' referred to in Directive 2008/99/EU, it has been adopted verbatim in Article 326, as mentioned above, since the reform of the Criminal Code by Organic Law 1/2015 of 30 March 2015. As confirmed by scholarship and case law, both the notion of 'substantial damage' and that of 'serious risk' involve an element of evaluation to be interpreted by the courts. The case law of the Supreme Court has attempted to outline that element, stating that *'semantically, "serious" means "which causes or may cause significant harmful effects"'* (judgment of the Supreme Court (hereinafter JSC) of 30 July 2004, JSC of 13 February 2008, JSC of 8 November 2011).

In any event, the unavoidable evaluation must take into account that the concept of danger has two essential components: probability and negative nature of a possible outcome. Seriousness therefore has to be computed from both components considered together. This implies excluding cases involving outcomes that are merely possible or unlikely and also those which if they occurred would affect the legal interest concerned only insignificantly.

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

The Spanish authorities report that they have encountered cases showing links between waste crime and other forms of serious criminal offences.

Some recent investigations (e.g. Operations WASTE, ROTAMM and REGUMATO) have revealed the existence of organised crime groups that typically commit offences related to this kind of organised crime, such as money laundering, falsification and tax fraud.

Furthermore, the link between waste crime and corruption is becoming increasingly clear, as the majority of waste proceedings and formalities require administrative authorisation, which leaves the door open to malfeasance, falsification, influence peddling and bribery. Operation REGUMATO exposed the link between corruption and waste crime.



Mention should also be made of an operation concerning a criminal organisation involved in stealing catalytic converters from vehicles before subsequently selling them on at recycling centres, as well as various international collaborations on criminal organisations involved in the illegal trafficking of electrical and electronic waste.

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

According to Spanish legislation, NGOs do not have a specific role differing from the role of every citizen.

Article 125 of the Constitution recognises popular action: 'Citizens may engage in popular action and take part in the administration of justice through the institution of the jury, in the manner and with respect to those criminal trials as may be determined by the law, as well as in customary and traditional courts.'

Similarly, Article 101 of the Criminal Procedure Act provides that: '*Criminal prosecution is public. Any Spanish citizen may participate in it in compliance with the provisions of the Law*'. Under Article 259 of the Criminal Procedure Act, any natural or legal person may lodge a complaint.

Furthermore, in Spain, civil prosecution for the liability incurred for the offence is prosecuted along with criminal liability, in accordance with Articles 100 and 110 of the Criminal Procedure Act. If a civil prosecution is not brought by the injured party, it is brought by the Public Prosecutor's Office, unless expressly waived by the injured party (Article 105 of the Criminal Procedure Act).

Provision is also made for class action by administrative procedure under Law 27/2006 of 18 July 2006, which governs the rights of access to information, public participation and access to justice with respect to environmental matters. For legal persons, the Law lays down a twofold requirement for such an action: it may be brought by non-profit-making legal persons (Articles 22 and 23) such as associations and foundations, and in relation to infringements of environmental rules on specific matters such as noise pollution, soil contamination, atmospheric emissions, waste management, water protection and matters subject to environmental impact assessment (Article 18).

NGOs seem to be proactive in the monitoring possible illegal activities and reporting to the competent Authorities of environmental crimes, and there is also significant involvement in training and common projects (as in the Birdlife case).

As mentioned by the two NGO representatives and confirmed by the Spanish authorities, NGOs do not have the right to be informed of the results of a complaint / report if the case has not been brought to the court but has been dropped. According to the NGO representatives, NGOs suffer from a lack of information and feedback regarding the results of their complaints. In most cases they are – according to their statements - not informed whether their reports lead to investigations nor of the results of any such investigations. The representatives of SEPRONA confirmed that there is no 'formal' information provided to the NGOs which reported the case.

NGOs conduct formal cooperation with Guardia Civil (SEPRONA) and offer training courses for investigations to police and prosecutors.

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

### *5.2.1. Difficulties encountered with regard to the admissibility of evidence*

No specific difficulties were reported by the Spanish authorities with regard to the admissibility of evidence, thanks to the existence of a technical unit for assistance and advice on technical and scientific matters attached to the coordinating public prosecutor for the environment as per Article 20(2) of the organisational statute of the Office of the Public Prosecutor. This technical unit is at the disposal of the specialist public prosecutors throughout Spain and even takes responsibility for preparing the expert reports ordered directly by the courts.

This solves the main difficulty in acquiring evidence, i.e. the need to have a technically qualified expert who is completely impartial in order to confirm that the conduct under investigation is in keeping with or capable of producing 'substantial damage' or a 'serious risk'.

However, problems arise with regard to the capacity of the technical unit, since it consists of eight experts, not a sufficient number to meet the needs of the whole Spanish territory.

It can at times be difficult to identify the number and precise identity of the injured parties in order to inform them of their right to bring criminal or civil actions.

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

Article 127 of the Criminal Code provides in general for the mandatory forfeiture of all illegal assets as an ancillary consequence of the crime:

- 1. All penalties imposed for an intentional crime shall lead to loss of the assets obtained therefrom and of the goods, means or instruments with which they were prepared or executed, as well as the gains derived from the crime, whatever transformations they may have undergone.*
- 2. In cases in which the law provides for the imposition of a custodial sentence for more than one year for committing a crime resulting from imprudent conduct, the judge or court of law may order the loss of the assets obtained thereby and of the goods, means or instruments with which it was prepared or executed, as well as the gains derived from the crime, whatever transformations they may have undergone.*
- 3. If, for any reason, it is not possible to seize the goods indicated in the preceding paragraphs of this Article, the forfeiture of other assets in a quantity corresponding to their economic value and to that of the gains obtained from those assets shall be ordered. The same procedure shall be followed if the forfeiture of certain goods, assets or gains is ordered, but their value is lower than their value at the time of purchase'.*

Similarly, Article 127 ter allows the judge to order seizure, but without a conviction, if proof of the illegal assets is demonstrated in adversarial proceedings other than criminal proceedings and the legal requirements are met. Article 127 quater of the Criminal Code extends this to goods, assets and gains derived from illegal activity.

Article 127 septies authorises the judge, by means of an order, to require the forfeiture of other goods, including goods of illegal origin, that belong to those criminally liable for the offence, to a value equivalent to the part of the seizure not implemented.

Article 129 provides for the adoption of interim measures against the party suspected of having criminal or civil liability, when that party is a legal person, as both a precautionary and definitive measure. Such measures may include the temporary closure of premises or establishments, suspension of corporate activities and judicial intervention.

Law 41/2015 of 5 October 2015 amending the Criminal Procedure Act to speed up the criminal justice system and strengthen procedural guarantees puts in place a separate confiscation procedure which allows for the deprivation of ownership of goods deriving from the offence, despite the fact that the perpetrator cannot be judged.

Furthermore, special penalties may be imposed in connection with the ban on exercising a certain professional activity related to the nature of the offence committed or of the administrative fine. Finally, under subsidiary civil liability, payment for any damage or detriment generated as a result of the offence may be ordered.

At administrative level, Articles 53 et seq. of Law 22/2011 set out the provisional measures and the obligation to restore the disrupted situation, without prejudice to the penalty that may be imposed and the coercive fines and subsidiary enforcement.

The main provisional measures are: (a) correction, security or control measures to prevent the damage from continuing; (b) sealing of machinery, equipment or vehicles; (c) temporary closure, in part or in full, of the establishment; (d) temporary suspension by the undertaking of authorisation to perform an activity.

Without prejudice to the penalty that may be imposed, the offender will be required to restore the disrupted situation to its original state, and to pay compensation for the damage and detriment caused, which may be determined by the competent body, which, in this case, must notify the offender to his or her satisfaction within the set deadline.

In the case of environmental damage, the offender will be required to pay damages under the terms of Law 26/2007 of 23 October 2007 on Environmental Liability.

If the offenders do not provide for restoration or compensation in accordance with the provisions of Article 54, and once the deadline indicated in the corresponding demand has expired, the investigating administration may order coercive fines to be imposed or subsidiary enforcement. The total of each of the coercive fines will not exceed, as appropriate, one third of the fine established for the offence committed.

Similarly, in such cases and if the operations to clean and recover contaminated soil are not carried out, subsidiary enforcement may take place on behalf of and at the expense of the offender.

Finally, provision is also made for the bodies exercising the power to impose penalties, if they consider that there are reasons of public interest, to order the publication, in the corresponding Official Gazette and through the social media they consider appropriate, of the penalties imposed for committing serious and very serious offences, and the surname and first name or company name of the natural or legal persons liable, once those penalties have been finalised. However, according to the Spanish authorities, this power has never been used by the administrative authorities, and only in a very few cases by the judicial authorities.

According to the information the experts received during the visit, the order of publication may be part of the criminal judgment. Article 339 of the Criminal Code reads as follows:

“The judges or courts shall order the adoption, at the perpetrator's expense, of the necessary measures aimed at restoring the ecological balance disturbed, as well as any other precautionary measures required to protect the assets safeguarded under this Title

The Spanish authorities confirmed during the visit that this option is not often used.

Furthermore, Law 39/2015 of 1 October 2015 on the Common Administrative Procedure of the Public Administrations sets out in Article 56 the following provisional measures: (a) temporary suspension of activities; (b) lodging of securities; (c) withdrawal or seizure of productive assets or temporary suspension of services on grounds of health, hygiene or applicable regulatory legislation; (d) freezing of assets, income and expendable items computable in cash by application of certain prices; (e) storage, retention or immobilisation of movables; (f) seizure and deposit of income obtained through an activity regarded as illegal and with regard to which a ban or cessation is desired; (g) consignment or lodging of a deposit of the amounts claimed; (h) withholding of payments to be made by public administrations; (i) those other measures to protect the rights of the parties concerned that are expressly stipulated by law or are regarded as necessary to ensure the effectiveness of the resolution.

### *5.2.3. Treatment of seized objects*

In Spain, neither the seizure nor the responsibility for bearing the costs that seized objects generate is governed by any special legislation in the case of waste crimes.

As regards how seized objects are dealt with, there is no difference from other offences, although the measures vary depending on the nature of the goods and their status in the legal proceedings (pieces of evidence, assets seized in order to meet civil liabilities and as a guarantee for their subsequent conviction-based confiscation). Accordingly, the judicial bodies may order their storage, destruction, disposal (including advance disposal prior to the finalisation of criminal proceedings) or authorise provisional use by the administration or for the provision of a public service.

As for the maintenance costs, there is also no difference from goods seized in other kinds of offence. In general, the determination and approval of the costs incurred by the receiver in enforcing a judicial order for seizure or storage of goods takes place within the framework of individual legal proceedings, and may be included as procedural costs. With regard to the person or entity required to make the payment, this is an issue resolved within the framework of the legal proceedings when a decision on the costs to be imposed is taken.

