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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: 8th Round of Mutual Evaluations - 'The practical implementation and operation of European policies on preventing and combating Environmental Crime'
Follow-up to the Report on Belgium

As a follow-up to each Round of Mutual evaluations, each Member-State is requested to inform the General Secretariat of the Council of the actions it has taken on the recommendations given to it.

A follow-up report should be submitted within 18 months from the adoption of the report concerned.

Delegations will find in the Annex the follow-up report of Belgium regarding the recommendations that were made in the report [11402/1/18 REV1](#) for the Eighth Round of Mutual Evaluations.

EIGHTH ROUND OF MUTUAL EVALUATIONS ON 'THE PRACTICAL
IMPLEMENTATION AND OPERATION OF EUROPEAN POLICIES ON
PREVENTING AND COMBATING ENVIRONMENTAL CRIME'

FOLLOW-UP TO REPORT ON BELGIUM

In the context of the eighth round of Mutual Evaluations on 'the practical implementation and operation of the European polices on preventing and combating environmental crime'

The evaluation report on BELGIUM as set out in doc. ST 11402/1/18 REV1, was adopted by the LEWP/COPEN WP on 14/09/2018.

We hereby submit, according the procedures set out in doc. 15538/4/15, our report on the follow-up to the recommendations made to BELGIUM in the above evaluation report.

For each recommendation, only the concerned authorities have given information on the follow-up measures taken and are expressly mentioned.

Recommendation 1. Find additional instruments to coordinate the National Security Plan and the zonal security plan.

Police: The coordination between the (federal) National Security Plan (NSP) and the zonal security plans is part of a bigger picture than only the phenomenon of environmental crime. For the moment – as we still do not have a new government after the last elections – the process of agreeing on a new NSP is still in an early phase. Therefore, it is not possible right now to state that environmental crime will emerge as a priority. The Local Police already, in general, participates in actions such as traffic controls linked to waste (eco-forms). Findings of the aforementioned basic police care by the Local Police enable certain phenomena to be detected and form the basis of specialized investigation by the Federal Police. Furthermore, following Article 4 of the Law of 7 December 1998 organising an integrated police service, structured at two levels, the zonal security plans take into account the NSP. As a part of the ongoing process leading to a new NSP a more streamlined coordination with the local unities of the Federal and the Local Police is currently being investigated (e.g. the idea of organising roadshows is being considered).

Recommendation 2. Consider the possibility of improving the environmental crime statistics because the judicial figures do not adequately reflect the number of cases falling into this crime category.

- a. **Police:** Due to the frequent financial purposes of committing environmental crimes the facts are often qualified as financial crimes. Raising police awareness on specific encoding for environmental crime is strongly advised. The initial qualification issue has been acknowledged, but is also largely intertwined with the issue of prioritizing and sensitizing all levels of the competent authorities (see the new efforts with regard to recommendation 9).

Note: In the context of the statistics, we wish to rectify and address an error made in part 3.3 Statistics on “Waste Crime” in the document (page 16 in the English version). It should be noted that the numbers represent statistics of the Belgian integrated police (namely local and federal police services) and that most of the reported figures were generated by the Local Police. Local police forces are active in basic police care (see Article 3 Law of 7 December 1998 organizing an integrated police service, structured at two levels). Federal police forces carry out more specialized environmental investigations linked to organized crime (see also circular COL 2/2002).

b. Prosecutor’s office: Necessary structural measures (implementation of a data structure) were taken by the expert network to enable a better qualification of environmental offences. This facilitates the possibility to better follow-up on statistical demands. For now, it is being investigated if and how this system can be used to achieve more detailed statistics in this regard.

c. Walloon Region:

The central file is an obligation established with the new "delinquency decree" of 06.05.2019 art.D144 §1 and which becomes compulsory on 01.01.2021.

