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NOTE

From: Finnish Delegation
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 Finland

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 evaluation report concerned.

Delegations will find in the Annex the revised follow-up report of Finland regarding the recommendations that were made in the evaluation report set out in 8430/1/18 REV 1 DCL 1 for the Eighth Round of Mutual Evaluations.

EIGHTH ROUND OF MUTUAL EVALUATIONS ON ENVIRONMENTAL CRIME -

FOLLOW-UP TO THE REPORT ON FINLAND

– FOLLOW-UP TO REPORT ON FINLAND

English translation, original in Finnish

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 **FINLAND** as set out in doc. ST 8430/1/18 REV1, was adopted by the LEWP/COPEN WP on **21/06/2018**

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

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GENERAL REMARKS

The evaluation of Finland's performance in the context of the eight round of mutual evaluations "The practical implementation and operation of European policies on preventing and combating environmental crime" was carried out in autumn 2017. The evaluation process was participated by the Ministry of the Interior, the National Police Board of Finland, the National Bureau of Investigation, the Eastern Uusimaa Police Department, the Border Guard, the Customs, the Ministry of Justice, the Prosecution Service, the Ministry of the Environment as well as the Finnish Environment Institute SYKE. The same parties were involved in preparing this follow-up report as part of the process overseen by the Ministry of the Interior.

The evaluation on Finland included several recommendations for the Finnish authorities. This report seeks to respond to the recommendations and provide information on the current state of implementation 18 months after the adoption of the evaluation. The evaluation of Finland's performance by an external team of experts has been an important process. The programme of the present Government headed by Prime Minister Marin includes an entry calling for an inquiry into ways of improving efficiency in preventing and combating environmental crime and putting in place an effective regime of sanctions. The first strategy for preventing environmental crime completed in 2015 establishes a number of objectives that were to be attained by 2020. The current National Environmental Crime Policy covers the years 2021–2022. The new strategy was completed late 2020 and the recommendations contained in the follow-up report on Finland were taken into consideration.

Recommendations for the Finnish authorities - follow-up

- **Recommendation:** Clear rules should be established on how to distinguish between administrative offences, minor violations and major crimes.

Follow-up: In Finland, administrative violations and petty offences are, as a rule, laid down in the environmental legislation and more serious offences punishable by imprisonment are laid down in the Criminal Code. The system currently adopted by Finland is efficient. The environmental authorities, the Police, Customs, Border Guard and Prosecution Service have engaged in effective cooperation for a long time.

The various rules are successfully applied in close inter-government cooperation, in which the required competence and application of the right rules are ensured through a wide range of expertise. Aside from the Police, environmental crime in Finland is investigated by the Border Guard and Customs in their respective fields of responsibility.

Ultimately, the line between offences, minor violations and major crimes is drawn by courts of law and judicial practice.

- **Recommendation:** There should be legal arrangements to ensure that local and regional authorities are obliged to report minor offences to the police or introduce administrative penalties.

Follow-up: Finnish legislation imposes obligations on the environmental authorities to report their suspicions of environmental crime to the police for investigation (e.g. section 188(1) of the Environmental Protection Act and chapter 14, section 2 of the Water Act). At the moment, the authorities themselves decide when to report offences to the police. There is a regional cooperation group in the area of each police station, where deliberations can take place. The Police and Prosecution Service have offered extensive training also for the environmental authorities to explain the concept of “reasonable suspicion” applied by the police as a criterion for pre-trial investigations. The problem of determining whether an act is minor has also been addressed. Additionally, the Ministry of the Environment has been instructing and training the environmental administration, Centres for Economic Development, Transport and the Environment and communal environment authorities to apply legislation and the low threshold for filing requests for police investigations into such acts and instances of negligence (Environmental Administration Instructions, publication 9/2014, p. 18).