In 2015 an Office for Asset Recovery and Management (ORGA) was set up within the Ministry of Justice at Directorate-General level, dedicated precisely to first the localisation and then the administration of assets preventively seized or definitively confiscated by a final judgment. However, its area of competence does not include environmental offences, except where environmental crimes are linked to organised crime (Article 127 bis of the Criminal Code lays down ORGA's area of competence). Furthermore, the scope of the Office's asset management activity does not include safekeeping of goods.

In general, the determination and approval of the costs incurred by the receiver in enforcing a judicial order for seizure or storage of goods takes place within the framework of individual legal proceedings, and may be included as procedural costs. With regard to the person or entity required to make the payment, this is an issue resolved within the framework of the legal proceedings when a decision on the costs to be imposed is taken. They are usually imposed on the person declared responsible for the crime. If the costs are declared ex officio, or if those ordered to pay the costs are declared to be insolvent or in default, they are paid by the Ministry of Justice or by the Autonomous Communities which have these powers . In addition, it must be borne in mind that, to undertake the disposal (sale) of the assets in accordance with Article 367 quinquies of the Criminal Procedure Act, the proceeds of the disposal will be applied, first of all, to the costs incurred in conserving the assets and in the procedure for their disposal.

### **5.3. Environmental restoration**

Article 109 of the Criminal Code lays down that '1. Perpetration of an act defined as a felony by law shall require, pursuant to the provisions contained in the laws, the damages and losses caused thereby to be repaired'. Article 110 states that 'The liability established in the preceding Article includes: 1. Restitution; 2. Repairing the damage; 3. Compensation of material and moral damage'.

With regard to environmental crime, Article 339 of the Criminal Code stipulates that 'the judges or courts of law shall order adoption, at the perpetrator's expense, of the necessary measures aimed at restoring the ecological balance disturbed, as well as any other precautionary measures required to protect the assets safeguarded under this Title'.

Thus, under Spanish law, the offender can be required to restore the disrupted situation to its original state, and to pay compensation for the damage and detriment caused which may be determined by the competent body.

In the event that restoration has not, or not sufficiently, been effected after the deadline indicated has expired, the investigating administration may order coercive fines to be imposed or subsidiary enforcement.

Such prescriptions can be highlighted as good practices.

From the point of view of case law, the 'polluter pays' principle applies.

Also administratively, without prejudice to the penalty that may be imposed, the offender will be required to restore the situation that he or she altered to its original state, and to pay compensation for the damage and detriment caused, which may be determined by the competent body, which, in this case, must notify the offender to his or her satisfaction within the set deadline.

In the case of environmental damage, the offender will be required to pay damages under the terms of Law 26/2007 of 23 October 2007 on Environmental Liability (Article 54 of Law 22/2011).

## **5.4. Jurisdiction**

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

As already mentioned, in Spain the investigation of criminal cases is assigned to the investigating judge. For details, see 4.1.1.

In accordance with Article 23 of the Framework Law on the Judiciary, the Spanish judiciary pursues and prosecutes crimes committed outside the territory when:

*(1) Crimes and offences committed in Spanish territory or on board Spanish ships or aircraft shall fall within Spanish criminal jurisdiction, without prejudice to the provisions of international treaties to which Spain is a party.*



*(2) Acts considered as offences under Spanish law, even if committed outside national territory, shall fall within Spanish criminal jurisdiction if the person who committed the crime is a Spanish citizen or a foreigner who acquired Spanish citizenship following commission of the act in question, subject to the following conditions:*

*(a) The act is an offence in the place where it was committed, except in cases where, by virtue of an international treaty or normative act of an international organisation, that requirement is waived, notwithstanding the provisions of the following paragraphs.*

*(b) The victim or Public Prosecutor's Office lays charges or files a complaint before the Spanish courts.*

*(c) The accused has not been acquitted, pardoned or sentenced for the crime in another jurisdiction or, in the latter case, has not served the sentence. If the sentence has only been served in part, this shall be taken into account to reduce proportionally any penalty imposed.*

Furthermore, the Spanish courts are regarded as having jurisdiction in the case of crimes involving illegal waste shipments to third countries, if such shipments originate from Spanish territory, on the grounds that they are included in the criminal acts set out in Article 326 of the Criminal Code.

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

No other mechanisms are in place to resolve conflicts of jurisdiction with other Member States that address specifically cross-border waste crime cases in Spain, apart from Council Framework Decision 2009/948/JHA of November 2009.

## 5.5. Conclusions

- Article 45(3) of the Spanish Constitution not only lays down the obligation to repair the damage caused by those who break environment-protecting provisions but also provides expressly for criminal or administrative penalties.
- Spanish legislation meets European requirements, i.e. that the penalties must be effective, proportionate and dissuasive. Environmental legislation and the classification of an infringement as a serious crime or a criminal offence takes into account not only the unlawfulness of the act, but also some other important factors, e.g. offenders are operating clandestinely, express orders are disobeyed, environmental information are falsified or concealed, or the work of administrative authorities is obstructed.
- Only the most serious environmental violations are subject to criminal liability and penal penalties.
- Administrative offences and penalties are mainly found in the Law 22/2011 on waste and contaminated soil, which also governs the relation between the systems of criminal and administrative penalties.
- If no criminal offence is deemed to have taken place, the competent administrative authority shall continue with the penalty proceedings. In practice this means that, if a prosecutor does not deem an act to be a criminal offence, the case will be sent back to the relevant administrative authority.
- Article 329 of the Criminal Code provides for the crime committed by an official who has permitted the award of clearly illegal licenses or has failed to carry out mandatory inspection. This may be considered a best practice. Regardless of possibly more general provisions covering such action in other legal systems, in the view of the experts this provision, desirably, underlines the responsibility and the criminal liability of each official for illegal and improper administrative action in the field of environmental issues. This provision, if applied, is to be considered a best practice.

- NGOs conduct formal cooperation with the Guardia Civil (SEPRONA) and offer training courses for investigations to police and prosecutors. They also collaborate with SEPRONA by reporting waste crime to the authorities.
- Despite this cooperation, NGOs suffer from a lack of information and feedback regarding the results of their complaints. In most cases they are – according to their statements - not informed whether their reports lead to investigations and what are the results of such investigations. Despite the fact that it is not mandatory to inform the complainant if the case was not prosecuted, feedback would be helpful, especially in these cases, for the NGO's representatives for future cases / reports. The lack of feedback risks discouraging them in their work.
- In addition to the imprisonment or fine imposed under Articles 325 and 326 of the Criminal Code, the provision disqualifying those found guilty from exercising a profession or holding office for a variable period is a good practice.

## 6. COOPERATION

### 6.1. International cooperation

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

According to the Spanish authorities, there are no specific forms of cooperation in cross-border cases of waste crime. However, this deficiency is covered by international police cooperation mechanisms set up for other types of crime, primarily Interpol, Europol and SIRENE.

One example of practical experience of cross-border cooperation relates to Operation RENS, conducted in October 2016 by the National Police (Central UDEV Environment Group), with regard to the existence of a route for shipping chemical waste overland from the Netherlands to Spain.

In the field of cross-border waste shipments, MITECO is responsible for performing the inspection and penalising functions arising from that shipment system, without prejudice to such cooperation as may be provided by the Autonomous Community in which the relevant site of operations is located.

Over the course of 2018, management delegation agreements are to be established between MITECO and those Autonomous Communities that so wish, for the carrying out of inspections of shipments to or from third countries in the Autonomous Community's territory.

Such management delegation agreements do not under any circumstances imply the surrender of ownership of the competence or of the substantive elements for exercising it, as it is the Ministry's responsibility to issue any legal acts or resolutions that offer support or which incorporate the specific material activity covered by the management agreement.

Furthermore, the following are to be formalised in 2018:

- Framework cooperation agreement between the National Agency for Tax Administration and the Ministry for Ecological Transition on the inspection of waste shipments

This agreement aims to establish a general framework for cooperation between the AEAT, through the Customs and Excise Duties Department, and the Ministry for Ecological Transition, through the Directorate-General for Biodiversity and Environmental Quality, for the appropriate exercise of their respective powers to inspect cross-border waste shipments.

For this purpose, appropriate cooperation between their departments will be established so as to guarantee optimum supervision of cross-border waste shipments, preventing the occurrence of adverse effects that may negatively affect human health, and of the environment, in accordance with the relevant legislation in force.

The framework agreement will apply to inspections arising from compliance with the national inspection plan and the resulting annual programmes of waste shipments to and from third countries not belonging to the European Union.

- Operational procedure for cooperation between the Directorate-General of the Guardia Civil and the Ministry of Ecological Transition's Directorate-General for Biodiversity and Environmental Quality

The purpose is to establish a general framework for cooperation between the Ministry of the Interior, through the Directorate-General of the Guardia Civil, and MITECO, through the Directorate-General for Biodiversity and Environmental Quality, for the appropriate exercise of their responsibilities regarding the inspection of waste shipments, and to supervise proper compliance with the waste management legislation in force at national level, in accordance with Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.

MITECO will establish the appropriate cooperation between its departments, in order to guarantee optimum supervision of cross-border shipments of waste, preventing malpractice in waste management which gives rise to adverse effects that may negatively affect human health or the environment, in accordance with the relevant legislation in force.

In the field of Customs, the Convention on mutual assistance and cooperation between customs administrations (Naples II Convention) of 18 December 1997 will apply to mutual assistance and cooperation in criminal investigations relating to infringements of national and Community regulations. The judicial authority will decide whether to apply the Convention or mutual legal assistance in criminal matters.

Article 5 of the Naples II Convention stipulates that each Member State must appoint a central coordinating unit; and for that purpose Spain has appointed the Subdirectorate-General for Operations, part of the Office of the Deputy Director for Customs Supervision, in AEAT's Customs and Excise Duties Department.

Article 19 states that customs administrations are to engage in cross-border cooperation. They must provide each other with the necessary assistance in terms of staff and organisational support. Requests for cooperation must, as a rule, take the form set out in Article 9. In some specific cases, officers of the applicant authority may engage in activities in the territory of the requested state, with the approval of the requested authority. Coordination and planning of cross-border operations will be the responsibility of the central coordinating units in accordance with Article 5.

Cross-border cooperation will be permitted for the prevention, investigation and prosecution of infringements in cases of: illicit traffic in drugs and psychotropic substances, weapons, munitions, explosive materials, cultural goods, dangerous and toxic waste, nuclear material or materials or equipment intended for the manufacture of atomic, biological and/or chemical weapons (prohibited goods).

The Spanish authorities mentioned the possibility of cross-border cooperation for the prevention, investigation and prosecution of illegal waste trafficking under Art. 19(2)(a) of the Convention, but did not provide information on whether such cooperation is carried out in practice.