This central file includes:

- 1° the reports and warnings written and drawn up under this part;
- 2 ° the restraint measures taken with regard to offenders;
- 3 ° the restoration measures requested by the control officer or by the “Bourgmestre”;
- 4 ° the proposals for fines made by control officers;
- 5 ° the infringement situations regularized following a warning or a measure of constraint pronounced;

6 ° the decision of the Public Prosecutor referred to in article D.166;

7 ° the transaction proposals made to offenders by Prosecutors;

8 ° judgments and decisions rendered by the courts and tribunals having the force of res judicata, including the penalties imposed, the ancillary measures and the restitution measures pronounced;

9 ° transaction proposals made to offenders by sanctioning officials;

10 ° the decisions of sanctioning officials having the force of res judicata, including the administrative sanctions imposed, the ancillary measures and the restitution measures pronounced;

11 ° the execution of decisions rendered either by the courts and tribunals, or by a sanctioning official.

By way of derogation from paragraph 3, 1 °, the minutes ultimately considered to be erroneous are removed from the central file.

The mention of the infringements, as well as the points relating, are automatically deleted ten years from the classification without result or the execution of the decisions rendered either by the courts and tribunals, or by a sanctioning official. This ten-year period begins from the day after the day when the decision concerned is no longer subject to appeal.

Paragraph two of the same article states that the data in the central file are not accessible to the public and can only be used by the investigating agents having the quality of judicial police officer, by the mayors, by the police officers, by the sanctioning officials as well as by public prosecutors.

Persons who receive communication of personal data within the framework of the provisions of this chapter shall take necessary measures to guarantee the confidentiality of these data as well as their use for the sole purposes provided for by or under this part or for the application of their legal obligations.

The central file will be fed with the work of all those who act within the framework of environmental legislation being:

- Courts (judgment);
- Prosecutors office;
- Sanctioning officials;
- Control officers (regional agents, municipal agents, police);
- Mayor.

Recommendation 3. Contemplate the possibility of allowing information to be shared where Article 44 of the Law on Policing forbids the police to share information with the competent national authorities.

Police: The need to be able to share (limited and appropriate) police information with external partners remains a focus with the police services concerned.

- As for environmental crimes the benefits of information sharing are obvious and it is worth noticing that, notwithstanding Article 44/1 and following, Article 15 of the Law of 5 August 1992 on Policing already allows for the communication of information to the competent authorities, including information concerning administratively sanctioned infringements.

- Article 44/11/9, §§2 and 3 of the Law on Policing offers an additional possibility to communicate operational police data "*to Belgian public authorities, public or public-interest bodies or organizations entrusted by law with the application of criminal law or which have legal public security missions when they need them for the performance of their legal missions*". In order to benefit from this communication, this Article requires the receiving authorities to appear on a list to be drawn up on the basis of a decision from the Ministers of the Interior and Justice. The creation of this list has been introduced by a recent legal amendment. The concrete modalities of this communication have to be determined through Guidelines (i.e. a directive) of the Ministers of Interior and Justice. This Directive will be adopted as soon as it will be validated by the advising authorities as foreseen in the procedure. Currently, all relevant recipient authorities are being determined.
- Furthermore, it should be noted in passing that different special laws provide for copies of the official reports to be sent to the specialized services.

Recommendation 4. Increase the number of staff of all competent services dealing with environmental crime.

- a. Police:** At the moment a need for additional personnel has been acknowledged. However, in line with the general financial and personnel limitations of the Federal Police, the upcoming central service (see recommendation 9) will need to be expanded progressively. Nevertheless, several of the Federal Police's external partners have shown a willingness to second a staff member to this central service. In this way coordination will give rise to a structural improvement in the fight against environmental crime. If additional tasks were to be assigned to the Local Police, additional resources would also have to be made available. In the Belgian state structure, the environment is in fact mainly for the regions, which is also reflected in the funding.

- b. Prosecutor's office:** In this regard, it needs to be mentioned that the prosecutor's office depends on the minister of Justice. In addition, it is not always easy to find a sufficient number of environmental magistrates or to let magistrates work on this subject matter. This is so because of two reasons being that magistrates hold a lot of different responsibilities and that some of these might have priority.
- c. Flemish region:** No remarks or changes.
- d. Brussels Capital region:** There has been no change in the workforce for the Brussels Environment Inspectorate in recent years.
- e. Walloon region:** No remarks or changes.

