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**NOTE**

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From: Austrian Delegation  
To: Delegations

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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 Austria

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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 Austria regarding the recommendations that were made in the report ST 10079/1/19 REV1 for the Eighth Round of Mutual Evaluations.

EIGHTH ROUND OF MUTUAL EVALUATIONS ON ENVIRONMENTAL CRIME -

FOLLOW-UP TO REPORT ON AUSTRIA

Austria would like to make the following comments by way of follow-up to the recommendations set out in the Report on Austria (10079/19 REV1):

1. *is encouraged to develop a national environmental strategy in one single comprehensive document, establishing the country's priorities and the resources planned to tackle environmental crime, including waste-related crime, and setting out the roles of the various actors, including the Public Prosecution Service, and their cooperation in this field;*

**Austria's Response:**

With regard to this recommendation, it should be noted that the Austrian Government, as emphasised in the **Government programme for 2020-2024**, attaches great importance to protecting the environment and tackling environmental crime. To this end, the following actions are planned within the **sphere of competence of the Federal Ministry of Justice**:

- a. *evaluating and, where necessary, amending the current provisions of criminal law in order to hold those responsible for environmental crimes to account;*
- b. *harmonising the concept of waste;*
- c. *lowering the thresholds for criminality;*
- d. *pooling the investigative competences of the public prosecution service for the purpose of tackling environmental crime;*

- e. *including a compulsory module on environmental criminal law in the standard training for judges and public prosecutors; and*
- f. *revising the system of sanctions provided for in the Corporate Criminal Liability Act, in particular by providing for more extensive and more attractive possibilities for out-of-court settlement.*

• With regard to points a to c: In the core areas of environmental criminal law, the threshold for criminal liability is currently as follows:

- a danger to the life of another or a danger of serious bodily injury (Section 84(1) of the Austrian Criminal Code) to another or otherwise a danger to the health or bodily safety of a large number of people;
- a considerable danger to the animal or plant population;
- a long-lasting deterioration in the condition of a body of water, of the soil or of the air; or
- an expense for disposal, or otherwise damage to another's property, to an object which is listed for heritage protection or to a natural monument exceeding EUR 50 000.

- With regard to these thresholds and the associated penalties which apply in the core areas of environmental criminal law, no considerations or requests have recently been put to the Federal Ministry of Justice such as would have occasioned a stakeholder consultation on the matter in the first instance. It appears, however, that new EU requirements may well be introduced in this area. We first need to await these developments. In one area – assessing whether thresholds can be set in a practicable manner in Sections 181f and 181g of the Criminal Code – the responsible department of the Federal Ministry of Justice is already in discussions with representatives of the Federal Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology (hereinafter ‘Federal Ministry of Climate Action’). It is also the case in this area, however, that various ministries need to work together closely, which affects the timeline of the decision-making process.
- As regards the concept of waste, there is a discrepancy between the Waste Management Act and the Criminal Code insofar as law enforcement authorities – on the basis of opinions expressed by legal scholars in the 1990s, which, however, are still reflected in part in current legal commentary – apply a narrower concept of waste under the Criminal Code than under the Waste Management Act, which can, in practice, lead to the failure of complaints. In this regard, the competent Federal Ministries (Justice, the Interior and the Environment) already reached an understanding at staff level during the last parliamentary term. It was agreed that the concept of waste established under the Waste Management Act should prevail (see also the **response to Recommendation 3**).
- In addition, with regard to the shipment of waste, the term ‘non-negligible quantity’, used in Section 181b(3) of the Criminal Code, is interpreted differently by the judicial authorities and the administrative authorities, respectively. A general circular should be issued to harmonise the interpretations.