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

The mechanisms used for the purpose of information exchange in cross-border cases of waste crime are the same as for other types of crime, specifically those provided by Europol and Interpol, as well as the Interior counsellors and attachés in Spain's diplomatic missions abroad and the liaison officers that police forces exchange between their respective agencies. In this context, mention should be made of the Police and Customs Cooperation Centres on the borders between Spain and France and between Spain and Portugal, which serve as a contact for members of those states for the purpose of rapidly obtaining information on international crime.

With regard to Customs, as mentioned in the previous paragraph, Spain has appointed the Sub directorate-General for Operations, part of the Office of the Deputy Director for Customs Supervision, in AEAT's Customs and Excise Duties Department.

The Spanish authorities make use of EU information databases in order to prevent, detect, investigate and prosecute cross-border cases of waste crime. The most relevant are those managed from Europol, to which Spain has access as a Member State. They are police databases on crime, and also contain intelligence obtained from data analysis.

Pursuant to Article 26 of Regulation (EC) No 1013/2006, the Commission is working on the development of a platform on which information and documents may be submitted and exchanged by means of electronic data interchange with electronic signature or electronic authorisation in accordance with Directive 1999/93/EC of the European Parliament and of the Council, or a comparable electronic authentication system which provides the same level of security. Once it is developed it will be very useful for preventing, detecting, investigating and prosecuting cross-border cases of waste crime.

They also use the data from the customs information system.

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

The difficulties faced in judicial cooperation relating to waste crime are the same as those encountered with regard to evidence in court and administrative proceedings. (See above, 5.2.)

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

Spanish authorities have not participated in any JIT specifically for waste crime. However, from the experience obtained in JITs relating to other types of environmental crime, they consider that JITs are a useful tool for investigating this form of crime.



## 6.2. Cooperation with EU Agencies and networks

### 6.2.1. Cooperation with Europol and Eurojust

The Spanish authorities are aware of the products provided by Europol, since they not only receive the SOCTA report and other reports drawn up by the European Serious Organised Crime Centre (ESOCC), which also provides information on the trafficking of chemicals and chemical pollutants, etc., but also contribute to and actively participate in their drafting.

Spain considers Europol a fundamental tool for cross-border cooperation in the fight against trafficking in waste. The exchange of, and access to, information from Member States and from third parties greatly facilitates international cooperation.

Cooperation with Eurojust is very standardised at all levels. An environmental case which transcended national borders in the European sphere would be channelled to Eurojust.

SEPRONA is very proactive in international cooperation with Europol and in particular with EnviCrimeNet, the informal network within Europol dedicated to environmental crimes.

Spain, through SEPRONA, is also a member of the EnviCrimeNet Steering Group, whose aim is the elaboration of initiatives and strategies to be discussed and, if appropriate, approved by the General Assembly.

It has carried out numerous investigations resulting in operational meetings at the headquarters of Europol with other countries involved, thereby contributing to increasing the number of requests for exchanges of information.

Customs authorities participate in operations carried out in the above spheres, as well as those organised by the World Customs Organisation (**WCO**).

The annual meeting of the Green Customs Initiative is held at the headquarters of the WCO in Brussels; its aim is to analyse and assess progress and operational activities to be carried out. The 12th meeting took place in October 2017, and the next is scheduled for October 2018. In this area, the first joint customs operation to combat illegal shipments of waste, Demeter I, took place between 23 March and 11 May 2009. Demeter II and Demeter III took place in 2011 and 2013 respectively. Customs and Guardia Civil also participated in Interpol's Operation 30 Days of Action (tracking down illegal dumping and the market in hazardous waste).

In cooperation with the Office for Harmonisation in the Internal Market (now the European Union Intellectual Property Office), Europol supported the launch of Operation Silver Axe, focusing on the use of illegal or counterfeit pesticides in order to assess the need to take action against these types of product.

According to information gathered by the Europol National Unit, requests for exchanges of information have increased since 2016, particularly those from SEPRONA, as the latter has carried out numerous investigations resulting in operational meetings at the headquarters of Europol with other countries involved. Participating in the TECUM project was very stimulating in this sense.

Representatives from the Guardia Civil currently participate in the Platform for Experts (EPE).

Another of the new products offered by Europol is the Envicrime Analysis Project (operational since 24 November 2017), established as part of the new EU policy cycle to tackle organised crime for the period 2018-2021, in which environmental crime has been included as a priority for the first time. This file concerns environmental crimes, including those involving the illegal trafficking of waste. SEPRONA has retained a seconded national expert for more than a year on the Envicrime Analysis Project file.

As regards the aforementioned policy cycle and, more specifically, the EMPACT projects intended to provide a response to the priorities established, Spain is a co-driver of the EMPACT Environmental Crime project, via the Guardia Civil, with the active participation of the National Police, directly involving the specialised services mentioned previously in this report.

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

The Guardia Civil and the National Police are members of EnviCrimeNet, a group of experts whose objective is to exchange knowledge and experience, analyse the state of play of crime and establish channels of communication and coordination.

As mentioned in the above paragraph, Spain is also a co-driver of the EMPACT Environmental Crime project via the Guardia Civil.

The Guardia Civil has also taken part in the Envicrime Analysis Project, by appointing a seconded national expert from SEPRONA for more than a year.

Spain participates in the Platform for Experts (EPE) through representatives from the Guardia Civil.

The Subdirectorate-General for Waste, part of MITECO, collaborates continuously with the Network for the Implementation and Enforcement of EU Environmental Law (IMPEL). Spain signed up to join the Network, in accordance with its new status, in May 2008, although it had been a member of the Network since its creation in 1992. Spain's participation in the Network is coordinated via the Subdirectorate-General for Air Quality and Industrial Environment within MITECO. This participation has proved very useful for gaining an understanding of how environmental legislation is applied in the different countries of the Union, and for the uniformity of criteria achieved by that application.

Also, Spanish representatives attend the annual meetings on good practices, which allows them to get to know members from other states who are also working in the area of inspections.

Through the Autonomous Communities - the environmental authorities competent for environmental management - Spain is involved in various IMPEL projects, which are a valuable source of information and exchange of experiences; this subsequently facilitates its work of granting integrated environmental authorisations, carrying out inspections and environmental controls, and results in a clear benefit for the whole country.

In 2017, Spain participated in the following projects of the Waste and Waste Transfers group:

- Landfill project
- Waste electrical and electronic equipment (WEEE) / Plastics Project
- Refuse-Derived Fuel Project

In the legal sphere, Spain has access to the information it needs for the preparation of proceedings partially taking place abroad, via the members of the European Judicial Network it has appointed. Spain also uses Eurojust and the Handbook of forms, for assistance and international cooperation:

<http://www.poderjudicial.es/cgpj/es/Temas/Relaciones-internacionales/Auxilio-judicial-internacional/Prontuario/>

The functions for which the international relations section of the General Council of the Judiciary is responsible include following up on outgoing letters rogatory sent by the Spanish judicial authorities and mediation regarding incoming letters rogatory.

Spain also participates in the EU Forum of Judges for the Environment (EUFJE).

Spain participates in the European Network of Prosecutors for the Environment (ENPE) too.

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

Interpol is considered a useful instrument for cooperation with third countries. In the context of the Interpol Environmental Security Programme, Spain took part in Operation 30 Days of Action, which was organised and took place between 1 and 30 June 2017, with the participation of the National Police, Guardia Civil, the Customs Investigation Service and MITECO. As a consequence of the actions taken by Guardia Civil in the framework of the Operation 30 Days of Action, Operation TYSON was later born.

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

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

Article 259 of the Criminal Procedure Act provides that anyone who is aware of the perpetration of any public crime is obliged to bring it to the attention of the judicial authorities, either directly or through the LEAs.

Furthermore, Law 4/2015 of 30 March 2015 on the Protection of Citizens' Security imposes certain obligations with respect to the communication of information of relevance to the LEAs, in relation to certain activities that pose a potential risk to the population.

Finally, Article 44(2) of Law 22/2011 of 28 July 2011 on waste and contaminated soil specifically provides for an obligation on the part of all entities and companies carrying out waste management operations to cooperate with the competent authorities to allow the latter to carry out inspections, controls, take samples, collect information, check documentation and any other operations required to fulfil its mission.

Companies that comply with the legislation in force have a vested interest in reporting illegal waste practices, because they find themselves in a situation of 'unfair competition' with respect to non-compliant companies whose costs, as a result, are drastically reduced.

Their legal obligations are set out in the rules cited below, 6.4.2.

In those cases in which greater cooperation with the private sector has been necessary through the establishment of appropriate contacts with the companies concerned, beneficial cooperation has been achieved.

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

As mentioned in the previous subsection, Article 259 of the Criminal Procedure Act provides that anyone who is aware of the perpetration of any public crime is obliged to bring it to the attention of the judicial authorities, either directly or through the LEAs.

Furthermore, Law 4/2015 of 30 March 2015 on Protection of Citizens' Security imposes certain obligations with respect to the communication of information of relevance to the LEAs, in relation to certain activities that pose a potential risk to the population.

Finally, Article 44(2) of Law 22/2011 of 28 July 2011 on waste and contaminated soil specifically provides for an obligation on the part of all entities and companies carrying out waste management operations to cooperate with the competent authorities to allow the latter to carry out inspections, controls, take samples, collect information, check documentation and any other operations required to fulfil its mission.

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

Practical experiences of cooperation with the private sector relate to bilateral communication channels established by the entities involved in tyre waste management to facilitate the process of reporting any irregularity detected, requesting support with waste analysis or carrying out expert reports.

There have also been experiences of cooperation along similar lines in relation to residues of plant protection products.

## 6.5. **Conclusions**

- SEPRONA is very proactive in cooperation on cross-border cases: it is involved in the main bodies concerned, such as Europol (EnviCrimeNet) and Interpol. SEPRONA has also participated in joint police operations (as in 2014, with several European countries involved) and international projects like TECUM (Spain, Italy and Romania were the leader countries). Customs operates according to the Naples II Convention: it has also joined the central coordinating unit (it has been appointed to the Subdirectorate-General for Operations). This framework can be considered as a good practice.
- Bilateral protocols with Portugal and France to check the transboundary shipment of waste are a good practice.
- The unavailability of well-organised data could be a weak point in the framework of international cooperation.
- Practical experiences of cooperation with the private sector relate to bilateral communication channels established by the entities involved in tyre waste management to facilitate the process of reporting any irregularity detected, requesting support with waste analysis or producing expert reports.

## 7. ILLEGAL TRAFFICKING OF WASTE

### 7.1. National structure

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

Detecting and taking criminal action against illegal trafficking requires the cooperation of all national authorities. There are several authorities involved in preventing and fighting against illegal shipment of waste: national authorities (police, Customs, Ministry of Environment –competent for extra-EU shipments) and regional authorities (autonomous regions – competent for intra-EU shipments).