Recommendation 5. Consider the possibility of the network of magistrates specializing in the environment meeting several times a year for more extensive information sharing.

- a. Prosecutor's office:** The network of magistrates, specialising in environmental, crimes has since 20 years met several times a year.¹

In addition, in the context of the umbrella association of experts on environment, exchange of information, viewpoints and questions, takes place (through emails) on a(n) (almost) weekly basis.

- b. Brussels Capital region:** The Brussels Environment Inspection Division and the Brussels Public Prosecutor meet several times a year to exchange information and guarantee smooth cooperation.

¹ Some examples:

- Brussels Capital region Subexpertnetwork:

*26.04.2018

*21.11.2018

*04.04.2019

*28.11.2019

- Flemish Subexpertnetwork:

*13.06.2018

*18.12.2018

*28.05.2019

*22.11.2019

- Walloon Subexpertnetwork:

*31.01.2018

*08.05.2019

*04.03.2020

Recommendation 6. Provide magistrates with more targeted training to give them greater technical proficiency in this area.

Prosecutor's office: IGO/IFJ (institute for judicial education) organises specialised trainings on a regular basis.² Also, IGO/IFJ finances the partaking/participation in external training of Belgian magistrates on environmental crimes.

Recommendation 7. Consider the possibility of drawing up a blacklist of companies involved in illegal waste trafficking.

Brussels Capital region: A lot has been invested recently in the Decree of the Government of the Brussels-Capital Region of 01/12/2016 on waste management (BRUDALEX) to identify companies that trade in waste by implementing an obligation for registration or approval. In addition, BRUDALEX provides a public list of suspended and withdrawn registrations and approvals for carriers, collectors, traders and brokers. A suspension and / or withdrawal can occur for various reasons, one of them certainly being a company that has repeatedly committed violations of waste legislation. This list has not yet been made available.

Recommendation 8. Taking the good cooperation with Go4circle as the model, consider the possibility of all regional administrations holding information exchanges with the private sector.

- a. **Flemish region:** After a thorough analysis of best practices on exchange of information with the private sector, we are in the process of implementing this recommendation through different channels.
- b. **Brussels Capital region:** Brussels Environment established a good cooperation with Go4Circle. Regular consultation takes place.
- c. **Walloon region:** in progress.

² Examples:
-12.11.2018 – Milieurecht – deel 1
-26.11.2018 – Milieurecht – deel 2
-15.02.2019 – Environmental Law
-21.10.2019 – Milieurecht – deel 3

Recommendation 9. Invest in a single national contact point to represent all partners of the various regions and authorities of the Belgian federal state so that information is more easily available to all and so that the exchange of information at federal, regional and international level is facilitated by the fact that it goes through that single contact point.

a. Police: The Federal Police has recently agreed to set up a single national contact point for serious crimes in the areas of “environment and public health” (namely waste crime; internationally protected animals and plants; hormonal products; food crime; human doping...) within the central services. The service will be modelled after its French equivalent, namely the ‘Office central de lutte contre les atteintes à l’environnement et à la santé publique’ (OCLAESP). This accommodates the need expressed in the Framework Note on Integral Security, 2016-2019 version. The main tasks of this service will be: providing expert knowledge, support of police units, coordination, information gathering and management, and image provision. It will be the central contact point for external partners of the police, as well as for regional, federal and international contacts. The establishment of this service will enable to build a specific research capacity, without being restricted to the priorities in the National Security Plan. This step shows a continuing and lasting effort to prioritize environmental crimes. Moreover, this central service will be open to accommodate personnel from external partners. Several partners have shown an interest and a willingness to contribute to this service. Similar to the fourth recommendation, additional tasks assigned to the Local Police would require additional resources.

b. General remark for the three regions (in the context of the Belgian political system): For most environmental matters, the 3 regions have almost full competence. A single point of contact for the 3 regions and the federal state is therefore difficult to develop from a legal perspective.