- With regard to point d: Pooling the investigative competences of the public prosecution service for the purpose of tackling environmental crime has already been effected through Section 4(3) of the Regulation implementing the Law on the Public Prosecution Service (in force since 1 January 2008). Under this Regulation, the directors of public prosecution offices may, for reasons of expediency, combine the handling of certain types of offence, including environmental offences, in one unit. Where the scope of the cases is significant, the work should be assigned to several public prosecutors (see also the response to Recommendation 5). In the area of criminal courts, special jurisdiction would need to be provided for in the Law on Court Organisation. A measure of this type will be considered when there are sufficient case numbers to justify establishing such a jurisdiction.
- With regard to point e: please refer to the **comments on Recommendation 5**.
- With regard to point f: please refer to the **comments on Recommendation 4**.

With regard to the **sphere of competence of the Federal Ministry of the Interior**, the Ministry's strategic planning for 2020-2024 has also been shaped by the Government programme for this period, which, in the chapter on internal security, sets out measures which are largely in line with those included in the Report on Austria of the eighth round of mutual evaluations. A precise timeframe for implementation of the individual measures cannot be provided at present, as a result of the COVID-19 pandemic.

The **Federal Ministry of the Interior** successfully submitted an **SRSS project** to the European Commission in 2019, which was approved by DG Reform and awarded support of EUR 200 000 (plus EUR 50 000 under the TAIEX instrument). The provider for the project, which started in October 2020, is the experienced Dutch organisation, the Center for International Legal Cooperation (CILC). It has been contracted to implement the project within 24 months, on behalf of the European Commission.

The aims of the project – the realisation of which will benefit the Federal Ministry of the Interior, as main beneficiary, together with the Federal Ministry of Justice, the Federal Ministry of Climate Action and subordinate administrative bodies, as secondary beneficiaries – are as follows:

- The creation of a national environmental strategy with a focus on implementing an institutionalised structure for cooperation. This will take the form of a National Environmental Security Task Force (NEST) – a structure recommended by INTERPOL and which provides for collaboration on the part of all organisations active in the environmental field. The Netherlands serves as an example here, having already successfully implemented a NEST, hence the involvement of experts from this country in the project. This measure is of relevance to **Recommendations 1 and 10** from the Report on Austria.
- Further training for public prosecutors in the field of environmental crime to be given by both national experts – from the Federal Ministry of Justice and the Department of Criminal Law and Criminology of the University of Vienna – and international experts (from the Netherlands public prosecution service for the environment). This is of relevance to **Recommendation 5**.
- The conclusion of cooperation agreements between the executive and the administration which go beyond operational activities and also cover areas such as joint training. Experts from France are also involved in the project to assist with the implementation of these measures, the French Central Office for Combating Harm to the Environment and to Public Health (OCLAESP) having successfully concluded agreements of this type with the French administrative bodies. This measure is of relevance to **Recommendation 10**.

The **Federal Ministry of Climate Action** draws up an **annual inspection plan** for **cross-border waste shipments**, including both vehicle inspections and inspections of facilities; current developments in the area are responded to immediately. Inspections of facilities are scheduled based on existing risks of illegal waste shipments or in response to current developments. Vehicle inspections are carried out in cooperation with customs and the police. If criminal activities are suspected, the police and public prosecution service are immediately informed/involved. Inspections of facilities and of waste collectors and treatment operators are carried out regularly by the provinces, and if criminal activities are suspected, action is also taken immediately, and coordinated with the police and public prosecution service.

The roles of the authorities involved in these areas would therefore seem to be clearly defined. An **annual coordination meeting** is held at the Federal Ministry of Climate Action, attended by representatives of the provinces, the police and customs. Joint activities and areas of focus are planned at this meeting, and it would seem advisable for representatives of the public prosecution service to attend as well. This is to be put into practice through the above-mentioned project for which Austria has obtained funding (see the first and third bullet points above).

2. *is recommended to establish centralised and integrated statistics encompassing figures on each stage of criminal and administrative proceedings, in order to obtain an overview of environmental crime in the country, which would make it possible to evaluate the efficiency of the environmental law enforcement system;*

**Austria's response:**

If this means compiling joint statistics for the police and judiciary, such a system would still be unfeasible at present owing to the different counting methods used in the areas concerned. For instance, while the police record the number of offences reported, the judiciary count the number of convictions.