In relation to the prevention and combating of trafficking, one of the bodies responsible for inspections is SEPRONA, which is tasked with preventing, detecting, prosecuting, reporting and investigating illegal conduct related to the protection of nature and the environment, including the management and shipment of waste.

Another responsible body is MITECO, which, under Article 12(3)(c) of Law 22/2011 of 28 July 2011 on waste and contaminated soil, authorises shipments of waste to and from non-EU third countries and performs the inspection and penalty functions set out in the aforementioned shipments regime. The inspections are implemented without prejudice to any cooperation on the part of the Autonomous Community that implements the main activity and performs the functions of the national authority in cases in which Spain is a transit state for the purposes of the provisions of Article 53 of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste. It is also responsible for compiling, drawing up and updating the information necessary for the fulfilment of the obligations deriving from national or Union law, international conventions or any other public information obligation.



Within MITECO, the inspection and penalising competences for shipments of waste to or from non-EU third countries are fulfilled by the Subdirectorate-General for Waste within the Directorate-General for Biodiversity and Environmental Quality.

Under Article 12(4)(d) of law 22/2011, the Autonomous Communities are responsible for issuing authorisations for waste shipments to and from other EU Member States, which are governed by Regulation (EC) No 1013/2006, shipments within Spain, inspections and, where relevant, the imposition of penalties on the basis of the above-mentioned shipment rules; and under Article 12(4)(e) for exercising the power of supervision and inspection and the power to impose penalties, within the scope of their competence;

Customs officials also are responsible for preventing and fighting illegal waste shipments as national environmental agents and contact points under the Basel Convention. In this role, they must be supported by MITECO to enable them to obtain the legal and technical information necessary to identify cases of illegal trafficking and the next steps to be taken. In turn, MITECO requires the support of the Customs services to enable it to detect suspected cases of illegal trafficking during customs controls.

Judges are responsible for hearing, sentencing and ensuring the enforcement of judgments in cases of environmental crime.

#### 7.1.2. Detection of illegal shipments of waste

Illegal shipments of waste are detected through inspections carried out in the framework of the National Inspection Plan on cross-border shipments of waste (2017-2019) and the intra-community waste shipment inspection plans of each of the Autonomous Communities, via police and customs investigations and with the cooperation of Autonomous Community inspectors.

From a policing perspective, illegal shipments can be detected following a complaint by an affected individual or business, or through the operational action taken by the competent police units, involving analysis of the data available from various bodies, transport inspections and customs offices.

In addition to the intelligence and information exchange measures set out above, radiation portal monitors for the detection of nuclear material and other radioactive materials are also used, with which some cases of radioactive waste (scrap or other types of waste) have been detected.

No specific obstacles have been encountered other than those that might be expected when dealing with any other type of criminal activity.

The majority of the inspections concern documentary checks to verify the accuracy of what has been declared.

As mentioned above, MITECO is the competent authority for waste shipments between Spain and non-EU countries and when Spain is a transit state for such shipments. Concerning such shipments the Ministry is responsible for performing the inspection and penalising functions set out in Regulation (EC) No 1013/2006. However, the Ministry does not have any resources of its own to perform inspections and is dependent on the Autonomous Communities and other authorities to be able to fulfil this responsibility. For that reason, a series of agreements is being launched on cooperation between different administrative and environmental authorities, customs and inspection services, in order to facilitate the Ministry's work on monitoring and inspecting cross-border waste shipments (See above, 6.1.1.). According to the information given by the Ministry, the agreements will be concluded before the end of 2018.

According to information from one of the regional authorities, numerous inspections are carried out every year and many administrative penalties are applied. However, it has not been possible to determine how many of these inspections and penalties relate to waste management.

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

According to the experiences of the Spanish authorities two typical practices have been observed in the area of shipments of waste. The first involves failing to declare waste. This practice involves sending or receiving waste that is registered as raw materials or goods, in order to circumvent the waste inspection and monitoring system entirely. Shipments of unauthorised hazardous waste, presented as non-hazardous waste, have also been detected.

The second practice is linked to waste management and involves charging for a waste decontamination process which is not in fact carried out: the waste is merely deposited in landfill or placed on the market as a second-hand or recycled product, when in reality it was not processed in accordance with the legally established procedure.

### *7.1.4. Measures on shipments of waste*

The waste shipment inspection plans are designed to fulfil the requirements of Regulation 1013/2006 on shipments of waste and the provisions of Law 22/2011 on waste and contaminated soil.

## **7.2. Inspections**

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

According to the Spanish authorities, the majority of the inspections concern documentary checks to verify the accuracy of what has been declared. When there are indications of specific irregularities regarding a shipment, or particular operations, a more thorough inspection of the cargo is carried out, usually as part of an investigation, for which the Guardia Civil has the appropriate means of protection and methods of obtaining samples, such as protective suits, containers for all types of samples, etc. The administrative authorities can also involve the National Police. There are guides on technical procedures that set out how to proceed and how to gather all types of evidence and samples.

Concerning monitoring and inspections of shipments within the competence of the Ministry of Ecological Transition, see above 6.1.1 and 7.1.2.

The Spanish authorities are of the view that there is good and active cooperation between the competent police departments and the judicial authorities.

Measures taken must be proportionate to the nature and severity of the alleged offences and may consist in: (a) corrective, security or control measures that prevent the damage from continuing; (b) the placing of apparatus, equipment or vehicles under seal; (c) temporary, partial or complete closure of the establishment; (d) temporary suspension of the company's authorisation to carry out the activity.

Provisional measures set out by Article 53 of Law 22/2011 can be issued by the relevant judicial authority.

Article 53 of Law 22/2011 sets out the provisional measures:

*1. Once the process of imposing penalties has been initiated, the court competent to rule on it, on its own initiative or at the request of the investigating judge, may at any time adopt, by means of a reasoned agreement, the provisional measures it deems necessary to ensure an effective resolution allowing the risks or damage to human health and the environment to be discontinued or prevented. Those measures must be proportionate to the nature and severity of the alleged offences and may consist in: (a) corrective, security or control measures that prevent the damage from continuing; (b) the placing of apparatus, equipment or vehicles under seal; (c) temporary, partial or complete closure of the establishment; (d) temporary suspension of the company's authorisation to carry out the activity.*

2. *For the same purpose, the competent court may, in urgent cases and for the provisional protection of the relevant interests, adopt essential provisional measures prior to the initiation of the process, in accordance with the limits and conditions laid down in Article 72(2) of Law 30/1992 of 26 November 1992 and other applicable legislation; such measures may not under any circumstances be in force for a period exceeding 15 days. The measures may include suspension of authorisation and a ban on carrying out the specified activities where the competent authority ascertains that a company is not complying with the requirements laid down in the authorisation granted or in the notification submitted.*

3. *No provisional measures may be adopted without first offering the persons involved a hearing, except where it is advisable for reasons of urgency to adopt a measure immediately in the light of serious damage to human health or the environment, or where an activity regulated by this Law is being carried out without the mandatory authorisation or with authorisation that has expired or been suspended, in which case the provisional measure imposed shall be reviewed or ratified following the hearing of the persons involved. As part of the hearing procedure provided for in this paragraph, the persons involved shall be given a maximum period of 15 days to submit any allegations, documents or information they deem appropriate.*

4. *The provisional measures described in this article shall be independent of any decisions that judges and courts may adopt in response to a request to adopt provisional measures by those entitled to do so as part of the exercise of their responsibility.'*

For the same purpose, the competent court may, in urgent cases and for the provisional protection of the relevant interests, adopt suspension of authorisation and a ban on carrying out the specified activities where the competent authority ascertains that a company is not complying with the requirements laid down in the authorisation granted or in the notification submitted.

In the case of administrative offences, SEPRONA units and/or the National Police and the various MITECO and Autonomous Community authorities involved cooperate as regards the handling of information requests necessary for the case in question. Follow-up takes place on the basis of the corresponding administrative case number.

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

Both inspections and investigations have been conducted in relation to the mismanagement of WEEE, including misappropriation of the fees for its proper treatment.

Specific inspection activities and analysis are also conducted on ELVs. An example of this is the 604 inspections relating to scrapping and ELV status carried out in 2017 by the Guardia Civil's SEPRONA units.

With regard to cross-border shipments, fraud has been detected in relation to the reintroduction of ELVs as second-hand vehicles intended for Portugal and North African countries.

The illegal sale of ELV parts has also been detected, and in many cases the waste has not been decontaminated.

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

No notable challenges have been detected by the Spanish authorities with regard to the taking back of illegal waste shipment to the state of origin.

#### 7.2.4. *First inspection plan*

Inspection plan/s can be consulted at the following URLs:

<http://www.MITECO.gob.es/es/calidad-y-evaluacion-ambiental/planes-y-estrategias/Planes-y-Programas.aspx>

[http://www.MITECO.gob.es/es/calidad-y-evaluacion-ambiental/planes-y-estrategias/planestataldeinspecciondetrasladostransfronterizosderesiduos2017-2019\\_tcm7-466948.pdf](http://www.MITECO.gob.es/es/calidad-y-evaluacion-ambiental/planes-y-estrategias/planestataldeinspecciondetrasladostransfronterizosderesiduos2017-2019_tcm7-466948.pdf)

<http://www.MITECO.gob.es/es/calidad-y-evaluacion-ambiental/planes-y-estrategias/Planes-y-Programas.aspx#para5>

### 7.3. Conclusions

- Preventing and fighting the illegal trafficking of waste involves many authorities at different levels.
- The responsibility for waste shipments under Regulation (EC) 1013/2006 is split between the Autonomous Communities, competent authorities when it comes to waste shipments between EU countries, and MITECO, competent authority for shipments to and from non-EU countries and for transits via Spain concerning such shipments. These competent authorities are responsible *inter alia* for the authorisation of shipments and the inspection and penalising functions set out in the EU Regulation.
- MITECO does not have any resources of its own to perform inspections and is completely dependent on the Autonomous Communities and other authorities to be able to fulfil this responsibility. Without interfering with the Spanish organisational structure, the evaluators received the impression that these inspections have not been considered a priority by the environmental authorities. However, agreements between MITECO and the Autonomous Communities concerning inspections of waste shipments to and from non-EU countries are being developed and are soon to be finally concluded, during autumn 2018. MITECO is also concluding agreements with the National Agency for Tax Administration/Customs and Guardia Civil to facilitate work on monitoring and inspecting cross-border waste shipments.
- SEPRONA plays a central role, tasked with preventing, detecting, prosecuting, reporting and investigating illegal conduct related to the protection of nature and the environment, including the management and shipment of waste.
- Customs has legal powers to control shipments at the EU external border. Despite the responsibility of MITECO, Customs seems, until recently, to have been the only authority performing inspections of export and import of waste shipments - with the assistance of the Guardia Civil. However, Customs does not seem to have the expertise needed to deal with illegal waste shipments when it comes to specific waste-related issues.