The peer evaluation focused specifically on waste crimes. The Finnish Waste Act provides for administrative penalties for less serious instances of negligence. The scope of application of the penalty payment was expanded by a new amendment to the Waste Act (714/2021) when certain minor acts were removed from the scope of the penal provisions and transferred to the scope of the negligence fee.

- **Recommendation:** Finland should be encouraged to provide for penalties in the case of administrative offences.

Follow-up: In Finland, the penalties for administrative violations are laid down separately in each environmental act. On 21 March 2017, the Ministry of Justice appointed a working group to assess the need for any general legislation on punitive administrative sanctions and prepare proposals for the provisions required for the introduction of such legislation. Additionally, the working group was tasked to prepare a proposal for the regulatory principles for administrative penalties to be used in support of legislative drafting. (Ministry of Justice Working Group, Report on the Preparation of General Legislation on Punitive Administrative Penalties 52/2018).

After deliberations, the working group concluded that no general legislation on administrative penalties is called for or necessary. However, the working group drew up a proposal for the principles of regulation for use in support of legislative drafting suggesting that these principles for the imposition of administrative penalties, including the relevant grounds, should be included in the online law-drafting guide at www.finlex.fi in order to ensure that the principles have a real effect.

Recommendation: The specialization of all operators dealing with environmental matters should be enhanced, not only through the daily work but also through joint training courses.

Follow-up: The Police University College, the Prosecution Service and the Ministry of the Environment have jointly held training courses on environmental crime for all key authorities across the country. A thorough training programme was organized in 2017 and 2018. Plans are in place to continue these courses, but on a more limited scale. Regional cooperation groups hold annually 1–2 joint events which also include training.

The police organised an international seminar on environmental crimes together with the City of Lahti in October 2021. In 2021, prosecutors and environmental authorities received training on sampling and its significance from a criminal laboratory established by the National Bureau of Investigation. The Police University College continuously provides training related to the prevention of environmental crimes, where also stakeholders are welcome. In addition, the police will organise a seminar for the regional groups for environmental crimes in 2022.

The Prosecution Service provides training on environmental crime every year for prosecutors and the representatives of stakeholder groups. Prosecutors specialising in environmental crime regularly participate in seminars and training courses organised by international environmental crime networks. In 2020, the environmental administration established a network of contact persons for environmental crimes at the Centres for Economic Development, Transport and the Environment. The network includes participants from all the centres that deal with environmental issues. The network meets several times a year to share know-how, experience and information on topical issues related to the prevention of environmental crimes.

- **Recommendation:** Specialized units should be set up inside the economic crime units or, at least, a focal point with proven expertise should be identified.

Follow-up: Regional cooperation networks for combating environmental crime have been established in each police district in order to ensure smooth cooperation between the authorities. As a rule, investigations into environmental crimes committed in the course of business operations are handled by financial crime units across Finland. This was done to ensure an adequate level of competence in the performance of pre-trial investigations and the application of coercive measures. The cooperation networks ensure that the appropriate contact persons can be reached under all circumstances.

As part of the reorganisation, effective from 1 October 2019, the Prosecution Service gave due consideration for the need for specialisation within the service. The existing level of specialisation has been reinforced by establishing a number of positions for special prosecutors. One of the objectives of the reorganisation was to centralise and enhance expertise and improve coordination of criminal prosecution in environmental matters.

Under the instructions issued by the Office of the Prosecutor General, special prosecutors can be assigned to try cases in others parts of Finland.

- **Recommendation:** LEAs should be encouraged to adopt a more proactive attitude (e.g. through the use of intelligence sources, data analysis) to detect and investigate more crimes and also to acquire more evidence.

Follow-up: The issuance of environmental permits and monitoring fall within the mandate of the environmental authorities.

Compliance monitoring by the supervisory authority is based on the reports filed by entrepreneurs, notifications filed by the public, regular reporting by entrepreneurs, review and evaluation of reports on the state of the environment as well as other information gathered by the supervisory authority. Additionally, the supervisory authority is required to make use of economic indicators, a “risk indicator”, for regulatory purposes. Moreover, the supervisory authority engages in active efforts to gather information on activities subject to an environmental permit and related emissions by conducting inspections and negotiations.