However, for matters that require a common Belgian position, it is the Federal Public Service Environment which manages coordination between the regions and the federal state through the consultation committee EICE (extended interministerial conference for the environment). Nevertheless, this service is not a point of contact for the general public.

- c. **Brussels Capital region:** For the moment, a project within the Brussels-Capital Region, led by the Brussels Environment Inspection Division, is ongoing to investigate whether a single digital platform can be created for all regional partners (municipalities, public prosecutor's office, police, urban planning administrations,...) providing information about environmental violations. It is currently being analysed which databases these different partners have, what information they contain and what it is that can be shared (with careful attention for the GDPR legislation).

GENERAL REMARKS

To further substantiate the Belgian efforts made and involvement/willingness in combatting environmental criminality, we give an overview of citations from internal reports on the judicial reorganisation/restructuring of the Belgian legal system in the context of Environmental crimes ever since 2009:

- **2009: Proposition to establish a section ‘environment’ and a section ‘administrative law’ within all courts.**

The recommendation reads as follows:

Environmental law is a very complex and constantly evolving set of rules that requires specialisation. The High Council for Justice (HRJ) therefore proposed to set up an ‘environment section in courts that will take cognizance of all environmental matters: criminal cases, civil cases, environmental strike regulations, summary proceedings, ... Reference in this regard is made to comparable proposals in legal doctrine.

- **2014: Together with the HRJ, all magistrates charged with and responsible for environmental crimes, proposed for the following and recommended that:**

- In cases/files where prosecution is being based on ‘specialised’ legislation’, higher specialisation is necessary to pursue a higher level of efficiency and quality of administration of justice;
- ‘Environment’ should be interpreted in the broad sense of the word, meaning environment, urban planning, nature, ... (non limitative list) as well as in a ‘goal oriented’ way;
- Legislation (from 1/12/2013 – hereafter Reforming act) reforming the judicial districts, provides for the possibility to give sections within courts exclusive jurisdiction and responsibility over (including but not limited to) environment, urban planning, food safety,..;

- It is appropriate to make 1 department per province exclusively competent for all environmental files, both at the level of the public prosecutor's office and the seat, of which the specialized magistrates are preferably designated to the same department;
- Although magistrates have to be mobile, it seems more efficient for files to go between the different departments than the magistrates themselves;
- The objection that is often being made as to keeping the judiciary close to the subordinate (comparable to the situation in family cases) applies here to a lesser extent. The average environmental offender (often companies) can easily move to the appropriate department within a province;
- Art 50 of the reforming act must be amended in the way that civil environmental files can also be assigned to 1 specialized section.
 - In the current editorial of this article, this is only possible for a number of very specific competences such as but not limited to nuclear energy and MARPOL which are already assigned to 1 territorial jurisdiction (cf. art. 569 Ger. W.). The enumeration as provided in art 50 §1 a) should be extended to all special legislation, as already provided for in criminal cases.
 - Only this way, can we evolve towards a fully-fledged environmental court.
 - Also across provinces should cooperation in complex environmental files be possible.
- Making 1 department exclusively authorised/responsible will cause for a shift in files. The correct capacity must be calculated based on figures. Within the specialized departments, teams must be large enough to manage the new workload and to have sufficient spare capacity.
- The establishment of specialized departments must be accompanied by good and effective communication and consultation with other stakeholders: investigating- and seizure judges, police and inspection services, administrative and registry employees.

- **Conclusion: Interventions are necessary to achieve real specialization and efficient environmental enforcement. A legal framework must be put in place:**

- For an environmental court within the existing structure;
- For environmental judges and – attorneys;
- With a necessary and compulsory training, comparable to for example seizure judges, investigative judges, youth judges,...;
- For highly specialized cases, one competent court with jurisdiction for the whole territory and a national environmental prosecutor's office (such as in the Netherlands) can be useful.