- The evaluators received the impression from the information provided that the number of inspections implemented by the local authorities, even with the support of police and Guardia Civil, is not sufficient to prevent and tackle waste crime, taking into consideration the size and strategic position of the country. As waste crimes are assessed as 'control crimes', a higher number and quality of inspections would, in the evaluators' view, most likely lead to more waste crime cases being detected. It is recommended to increase the number and quality of national and cross-border waste shipment inspections.
- The majority of inspections of waste shipments concern documentary checks to verify the accuracy of what has been declared. Where there are indications of specific irregularities regarding a shipment, or particular operations, a more thorough inspection of the cargo is carried out, usually as part of an investigation, for which the Guardia Civil has the appropriate means of protection and methods of obtaining samples, such as protective suits, containers for all types of samples, etc. There are guides on technical procedures that set out how to proceed and how to gather all types of evidence and samples. SEPRONA has also many specific devices for investigating waste trafficking.
- Two trends observed in illegal shipments of waste are: failing to correctly declare waste, so as to circumvent the waste inspection and monitoring system entirely; and charging for a waste decontamination process which is not in fact carried out. With regard to cross-border shipments, fraud has been detected in relation to the reintroduction of ELVs as second-hand vehicles intended for Portugal and North African countries. Illegal selling of ELV parts has also been detected, and in many cases the waste has not been decontaminated.

- As mentioned above, there is a lack of information on the number of inspections, criminal and administrative cases, penalties etc. that specifically concern waste management and waste shipments. This makes it difficult to assess how Spanish authorities prioritise these issues. However, from the information provided, our team received the impression that the number of inspections concerning waste shipments performed by the regional and local authorities, even with the support of police and Guardia Civil, is not sufficient to prevent and tackle waste crimes, taking into consideration the size and strategic position of the country.
- Databases on waste are necessary to improve the effectiveness of the inspections that in some cases is very low.
- It is necessary to improve the distribution and the training of specialised personnel because of the typical modi operandi in waste trafficking (fraudulent declaration or decontamination).
- Spain should use existing working groups as much as possible to ensure a consistent approach to the prioritisation, planning and carrying out of inspections across the country, exchange of information and harmonisation of the implementation of the legal framework on waste management and waste shipments.

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

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

According to Law 22/2011 on waste and contaminated soil, hazardous waste is waste that displays one or more of the hazardous properties listed in Annex III to that law.

The method for determining whether waste displays one or more of those hazardous properties is laid down in Commission Regulation 1357/2014 and is essentially based on knowledge of the qualitative and quantitative composition of the waste, which is sometimes difficult to determine, or on physical, chemical or biological tests, which in many cases are complex, so it requires technical expertise to determine whether or not waste is hazardous.

However, Commission Decision of 18 December 2014 establishes a European list of waste (LoW) in which waste is described and identified by means of a code accompanied by an asterisk in the case of hazardous waste and with no asterisk in the case of non-hazardous waste. The European LoW is therefore a simple method of determining whether waste is hazardous, except in cases where a single description appears alongside one code with an asterisk and another without, based on whether or not the waste in question contains hazardous substances. In such cases the methodology described in Regulation 1357/2014 must be used.

In accordance with the above, the classification of waste as hazardous or non-hazardous, except in cases where it is clearly identified in the European LoW as categorically hazardous (with an asterisk) or not categorically hazardous (without an asterisk), is a complex problem because of the technical aspect.

In accordance with the distribution of competences in relation to waste, the Autonomous Communities are the competent authorities for the authorisation and registration of waste producers and managers and have experience in this regard. In many cases, the Autonomous Communities must be assisted by laboratories to determine whether waste is hazardous. MITECO is drawing up a guide to hazardous waste and identifying a network of laboratories that can be used when determining whether waste is hazardous.

To tackle fraudulent declarations, specific training of the personnel involved is necessary to improve knowledge of the qualitative and quantitative composition of the waste and the process it originates from, to identify it properly and for any other information useful for checking waste flow.

Also in Spain the mirror entries (hazardous/non-hazardous waste with the same appearance and description but different properties) are a weak point in the legislation. In many cases the authorities of the Autonomous Communities must be assisted by laboratories to determine whether waste is hazardous.

The Spanish authorities report they have encountered problems in respect of evidence in cases specifically related to hazardous waste crime; they are the same as for other types of environmental crime.

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

The national and regional authorities responsible for periodic inspections in Spain are the following:

<b>AUTHORITY RESPONSIBLE</b>	<b>UNIT</b>
<b>NATIONAL STATE ADMINISTRATION (MITECO)</b>	Subdirección General de Residuos (Subdirectorate-General for Waste) Dirección General de Biodiversidad y Calidad Ambiental (Directorate-General for Biodiversity and Environmental Quality)
<b>ANDALUSIA</b>	Dirección General de Prevención y Calidad Ambiental y Delegaciones Territoriales
<b>ARAGÓN</b>	Dirección General de Sostenibilidad
<b>ASTURIAS</b>	Dirección General de Prevención y Control Ambiental
<b>BALEARIC ISLANDS</b>	Servei de Residus de la Direcció General d'Educació Ambiental, Qualitat Ambiental i Residus del Govern de les Illes Balears Servei d'Agents del Medi Ambient del Govern de les Illes Balears
<b>CANARY ISLANDS</b>	Agencia Canaria de Protección del Medio Natural
<b>CANTABRIA</b>	Dirección General de Medio Ambiente

<b>CASTILE AND LEÓN</b>	Dirección General de Calidad y Sostenibilidad Ambiental
<b>CASTILE-LA MANCHA</b>	Viceconsejería de Medio Ambiente, Servicio de Control de Calidad Ambiental,
<b>CATALONIA</b>	Agencia de Residuos de Cataluña Departament de Territori i Sostenibilitat
<b>EXTREMADURA</b>	Dirección General de Medio Ambiente Consejería de Medio Ambiente y Rural, Políticas Agrarias y Territorio
<b>GALICIA</b>	Conselleria de Medio Ambiente y Ordenación del territorio
<b>MADRID</b>	Consejería de Medio Ambiente
<b>MURCIA</b>	Dirección General de Medio Ambiente
<b>NAVARRRE</b>	Servicio de Economía Circular y Agua
<b>BASQUE COUNTRY</b>	Departamento de Medio Ambiente y Política Territorial Dirección de Administración Ambiental Servicio de Inspección Ambiental y Servicio de Residuos Peligrosos y Suelos
<b>RIOJA</b>	Dirección General de Calidad Ambiental y Agua
<b>VALENCIA</b>	Direcció General del Canvi Climàtic i Qualitat Ambiental

The inspection system and the frequency and level of inspections are set out in the waste shipment inspection programmes approved annually by the Autonomous Communities and MITECO. They vary depending on the Autonomous Community and may also vary from one year to another.

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

**Title II** of Law 22/2011 establishes the **waste policy instruments**, specifically:

Article 14 – Waste management programmes and plans

Article 15 – Waste prevention programmes

Article 16 – Economic measures and instruments

In **Title III** on the **production, possession and management of waste**, Article 17 lays down the obligations of producers or other initial owners in relation to the management of their waste, and Article 18 lays down the obligations of producers or other initial owners in relation to the storage, mixing, packaging and labelling of waste.

For hazardous domestic waste, Article 19 provides that the obligations deriving from its status as hazardous waste will not apply to separated hazardous waste generated by households provided that it is not accepted by an entity or company registered to collect or treat it.

With regard to waste management, Article 20 lays down the obligations on waste managers, Article 21 regulates the collection, preparing for re-use, recycling and recovery of waste, and Article 22 describes the specific objectives of preparing for re-use, recycling and recovery.

Rules are also laid down for the disposal of waste (Article 23) and bio-waste (Article 24).

With regard to waste shipments, Article 25 lays down the conditions for waste shipments on national territory, and Article 26 regulates waste entering and leaving national territory, as well as its transit, on the basis of the provisions of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006, and of Commission Regulation (EC) No 1418/2007 of 29 November 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of waste does not apply, and on the basis of other EU legislation and the international treaties to which Spain is a party.

Chapter III of Title III regulates the system for authorisation and notification of waste production and management activities, setting out the authorisation arrangements for waste treatment operations, exemptions from authorisation requirements, and the need for notification prior to beginning waste production and management activities.

Title IV covers the extended liability of the product's producer, describing the concept, relevant obligations, and waste management in the context of extended liability of the product's producer.

The traceability of hazardous waste from production to final destination is ensured by the process laid down in Royal Decree 180/2015, which regulates waste shipments within national territory by stipulating that waste must be accompanied by an identification document during shipment from the place of production to the place of recovery or disposal. The identification document contains information concerning the quantity of waste being shipped, its European LoW code, and the origin and destination of the shipment.

In accordance with Law 22/2011 on waste and contaminated soil, once the shipment is complete the producers and managers of the waste involved in the shipment must retain the identification document as part of their chronological record, which must be kept for at least three years by producers of hazardous waste and by the carriers and managers who perform treatment operations.

Every year managers of waste treatment installations must send a summary of the chronological record to the competent authorities of the Autonomous Communities.



In addition, the Register of Waste Production and Management contains information on producers, managers and treatment installations.

The obligation to label hazardous waste is laid down in Article 18(3) of Law 22/2011 on waste and contaminated soil, and the web page of the Ministry of Ecological Transition includes information on the data and pictograms which must be used to label waste.

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

The trends in illegal hazardous waste management are described in the Section 7.1.3 above.

Most police operations carried out so far in relation to waste have involved hazardous waste, reflecting the fact that it is more expensive to treat. Given that waste crime is committed for financial gain, it is logical that hazardous waste is almost always involved.

According to the experiences of Spanish authorities, the trends in illegal hazardous waste management are the same as those described above, concerning trends in illegal shipments of waste (Section 6.1.3). The declaration of a shipment of inert waste which is actually hazardous waste is indeed one modus operandi that has been detected. One of the main reasons for such false declarations is to avoid the inspections that come with reporting waste as hazardous.

## 8.5. Conclusions

- According to Spanish authorities most police operations in the area of waste involve hazardous waste, which can be explained by the fact that it is more expensive to treat.
- Trends observed concerning hazardous waste are the same as for shipments of waste. Declaration of shipments as raw materials and not as hazardous waste is one modus operandi detected.
- It is within the competence of the Autonomous Communities to authorise and register waste producers and managers. Often they must be assisted by laboratories to determine whether waste is to be considered hazardous. MITECO is developing guidelines on hazardous waste and identifying a network of laboratories for the analysis of waste.
- As for all inspections within the area of waste, the regional and local authorities can ask for assistance from the National Police or SEPRONA when needed. SEPRONA in particular seems to have appropriate resources and equipment for these purposes.
- The system and frequency of inspections is set up in the waste shipment inspection programmes at regional level. Due to the decentralisation and multiplicity of inspections programmes, a general description cannot be given. In addition, the environment ministry has not established mechanisms to regularly obtain information on the implementation of the inspection programmes and to ensure consistency of inspection efforts across the country.
- From the information provided, the evaluation team received the impression that the number of inspections concerning waste production and management performed by the regional and local authorities, even with the support of police and Guardia Civil, is not sufficient to prevent and tackle waste crimes, taking into consideration the size and strategic position of the country. It is recommended to increase the number and quality of inspections, particularly of hazardous waste.