On 1 June 2018, an Analysis Unit was created by the National Police Board to develop a uniform national analysis methodology at a strategic, tactical and operative level. A simulation model for strategic analysis has been created to generate analytic data on the state of and changes in the regional operating environment. The analyses completed in 2019 addressed environmental crime highlighting the importance of detection, investigation and prevention. The findings will be used as a basis for allocating resources and determining appropriate action, planning training, engaging in preventive efforts and developing strategic communications. Additionally, each operative police unit carries out its own regional analyses.

The Police has also set up a project to develop a risk profiling model related to the prevention of environmental crime for companies operating in the waste sector. The project will continue until the end of 2023.

The police administration has improved its forensic capabilities in investigating environmental crime by establishing the position of National Forensic Environmental Crime Coordinator in the National Investigation Bureau in early 2020. The investigation coordinator is an expert who determines the appropriate course of investigation related to sampling in consultation with prosecutors, criminal investigators, the forensic laboratory and expert partners. He or she will also participate in the investigation of environmental crime within his or her own area of expertise. The coordinator's duties will include the provision of advice and training for prosecutors and criminal investigators; issuance of instructions for sampling; identification of the best expert partners; quality assurance of subcontractors' performance; verification and interpretation of the findings; and the assessment of environmental hazards.

In addition, National Environmental Crime Coordinator position has been established in the National Bureau of Investigation in May 2020. The coordinator is responsible for creating and maintaining situational awareness of environmental crime investigations, developing the capabilities for such investigations and the activities designed to detect crime, as well as engaging in and developing cooperation with police units and networked groups of partners. Efforts have also been made to introduce predictability to regional groups so that the regional situational picture would make the prevention of environmental offences as effective as possible.

The Customs supervises international flows of goods on behalf of various ministries, for example through inspections of illegal waste flows. Inspections shall be based on risk analysis, samples, intensification measures and targets selected by means of criminal intelligence.

- **Recommendation:** The use of special methods of investigation should be encouraged in order to obtain the relevant evidence to identify the organizers.

Follow-up: Provisions on the criteria for the application of secret coercive measures are set out in the Coercive Measures Act (806/2011). In reality, secret coercive measures may only be adopted in the investigation into aggravated environmental destruction and aggravated environmental crime. In some of these cases, said measures have been applied in order to investigate and find evidence (information received from lead investigators and officers in charge of the investigation in case of aggravated offences).

- **Recommendation:** The number of cases investigated and prosecuted should be increased through a more proactive attitude and more secure evidence so to increase also the number of convictions.

Follow-up: In the investigation of detected cases, urgent measures need to be taken promptly; i.e., the event must be documented and all the necessary samples taken. Systematic sampling is carried out in collaboration with the police and environmental authorities, which ensures the solidity of the evidence in the pre-trial investigation and legal proceedings.

- **Recommendation:** Retention and analysis of samples in a secure, objective and certified laboratory, possibly managed by the law enforcement authorities, should be encouraged.

Follow-up: In Finland, forensic investigation into environmental crimes is carried out by the forensic units of the local police (crime scene and sampling) and the Forensic Laboratory of the National Bureau of Investigation (laboratory analyses). Both the forensic units and the Laboratory have in place quality management systems certified to the ISO 17025 standard. It imposes stringent criteria for the marking, analysis and storage of samples and the reporting of findings. The accreditation system is far more stringent than, say, the ISO 9000 certification requiring a high standard of impartiality and independence.

Additionally, the operations of an accredited laboratory is reviewed annually by an independent accreditation agency. The national accreditation body in Finland is the FINAS Accreditation Service subordinated to the Finnish Safety and Chemicals Agency TUKES. Since forensic analyses related to environmental crime are carried out in the police premises, security considerations are duly taken into account. The Forensic Laboratory assists in the planning of sampling for subjects of environmental crime investigation. The laboratory also supplies the sampling equipment to police units.