We would, however, point out that meaningful statistics already exist for both environmental offences liable to prosecution through the courts and for those for which administrative penalties can be imposed; the statistics for the judiciary can be analysed with reference to all stages of criminal proceedings. In addition, work is underway to create common 'flow statistics' for the police and judicial domain (a 'domain-specific citizen identifier'). This will allow individuals to be identified unambiguously without the need to carry out a search/computer profiling for the person concerned across different registers or domains. This identifier will enable a person to be tracked during the various stages of the procedure (police – public prosecution service – court – penal system).



3. *should more clearly define the distinction between the administrative and criminal sanctions systems, by adopting and making available to all relevant actors specific and uniform criteria to facilitate the differentiation between violations that constitute an administrative infringement and those that constitute a crime;*

**Austria's response:**

As regards this recommendation, we would point out that such differentiation criteria already exist in the area of administrative infringements. During the last parliamentary term, discussions were held between the staff responsible in the Federal Ministry of Climate Action and the Federal Ministry of Justice with a view to establishing joint criteria to differentiate administrative infringements from offences punishable by a court of law. An agreement was reached that the criteria being used under the Waste Management Act should prevail.

4. *should take measures to increase the amounts of corporate fines for environmental crimes and to encourage, as far as practicable, that such fines are actually imposed in every case when the relevant criteria are met, with a view to encouraging a more uniform application of such fines;*

**Austria's response:**

With regard to the **first part of the recommendation** (increasing fines for environmental crimes), it should be pointed out that the system of sanctions provided for in the Corporate Criminal Liability Act will be revised during the current parliamentary term, in accordance with the Government programme for 2020-2024, which refers in particular to the provision of more extensive and more attractive possibilities for out-of-court settlement. This point was included in the Government programme on the basis of the evaluation of the Act carried out during the last parliamentary term, at which time guidelines on its practical application were also developed. 8 June 2020 (see the comments on the second part of the recommendation).

With regard to the **second part of the recommendation** (uniform application of the system of sanctions provided for in the Corporate Criminal Liability Act), it should be noted that the Austrian Ministry of Justice has no influence over the practical application of this Act, this being subject to independent judicial decisions. Nevertheless, in the summer of 2018, the Ministry of Justice drew up guidelines for the practical application of the Corporate Criminal Liability Act and made them available to Austrian judges and public prosecutors. These guidelines include suggestions for the practical application of the system of sanctions laid down in the Corporate Criminal Liability Act. This appears to be sufficient in terms of ensuring the uniform application of the law and the system of sanctions for which it provides, in accordance with the recommendation.

5. *should take appropriate measures to further increase the specialisation of prosecutors and judges in the field of the environment, including by further providing them with continuous specialised training in waste legislation and waste crime, and consider establishing a national network of environmental prosecutors in order to facilitate their exchanging experience and assisting each other in such a complex area;*

#### **Austria's response:**

With regard to the **first part of the recommendation** (specialisation of prosecutors and judges in the field of the environment):

Not all courts and public prosecution offices in Austria have specific departments responsible exclusively for environmental crimes, there currently being insufficient cases to warrant such a system. Were case numbers to rise, however, so that it became expedient to have specialised public prosecution departments, the necessary legislative provision already exists, insofar as the directors of public prosecution offices may handle all environmental crimes in a single unit, pursuant to Section 4(3) of the Regulation implementing the Law on the Public Prosecution Service.

With regard to the **second part of the recommendation** (continuous specialised training):

The training followed by **trainee judges** covers issues relating to environmental criminal law; these feature in particular in the units on criminal law that form part of the compulsory theoretical seminars. Responsibility for the exact design of these seminars lies with the Higher Regional Courts. It was recommended at last year's meeting of the further training advisory board, which was attended by staff responsible for training from all the Higher Regional Courts, that training in this area be further intensified.

All Austrian **judges and public prosecutors** working in the field of environmental crime will have the opportunity to attend training in this area. The Federal Ministry of Justice is working to make an extensive training programme available in the area of environmental crime, including for those undergoing initial training, i.e. trainee judges.