- The traceability of waste from production to final destination is addressed by provisions in the national legislation that require waste shipments to be accompanied by identification documents and requires producers and managers of waste to keep chronological records of the waste they manage, in accordance with the Waste Framework Directive. Every year managers of waste treatment installations must send a summary of the chronological record to the competent authorities of the Autonomous Communities. In addition, the Register of Waste Production and Management contains information on producers, managers and treatment installations.
- The unavailability of data is a weak point, and limits the reliability of the trends identified. However, Spain is developing a database for the traceability of hazardous waste, e-SIR, which will facilitate the access and exchange of information concerning waste.
- The correct distinction between goods / waste / hazardous waste is a problem. The availability of specialised Corps and Authorities is a good practice, but the network should be improved.
- The availability of specialised laboratories with competence to analyse waste is a good practice.

## 9. ILLEGAL PRODUCTION OR HANDLING OF DANGEROUS MATERIALS

### 9.1. The concept of dangerous materials

Law 22/2011 of 28 July 2011 on waste and contaminated soil says that 'hazardous waste' is waste which displays one or more of the hazardous properties listed in Annex III and which may be approved by the government in accordance with the provisions of European legislation or the international treaties to which Spain is party, as well as the containers and packaging that have been used to hold such waste.

Actions prohibited or restricted related to the production or handling of dangerous materials are set out in Framework Law 10/1995 of 23 November 1995 on the Criminal Code. Punishable acts vary and depend on the type of offence.

Article 326 bis: *Those who 'store or use dangerous substances which cause or are likely to cause substantial damage to air, soil or water quality or to animals or plants, or to cause death or serious injury to any person, or which may seriously endanger the balance of natural systems.'*

Article 567: *The manufacture, marketing or possession of chemical, biological, nuclear or radiological weapons, or of anti-personnel mines, or of cluster munitions, shall be considered storage of such arms.*

Article 577: *'... those who provide training or instruction in the manufacture or use of explosives, firearms or other harmful or dangerous weapons or substances ...'*

Spanish law (Law 22/2011 of 28 July on waste and contaminated soil) does not specify an authority responsible for deciding whether or not a given substance should be considered as dangerous material, if it is not clear. Hazardous waste is considered to be any waste that displays one or more of the hazardous properties listed in Annex III of the aforementioned Law, as well as any that may be approved by the government in accordance with the provisions of European law or the international treaties to which Spain is a party, in addition to the containers and packaging used to hold such waste.

The hazardous properties listed in Annex III are the following:

H 1 'Explosive': Substances and preparations which may explode under the effect of flame or which are more sensitive to shocks or friction than dinitrobenzene.

H 2 'Oxidising': Substances and preparations which exhibit highly exothermic reactions when in contact with other substances, particularly flammable substances.

H 3-A 'Highly flammable':

- Liquid substances and preparations with a flash point below 21°C (including extremely flammable liquids).
- Substances and preparations which may become hot and eventually catch fire when in contact with air at ambient temperature without any application of energy.
- Solid substances and preparations which may readily catch fire after brief contact with a source of ignition and continue to burn or be consumed after the source of ignition has been removed .
- Gaseous substances and preparations which are flammable in air at normal pressure.
- Substances and preparations which, in contact with water or damp air, give off highly flammable gases in dangerous quantities.

H 3-B 'Flammable': Liquid substances and preparations with a flash point above or equal to 21°C and below or equal to 55°C.

H 4 'Irritant': Non-corrosive substances and preparations which, through immediate, prolonged or repeated contact with the skin or mucous membrane, may cause inflammation.

H 5 'Harmful': Substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may pose limited health risks.

H 6 'Toxic': Substances and preparations (including highly toxic substances and preparations) which, if they are inhaled or ingested or if they penetrate the skin, may pose serious, acute or chronic health risks, or even a risk of death.

H 7 'Carcinogenic': Substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may cause cancer or increase its incidence.

H 8 'Corrosive': Substances and preparations which may destroy living tissue on contact.

H 9 'Infectious': Substances and preparations which contain viable micro-organisms, or their toxins, which are known or reliably believed to cause disease in humans and other living organisms.

H 10 'Toxic for reproduction': Substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may cause non-hereditary congenital malformations or increase their incidence.

H 11 'Mutagenic': Substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may cause hereditary genetic defects or increase their incidence.

H 12 Waste which releases toxic or very toxic gases in contact with air, water or an acid.

H 13\* 'Sensitising': Substances and preparations which, if they are inhaled or if they penetrate the skin, can cause hypersensitisation, such that subsequent exposure to the substance or preparation results in characteristic adverse effects.

H 14 'Ecotoxic': Waste which presents or may present immediate or delayed risks for one or more sectors of the environment.

H 15 Waste capable by any means, after disposal, of yielding another substance, e.g. a leachate, which possesses any of the characteristics listed above.

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

The illegal activities observed in the management of hazardous waste are mainly the failure to follow legally established treatment procedures, instead using cheaper alternatives which therefore allow a greater profit to be made, and at worst, the failure to carry out any kind of treatment at all, proceeding directly to disposal in incinerators, landfills or discharges into the environment.

The illegal handling of dangerous material prior to the jihadist attacks in Catalonia in 2017 is a useful reminder of the important role that the illegal production and handling of dangerous materials can play in terrorism. Various anti-terrorist operations and actions against malicious activity involving explosives, their precursors and CBRN (chemical, biological, radiological or nuclear) substances have also been carried out in Spain.

Specific provisions on the subject include the following:

- Law 8/2017 of 8 November 2017 on explosives precursors, transposing Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors.
- Law 53/2007 of 28 December 2007 on control of foreign trade in defence equipment and dual-use goods.
- Royal Decree 679/2014 of 1 August 2014 endorsing the Regulation on control of foreign trade in defence equipment, other equipment and dual-use products and technologies.
- Royal Decree 97/2014 regulating the transport of dangerous goods by road on Spanish territory.
- European Agreement concerning the international carriage of dangerous goods by road (ADR).
- Royal Decree 412/2001 concerning the transport of dangerous goods by rail.
- Regulation concerning the international carriage of dangerous goods by rail (RID).
- International Maritime Dangerous Goods code (IMDG code).
- Organic Law 10/1995 of 23 November 1995 on the Criminal Code:

- Article 326 bis: *'The penalties provided for in Article 325 shall be applied, in their respective cases, to anyone who, in breach of the laws or other general provisions, operates a plant in which a dangerous activity is carried out, or in which dangerous substances or preparations are stored or used, such that they cause or are likely to cause substantial damage to the quality of air, soil or water, or to animals or plants, death or serious injury to any person, or may seriously upset the balance of natural systems.'*

### **Section on nuclear materials**

- Article 341: *'Anyone who releases nuclear energy or radioactive elements that endanger the life or health of persons or their property, even if an explosion does not take place, shall be punishable by a term of imprisonment of between fifteen and twenty years and disqualification from exercising any public employment or position, profession or trade for a period ranging from ten to twenty years.'*

- Article 342: *'Anyone who, without being included in the previous Article, disrupts the operation of a nuclear or radioactive facility, or disrupts activities involving materials or equipment that produce ionising radiation, creating a situation in which the life or health of persons is seriously endangered, shall be punishable by a term of imprisonment of between four and ten years and disqualification from exercising any public employment or position, profession or trade for a period ranging from six to ten years.'*

- Article 343:

*'1. Anyone who, through the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, or through exposure by any other means to the aforementioned radiation, endangers the life, integrity, health or property of one or more persons, shall be punishable by a term of imprisonment of between six and twelve years and disqualification from exercising any public employment or position, profession or trade for a period ranging from six to ten years. The same penalty shall be imposed when these actions endanger the quality of air, soil or water, or animals or plants.'*



2. *When the conduct described in the previous paragraph results, in addition to the foreseen risk, in a harmful outcome constituting a criminal offence, whatever its seriousness, the judges or courts shall only consider the more severely penalised offence, applying the upper half of the penalty.*

3. *When, pursuant to the provisions of Article 31 bis, a legal person is responsible for the offences listed in this Article, they shall be punishable by a fine payable over a period ranging from two to five years.*

*Under the rules established in Article 66 bis, judges and courts may also impose the penalties listed in points (b) to (g) of Article 33(7).*

- Article 344: *'The acts set out in the previous Articles shall be punishable by the lower-degree penalty, in their respective cases, when committed as a result of serious negligence.'*

- Article 345:

*'1. Anyone who, in breach of the laws or other general provisions, acquires, possesses, traffics, supplies, handles, processes, uses, stores, transports or disposes of nuclear materials or other dangerous radioactive substances which cause or are likely to cause death or serious injury to any person, or substantial damage to the quality of air, the quality of soil, or the quality of water, or to animals or plants, shall be punishable by a term of imprisonment of between one and five years, a fine payable over a period of six to eighteen months, and disqualification from exercising a profession or trade for a period ranging from one to three years.*

*2. Anyone who produces such materials or substances without proper authorisation shall be punishable by the higher-degree penalty.*

*3. If the acts referred to in the previous paragraphs were committed as a result of serious negligence, a penalty of a lower degree than that indicated in those paragraphs shall be imposed.'*

## Section on explosives and other toxic agents

- Article 348:

*'1. Anyone who, by manufacturing, handling, transporting, holding or marketing explosives or flammable, corrosive, toxic or asphyxiating substances, or any other materials, apparatus or devices which may cause havoc, breaches the established safety regulations, specifically endangering the life, physical integrity or health of persons, or the environment, shall be punishable by a term of imprisonment of between six months and three years, a fine payable over a period of twelve to twenty-four months, and disqualification from exercising any public employment or position, profession or trade for a period ranging from six to twelve years. The same penalties shall be imposed on anyone who illegally produces, imports, exports, markets or uses ozone-depleting substances.*

*2. Anyone responsible for the surveillance, control and use of explosives that may cause havoc who, in breach of the rules regarding explosives, has facilitated their effective loss or theft shall be punishable by a term of imprisonment of between six months and three years, a fine payable over a period of twelve to twenty-four months, and disqualification from exercising any public employment or position, profession or trade for a period ranging from six to twelve years.*

*3. In the cases set out in the preceding paragraphs, when a legal person is responsible for the acts in accordance with Article 31 bis of this Code, they shall be punishable by a fine payable over a period of one to three years, except if the damage caused is proven to be of a greater amount, in which case the fine shall be two to four times the amount of that damage.*

*Under the rules established in Article 66 bis, judges and courts may also impose the penalties listed in points (b) to (g) of Article 33(7).*

*The upper half of the penalties established in the preceding paragraphs shall be imposed in the case of directors, executives or managers of the company, firm, organisation or operation.*

4. *Managers of factories, workshops, means of transport, depots and other establishments related to explosives that may cause havoc shall be punishable by a term of imprisonment of between six months and one year, a fine payable over a period of six to twelve months and disqualification from exercising any public employment or position, profession or trade for a period ranging from three to six years for any of the following:*

*(a) obstructing explosives security inspections carried out by the authorities;*

*(b) forging or concealing from the authorities relevant information about compliance with mandatory explosives security measures;*

*(c) disobeying specific orders from the authorities intended to resolve serious explosives security anomalies.'*

- Article 349: *'Anyone whose handling, transport or possession of organisms breaches established laws or security measures, specifically endangering the life, physical integrity or health of persons, or the environment, shall be punishable by a term of imprisonment of between six months and two years, a fine payable over a period of six to twelve months, and disqualification from exercising any public employment or position, profession or trade for a period ranging from three to six years.'*

- Article 350: *'Without prejudice to the provisions of Article 316, anyone whose digging of wells, excavation activities, construction or demolition of buildings, dams, piping or other similar works, or maintenance, fitting and upkeep thereof, violates established security laws, failure to comply with which may have catastrophic consequences and specifically endanger the life and physical integrity of persons or the environment, shall incur the penalties set out in the previous Article.'*

#### **Section on possession, trafficking and storage of weapons, munitions or explosives**

- Article 566 punishes *'...anyone who manufactures, markets or sets up storage facilities for weapons or munitions that are not authorised by law or by the competent authority in the case of weapons or munitions of war, chemical, biological, nuclear or radiological weapons, anti-personnel mines or cluster munitions.'*

## Section on terrorist offences

- Article 574(3): *'Anyone who, for any of the purposes listed in paragraph 1, develops chemical or biological weapons, or who seizes, possesses, transports, supplies others with or handles nuclear materials, radioactive elements or materials, or equipment that produces ionising radiation, shall also be punishable by a term of imprisonment of between ten and twenty years.'*

### 9.3. Procedural aspects

#### 9.3.1. Means of collecting evidence and of handling dangerous materials

Criminal offences related to the illegal production or handling of dangerous materials are documented using police reports which describe the various investigative procedures that have been carried out by the criminal police (criminal investigation) and that are subject to the Criminal Procedure Act. As regards the collection of evidence, Article 282 of the Criminal Procedure Act stipulates that all effects, instruments and evidence of the offence at risk of being lost should be collected, to be made available to the judicial authority. Materials posing a potential biological risk are subject to the joint operational protocol of the national law enforcement authorities, the Carlos III Health Institute and the Biological Alert Laboratory Network (RE-LAB).

In the case of administrative offences, the appropriate documents are drawn up and sent to the authorities responsible for imposing penalties. When it comes to the illegal production and handling of hazardous materials, there is a smooth exchange of information with European and international partners, that can be useful for taking anti-terrorist actions. To this end the following channels are used:

- Europol Platform for Experts (EPE)
- International Atomic Energy Agency (IAEA)'s Nuclear Security Information Portal (NUSEC), the access portal to the Incident and Trafficking Database (ITDB)

- Secure Information Exchange Network Application (SIENA)
- SINAPSE – EU CBRNE platform; the EU's CBRN scientific and technical community
- Early Warning System (EWS)

Arrests made in connection with the import and export of nuclear materials and radioactive substances are brought to the attention of the United Nations Sanctions Committee.

CBRN materials seized by police are handled according to the operating procedures of the specialist bomb disposal and CBRN branch of the Spanish police forces (TEDAX-NRBQ), taking the necessary physical protection measures. The costs of handling and storing these materials are paid from the national budget, specifically by the budget allocated to the police forces by the Ministry of the Interior.

Depending on their nature, hazardous materials are analysed by:

- (1) police laboratories;
- (2) Centre for Energy, Environmental and Technological Research (CIEMAT) – CBRN defence laboratories;
- (3) Carlos III Health Institute – Biological Alert Laboratory Network (RE-LAB).

There are various standard operating procedures.

- Operational protocol of the alert services and the national law enforcement authorities for informing RE-LAB of a biological alert or threat.
- Technical protocol for collaboration between the Nuclear Safety Council (CSN) and the Directorate-General of the Police and the Guardia Civil, of 16 November 2011.
- Framework agreement on collaboration between the Ministry of the Interior and the Nuclear Safety Council on planning, preparing for and responding to nuclear and radiological emergency situations, and on the physical protection of nuclear and radioactive facilities, materials and activities, of 25 October 2007.

- Operational protocol in case of detection of inadvertent movement or illegal trafficking of radioactive material in ports of general interest (MEGAPORT), of 22 June 2010.

For other types of hazardous materials, ad hoc measures are taken on a case-by-case basis.

The analysis of these hazardous materials can be carried out by police laboratories, the National Toxicology Institute, laboratories certified by the Autonomous Communities, etc.

As a general rule, it is the responsibility of the Autonomous Community to provide proper facilities for temporary storage and shipment, and to bear the handling costs and any other related costs.

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

All relevant information is included in Sections 6.2.1. and 6.2.2.

### *9.3.3. Techniques of investigation*

Both ordinary and special means of investigations can be used, with the limitations provided for by the law depending on the penalty. Techniques of financial or cyber investigations are commonly used in all types of investigation, including those carried out in connection with hazardous materials. As mentioned above, some units, such as the Guardia Civil's SEPRONA (UCOMA), are becoming more and more capable of using these types of techniques independently without requesting support from specialist units.

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

In terms of investigations relating to CBRN materials, one of the obstacles is the judicial bodies' lack of expertise. The Spanish authorities think that this problem could be solved by establishing courts at national level with jurisdiction over specific offences related to the proliferation of weapons of mass destruction.

Another investigative difficulty lies in the need of the investigators to have the support of specialists to intervene to determine the characteristics of the products and materials seized.

Furthermore, as the 'Environment and town planning' section of the Office of the Prosecutor General's Annual Report 2016 points out, if the Spanish legal system is to adapt to the demands of the 21st century, expert teams and criminal police officers must be assigned to cases in advance, since the necessary speed cannot be achieved without them. The complexity and specific nature of proceedings relating to environmental crimes reflect this problem.

The limited penalising of offences relating to the trafficking and mismanagement of waste makes it very difficult to use investigative measures that infringe fundamental rights but are nowadays essential to the success of an investigation, such as intercepting communications, accessing banking information, etc. It is also worth noting that the number of organised groups using advanced economic engineering to make it difficult to prove the existence of and locate unlawfully acquired profits is growing ever larger.

Lastly, in cases of international waste shipments, preserving the chain of custody of the evidence, investigating and ensuring the presence of the perpetrator at trial, and investigating and offering civil and criminal proceedings to injured parties, all pose problems.

#### *9.3.5. Training*

The programmes offered by the specialist bomb disposal and CBRN branches of the National Police (TEDAX-NRBQ) and the Guardia Civil (SEDEX-NRBQ) include extensive training for dealing with incidents involving these kinds of hazardous materials. This takes the form of continuous training, with regular refresher sessions. This continuous training is supplemented by courses, simulations and workshops at both national and international level.

In addition to the specialised training that the members of these units receive, the general training scheme for police officers includes basic training that allows them to provide an initial response to incidents involving these kinds of materials.

There are also classified concrete action plans for incidents involving CBRN materials, which provide for coordinated action to be taken by the different police departments, and for their cooperation with health services, fire services and local police.

#### 9.4. Conclusions

- The illegal activities observed in the management of hazardous waste are mainly those of failing to follow legally established treatment procedures, instead using cheaper alternatives which therefore allow a greater profit to be made, and at worst, failing to carry out any kind of treatment at all, proceeding directly to disposal in incinerators, landfills or discharges into the environment.
- Criminal offences related to illegal production or handling of dangerous material are documented using police reports which describe the various investigative procedures that have been applied by the criminal police (criminal investigation) and that are subject to the Criminal Procedure Act.
- The limited penalising of offences relating to the trafficking and mismanagement of waste make it very difficult to use investigative measures that could infringe fundamental rights but are nowadays essential to the success of an investigation, such as intercepting communications, accessing banking information, etc.
- In the case of administrative offences, the appropriate documents are drawn up and sent to the authorities responsible for imposing penalties.
- When it comes to the illegal production and handling of hazardous materials, there is a smooth exchange of information with European and international partners, which can be useful for anti-terrorist actions.
- The analysis of these hazardous materials can be carried out by police laboratories, the National Toxicology Institute, laboratories certified by the Autonomous Communities, etc.
- Both ordinary and special means of investigations can be used, with the limitations provided for by the law depending on the penalty.
- As a general rule, it is the responsibility of the Autonomous Community to provide proper facilities for temporary storage and shipment, and to bear the handling costs and any other related costs.
- One of the obstacles is the judicial bodies' lack of expertise. The Spanish authorities think that this problem could be resolved by establishing courts at national level with jurisdiction over specific offences e.g. the proliferation of weapons of mass destruction.



## 10. FINAL REMARKS AND RECOMMENDATIONS

### 10.1. Suggestions from Spain

None

### 10.2. Recommendations

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

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

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

#### *10.2.1. Recommendations to Spain*

1. Spain should work on a national strategy dedicated to the fight against environmental crime, *inter alia* by using risk analyses to focus on environmental problems.
2. Appropriate databases and statistics within each administration, based on reliable collected data, should be built up, then collected by one institution and made available to all the relevant authorities. Feedback is considered essential to assess the work of each institution and adopt future strategies.

3. Spain should take measures to ensure that all authorities concerned have access to the necessary information concerning inspections, criminal and administrative cases, penalties etc. in the area of waste management and shipments, taking into consideration the development of e-SIR and what information that system will cover.
4. The establishment organised databases directly accessible by the LEAs is strongly encouraged.
5. Spain should consider enhancing the capacity of the public prosecutor's office for the protection of the environment and land planning, either by appointing more technicians at central level or by including technical staff in the local specialised prosecution office.
6. The public prosecutor's office for the protection of the environment and land planning should focus more intensively on waste crime as, despite the responsibility of this unit and the thorough capability of its staff, this is obviously not a priority.
7. The number and quality of inspections of domestic and transboundary shipments of waste, both within the competence of MITECO and of the Autonomous Communities, should be increased.
8. Spain should consider increasing the number and quality of inspections by local and regional authorities related to the management of waste in different aspects. As waste crimes are assessed as 'control crime', more and better inspections would, in the evaluators' view, most likely lead to the detection of more waste crime cases.