Given the particular importance that the Austrian Government attaches to protecting the environment, the Ministry of Justice considers it to be of utmost importance that Austrian judges and public prosecutors responsible for environmental crime cases take part in such training. Given the, generally, cross-border nature of such offences, particular emphasis is placed on their participation in the international training events which are regularly organised in this area. In view of this, Austrian judicial authorities are made aware of such events, *inter alia* via the Austrian judiciary's intranet site.

The events include, notably: the training programme on environmental (criminal) law organised by Eurojust in cooperation with the ENPE, the exchange programme and seminars in the area of environmental (criminal) law organised by Eurojust in cooperation with the EJTN, the related training events offered by the ERA, and other training events organised by various national training institutes in the Member States. Some of the above-mentioned events are also live-streamed.

Two events relating to environmental law were opened for applications in 2020 (EU Environmental Law, online/Trier, Germany, 25 to 26 May 2020 and Legal Language Training in Cooperation in Environmental Law, Kroměříž, Czechia, 30 November to 2 December 2020). In addition, participants from Austria recently attended the following events organised by the ERA:

- Introduction to EU Environmental Law (in German), 16 November to 7 December 2020, online;
- EU Waste Legislation and Protection of the Environment through Criminal Law, 6 to 27 October 2020, online.

Four further events relating to environmental (criminal) law are also currently open for applications:

- National Judicature and the Aarhus acquis in the EU (with a focus on access to justice) (in German) (ERA), 15 to 23 April 2021, online;
- EU Environmental Law (EJTN), 28 to 29 September 2021, Trier, Germany;
- Judicial Cooperation in Criminal Matters: Cross-border Environmental Crimes (EJTN), 20 to 21 May 2021, online;
- Legal Language Training in Cooperation in Environmental Law (EJTN), 3 to 5 November 2021, Zagreb, Croatia.

All Austrian judges and public prosecutors are able to register for these events and attendance is considered as working time.

With regard to the training received at national level by Austrian judges and public prosecutors in the areas of waste legislation and waste crime, the Austrian Ministry of Justice, together with the Federal Ministry of Climate Action, plans to develop events which offer interested public prosecutors and judges comprehensive information on waste legislation and waste crime, ideally in combination with appropriate additional topics.

Of particular note is, lastly, an EU-funded project led by the Federal Criminal Intelligence Service (unit for environmental crime) entitled **Advancing the fight against environmental crime in Austria**, which the Federal Ministry of Justice is also involved in. The project comprises three key thematic areas, which also cover the organisation of training events for judges and public prosecutors. These events are to be made available to trainee judges as well. The project is currently in the planning stage and is to include two interdisciplinary training events for judges, public prosecutors and trainee judges, as well as for staff in the executive branch of government. The two events are to take place in 2022, in Vienna and Salzburg respectively. Representatives of academia are also to be involved in the conceptual design of the events, alongside (national and international) practitioners, and fortunately Prof. Susanne Reindl-Krauskopf, Head of the Department of Criminal Law and Criminology of the University of Vienna has already agreed to take part.

With regard to the **third part of the recommendation** (establishing a network to facilitate exchange of experience between environmental prosecutors):

After careful consideration, the Federal Ministry of Justice has come to the conclusion that there is currently no need for a formal network of this kind. Given the low number of cases, as mentioned, and the relatively limited number of public prosecutors therefore dealing with environmental offences, the latter do, in fact, regularly exchange experience on an informal basis without there being such a network. In our opinion, the objective of the recommendation is therefore met without a formal network being established. Should case numbers rise in the future, this part of the recommendation will be reassessed.

6. *is recommended to ensure more involvement of prosecutors and judges at European level, by encouraging their participation in the activities of the ENPE and of the EU Forum of Judges for the Environment (EUFJE);*

**Austria's response:**

It should be noted that Austria has now found suitable representatives for both the ENPE and the EUFJE, and that the two bodies have been notified accordingly. Austria is now therefore represented in these networks.

7. *should consider enhancing investigative capabilities in the area of environmental crime, including waste-related crime, by increasing the human resources both of the police - BK and LKA - and, when it comes to inspections, of the relevant departments of the customs administration;*

This recommendation is part of the Government programme for 2020-2024 and was, accordingly, incorporated in the strategic planning of the **Federal Ministry of the Interior**. It will be borne in mind throughout the implementation of the recommendations for action from the SRSS project mentioned under Recommendation 1.

As concerns the part of the recommendation directed at Austria's **customs administration**, it should be noted that the latter attaches great importance to the investigation and detection of environmental offences, this being one aspect of its duties. The tasks assigned to Austria's customs administration are currently being evaluated as part of its reorganisation (which began on 1 January 2021). This exercise has not yet been completed and the recommendation in question here will also be considered as part of the evaluation. It should be pointed out, however, that a decision was already taken to increase the level of specialisation in the area of mobile inspections.

8. *is recommended to ensure regular participation by the customs authorities in activities at EU and international level in the field of environmental crime, in order to share experience and knowledge with their colleagues of other States;*

**Austria's response:**

With regard to this recommendation, it should be noted that representatives of the Austrian customs authorities participate in such activities at both EU and international level to the greatest extent possible, in accordance with the available resources. Given the extensive and wide-ranging nature of the customs authorities' tasks, which encompass not only environmental offences but also other fields (such as protection of the financial interests of the EU, protection of health and life of humans, animals and plants, and protection of intellectual property), it is, regrettably, not possible for representatives of the Austrian customs authorities to participate in all such activities. We can, however, provide assurance that environmental crime is among the areas considered a priority by the Austrian customs authorities and that representation at activities in this area is therefore also treated as a priority.

*9. is recommended to encourage the courts, when expertise is needed in environmental cases, to make more use of the specialised competence available within the Austrian Federal Ministry for Sustainability and Tourism and, if needed, the Environment Agency Austria;*

**Austria's response:**

With regard to this recommendation – as with Recommendation 4 above – we would refer to the independence of the Austrian courts, as a result of which the Ministry of Justice has no influence over their handling of cases. This is also true for environmental offences. In addition, where environmental crimes are concerned, the public prosecution offices responsible are not subject to any general reporting obligation vis-à-vis the Ministry of Justice, and consequently the latter usually has no knowledge of these cases. It is intended, however, to recommend to the judges and prosecutors responsible, in the context of future training events, that they make use of the expertise of the Federal Ministry of Climate Action and of the Environment Agency Austria where necessary. There are also plans to involve the Environment Agency Austria in the above-mentioned project, Advancing the fight against environmental crime in Austria (see Recommendation 5).

*10. should consider establishing more formal and structured cooperation among all the environmental and enforcement authorities, including with the participation of prosecutors, based on cooperation agreements or memoranda of understanding, with a view to preventing and fighting against environmental crime more efficiently.*

**Austria's response:**

Cooperation between all levels of the Austrian administrative authorities, police and customs in the area of environmental crime is established and takes place on a continuous basis, including through coordination meetings.



With regard to the participation of representatives of the Austrian public prosecution service in such coordination meetings, we would refer to our comments on Recommendation 1. As explained there, part of the SRSS project involves the creation of a structured network for cooperation and coordination, with the participation of all competent authorities and departments in the area of the environment and environmental crime. This NEST (National Environmental Security Task Force) should support cooperation between all competent parties on both a strategic and an operational level, and professionalise the investigation of environmental crimes. To this end, there are also plans in place for cooperation agreements to be concluded between the executive and the administration, which in addition to operational activities, also cover areas such as training. Lastly, it should be noted with regard to this recommendation that – in addition to that for the Federal Ministry of the Interior – there already exists a non-formal basis for discussion between the Federal Ministry of Climate Action and Austrian public prosecutors in the area in question. It was thus, for instance, recently reported by the Sankt Pölten public prosecution office that it is in direct contact with this Ministry with regard to both general questions on criminal law and a currently pending case. This cooperation is to be intensified in the future.