9. Spain should use existing working groups as much as possible to ensure a consistent approach to the prioritisation, planning and carrying out of inspections across the country, exchange of information and harmonisation of the implementation of the legal framework on waste management and waste shipments.
10. Spain should consider encouraging staff from the relevant institutions to attend joint training courses for judges, prosecutors, police and administrative units, and also customs officers, on a more regular basis.
11. Spain should consider increasing the number of specialised personnel and training them on the typical modi operandi in waste trafficking, such as fraudulent declaration and decontamination.
12. As far as lawfully possible, proper feedback should be provided to the NGO that reported a given illegal activity to the relevant institutions.

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

1. Europol should encourage Joint Investigation Teams and bilateral police protocols for the setting of coordinated inspections in the framework of cross-border shipments of waste.
2. The establishment of a European databank concerning the waste that every company is authorised to manage should be encouraged.

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

<b>DATE/TIMETABLE</b>	<b>ACTIVITY</b>
<b>Monday 25 June 2018</b>	
	<b>Arrival of the evaluation team:</b> <b>Experts:</b> <ul style="list-style-type: none"><li>- Mr. Thomas BÖX, Senior Prosecutor München (Germany)</li><li>- Mr. Marco AVANZO, Col. Carabinieri (Italy)</li><li>- Ms. Ylva LINDÉN, National Environment Protection Agency, Environment Law Expert (Sweden)</li></ul> <b>Council:</b> <ul style="list-style-type: none"><li>- Mr. Enrique ESTELLER</li><li>- Ms. Carmen GIUFFRIDA</li></ul> <b>Commission:</b> <ul style="list-style-type: none"><li>- Mr. Miroslav ANGELOV</li></ul>
	<b>Internal meeting of the evaluation team (hotel)</b>
<b>Tuesday 26 June 2018</b>	
9.15-9.45	<b>Ministry of Justice (C/ San Bernardo, 62, Salón Rococó)</b> <ul style="list-style-type: none"><li>- Ms. Ana GALLEGO TORRES, General Director for International Legal Cooperation</li><li>- Ms. M<sup>a</sup> Eugenia HERNÁNDEZ FERNÁNDEZ, Prosecutor, Advisor at the General Direction for International Legal Cooperation</li><li>- Ms. Ana ANDRÉS BALLESTEROS, Deputy Director for Justice Affairs in the EU and IIOO</li><li>- Ms. Irene FUENTETAJA COBAS, Deputy Direction for Justice Affairs in the EU and IIOO</li><li>- Ms. Marta COLINO CASTRO, Deputy Direction for Justice Affairs in the EU and IIOO</li></ul>

10.15-12.00	<p><b>General Prosecution Office. Environmental Unit</b> (C/Ortega y Gasset, 57)</p> <ul style="list-style-type: none"> <li>- Mr. ANTONIO VERCHER NOGUERA, Public Prosecutor</li> <li>- Mr. ANTONIO COLMENAREJO FRUTOS, Public Prosecutor</li> <li>- Mr. TEODORO ABBAD-JAIME DE ARAGÓN SANTIVERI, Head of Technical Unit</li> </ul>
<p><b>10.3.</b> 12.30-13.30</p>	<p><b>10.4. General Council of the Judiciary</b> (C/ Marqués de la Ensenada, 8)</p> <ul style="list-style-type: none"> <li>- Mr. Pedro Félix ÁLVAREZ DE BENITO, Senior Judge. Head of the International Relation Service. General Council of the Judiciary</li> <li>- Mr. Faustino GUDIN RODRIGUEZ-MAGARIÑOS, Senior Judge. Criminal Court Nº 1 of Segovia</li> </ul>
14.00-15.30	Lunch
16.00-17.30	<p><b>Ministry for Ecological Transition</b> (Plaza de San Juan de la Cruz, s/n)</p> <ul style="list-style-type: none"> <li>- Mr. Javier CACHÓN DE MESA, General Director of Biodiversity and Environmental Quality</li> <li>- Ms. Paloma LÓPEZ-IZQUIERDO BOTÍN, Deputy Director on Waste</li> <li>- Ms. Margarita RUIZ SAIZ-AJA, Deputy Direction on waste</li> <li>- Ms. Marta SEBASTIÁN DE ERICE, Head of the support unit of the General Direction for Biodiversity and Environmental Quality</li> </ul>
1h	<b>Internal meeting of the evaluation team</b> (hotel)

<b>Wednesday 27 June 2018</b>	
9.30 – 11.30	<p><b>Ministry of Interior. Nature Protection Service Headquarters (SEPRONA) of the Civil Guard (C/ Batalla del Salado, 32)</b></p> <ul style="list-style-type: none"> <li>- Colonel Francisco Luis MONEDERO LIÑÁN, SEPRONA</li> <li>- Major Vicente CORRAL ESCARIZ, Criminal Intelligence Unit</li> <li>- Captain Ramón GONZÁLEZ GALLEGO, SEPRONA</li> </ul>
12.00-14.00	<p><b>Ministry of Interior. General Counterterrorism Headquarters of the Spanish National Police TEDAX-NRBQ (Centro Policial de Canillas, C/Julián González Segador s/n)</b></p> <ul style="list-style-type: none"> <li>- Police Inspector Alberto OLIVARES GARCIA, General Criminal Police Headquarters</li> <li>- Police Inspector Jorge MORATO ARNANZ, General Counterterrorism Headquarters</li> <li>- Police Inspector Sonia GÓMEZ TORRADO, International Cooperation Division</li> </ul>
14.00-16.00	Lunch
16.30-17.30	<p><b>National Agency for Tax Administration. Customs and Excise Department. Sub-directorate of Customs Surveillance (Avda Llano Castellano, 17)</b></p> <ul style="list-style-type: none"> <li>- Mr. José Luis VALLE MARÍA, Deputy Director General of Operations. Head of Intelligence &amp; Information</li> <li>- Mr. Arturo CONTELL LLIBEROS, Deputy Director General of Customs Management, Superior Financial Inspector of the State</li> </ul>
1h	<b>Internal meeting of the evaluation team (hotel)</b>

Thursday 28 June 2018	
10.00-14.00	<p><b>Valdemingómez Technological park</b></p> <ul style="list-style-type: none"> <li>- Mr Miguel Ángel BAQUEDANO, Director of Valdemingómez Technological park</li> </ul> <p><b>Meeting with representatives of:</b></p> <p><b>Ministry of Ecological Transition:</b></p> <ul style="list-style-type: none"> <li>- Mr. Javier CACHÓN DE MESA</li> <li>- Ms. Paloma LÓPEZ-IZQUIERDO BOTÍN</li> </ul> <p><b>Autonomous Community of Madrid:</b></p> <ul style="list-style-type: none"> <li>- Mr. Miguel Ángel GILARRANZ, Head of the Inspection Area</li> <li>- Mr. Daniel BARETTINO, Deputy Director for Inspection and Environmental Discipline</li> <li>- Ms. Marisol SANTOS, Head of the Planning and Waste Management Area</li> <li>- Mr. Enrique RODRIGUEZ, Deputy Director for Environmental Standards and Circle Economy</li> </ul> <p><b>Madrid City Council:</b></p> <ul style="list-style-type: none"> <li>- Mr. Víctor Manuel SARABIA HERRERO, General Director of Cleaning Services and Waste</li> </ul>
14.30-15.30	Free lunch
15.30-16.15	<p><b>Meeting with NGOs representatives (C/ San Bernardo, 45, Sala 215)</b></p> <ul style="list-style-type: none"> <li>- Mr. Jesús PÉREZ GÓMEZ, Ecologistas en Acción</li> <li>- Ms. Ana CARRICONDO, SEO/BirdLife</li> </ul>
2h	<b>Internal meeting of the evaluation team (hotel)</b>

<b>Friday 29 June 2018</b>	
9.30-11.00	<p><b>Ministry of Justice. Wrap-up session (C/ San Bernardo, 62, Salón Rococó)</b></p> <p><b>Ministry of Justice</b></p> <ul style="list-style-type: none"> <li>- Ms. M<sup>a</sup> Eugenia HERNÁNDEZ FERNÁNDEZ</li> <li>- Ms. Ana ANDRÉS BALLESTEROS</li> <li>- Ms. Irene FUENTETAJA COBAS</li> <li>- Ms. Marta COLINO CASTRO</li> </ul> <p><b>Ministry of Interior</b></p> <ul style="list-style-type: none"> <li>-- Chief Inspector Eduardo BOROBIO LEÓN- Inspector Sonia GÓMEZ TORRADO</li> <li>- Inspector Alberto OLIVARES GARCIA - Major Vicente CORRAL ESCARIZ</li> <li>- Captain Ramón GONZÁLEZ GALLEGO</li> </ul> <p><b>Ministry for Ecological Transition</b></p> <ul style="list-style-type: none"> <li>- Ms. Paloma LÓPEZ-IZQUIERDO BOTÍN</li> <li>- Ms. Marta SEBASTIÁN DE ERICE</li> </ul> <p><b>General Council of the Judiciary</b></p> <ul style="list-style-type: none"> <li>- Mr. Faustino GUDIN RODRIGUEZ-MAGARIÑOS</li> </ul> <p><b>National Tax Administration Agency</b></p> <ul style="list-style-type: none"> <li>- Mr. José Luis VALLE MARÍA</li> <li>- Mr. Arturo CONTELL LLIBEROS</li> </ul>



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

<b>List of acronyms, abbreviations and terms</b>	<b>Spanish or acronym in original language</b>	<b>Spanish or acronym in original language</b>	<b>English</b>
ISF			Internal Security Funds
TECUM			Tackling Environmental Crime through Standardised Methodologies
UDEV			violent crime unit
SEPRONA			Nature Protection Service
UCOMA			Central Operational Environmental Unit
MITECO			Ministerio para la Transición Ecológica
NGO			Non-Governmental Organisation
SEC			Crime Statistics System
AEAT			Customs Department of the National Tax Administration Agency
LEAs			Law Enforcement Agencies
CITCO			Intelligence Centre against Terrorism and Organised Crime
SRI			Investigations recording system

CEJ		Centro de Estudios Jurídicos	Centre for Legal Studies
JIT			Joint Investigation Team
ESOCC			European Serious Organised Crime Centre
<b>WCO</b>			World Customs Organisation
WEEE			Waste electrical and electronic equipment
EUFJE			EU Forum of Judges for the Environment
PPP			Public Private Partnership
ELV			End-of-Life Vehicle
LoW			European list of waste
CBRN			chemical, biological, radiological or nuclear
RE-LAB			Biological Alert Laboratory Network
CIEMAT			Centre for Energy, Environmental and Technological Research
CSN			Nuclear Safety Council

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