As the range of environmental crime is extremely varied, a single laboratory is practically unable to maintain the required analysis capabilities for all forensic needs. Hence, the Forensic Laboratory relies on proven competent subcontractor laboratories for some analyses. The subcontractors are required to have in place a quality management system identical to that applied by the Forensic Laboratory.

- **Recommendation:** Cooperation between LEAs and SYKE should be improved in order to guarantee the processing of all relevant information for criminal proceedings.

Follow-up: In January 2021 SYKE introduced a new information system on international waste shipments. Other authorities (Centres for Economic Development, Transport and the Environment, Customs and Police) are able to gain access to the database to look up information.

In its capacity as the LEA overseeing international waste shipments, SYKE prepared in early 2019 guidelines for these activities (Guidelines for international waste shipments for regional regulatory authorities) at the request of said authorities. The guidelines were updated in 2022. The sharing of responsibilities with the supervisory authorities are also taken into account in the audit plan for international waste shipments required under the Waste Shipment Regulation. The Customs and SYKE cooperate in monitoring national and international crime trends for the purpose of planning annual surveillance operations and determining priorities.

- **Recommendation:** Budget funds especially allocated to fighting these crimes should be increased and distributed equally among the institutions involved in the prevention, detection and prosecution of waste/environmental crime.

Follow-up: The latest programmes of the Governments, headed by Prime Minister Rinne and Prime Minister Marin, include an initiative that more resources should be allocated to environmental monitoring. A generally adopted principle in Finland is that budget funds are not normally allocated to pre-determined activities.

- **Recommendation:** More resources should be used to fight against environmental crime eventually by using the proceeds of these crimes. Work should focus on solutions to resolve the issue of high storage costs. Goods could be disposed of before criminal proceedings are concluded by cashing them in and evidence could in any case be obtained by appointing an expert to describe the goods before their disposal.

Follow-up: A Government-funded project was implemented in 2019 – 2020 to clarify the situation picture regarding the proceeds of environmental crimes. The final report of the project is available in the institutional repository for the Government:

<https://julkaisut.valtioneuvosto.fi/handle/10024/162606>.

In Finland, assets confiscated from offenders are not earmarked for a particular purpose because this would strongly interfere with the budgetary power of Parliament and consequently be constitutionally problematic. As far as storage costs are concerned, section 39 of the Act on the Enforcement of a Fine can be invoked, under which an enforcement order may be issued even if the decision on confiscation is not yet enforceable, if the assets subject to confiscation are perishable, liable to decline in value quickly or result in substantial storage or maintenance costs or if urgent measures are necessary for other compelling reasons. Seized (i.e. frozen) property or object may be sold already prior to a conviction by virtue of Chapter 7, Section 13 of the Coercive Measures Act and Chapter 8, Section 7 of the Enforcement Code, e.g. if the value of property or object loses value quickly or is costly to maintain. The national legislation thus enables liquidation of assets before the end of the criminal proceedings.

Additionally, it should be noted that national provisions required by Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders have entered into force on 19 December 2020.

Of the measures already taken, reference is made to the Lean project initiated jointly by the Ministry of Justice and the Ministry of the Interior to assess the functionality of the chain of crime as well as the practices and procedures applied by the authorities. Additionally, as part of the Ministry of Justice's action plan to combat off-the-books and grey economy, a working group was appointed (under the National Administrative Office for Enforcement) to look into ways of improving efficiency in tracing, seizing and recovering proceeds of crime and fictitious grounds for execution of levy. Another working group headed by the Office of the Prosecutor General has explored ways of improving the efficiency of enforcement measures after the issuance of a legally enforceable judgment especially in international cases.

With regard to international waste shipments, SYKE has adopted a procedure, which has provided solutions to the problems due to extended storage periods. If a suspicion of an illegal waste shipment arises, SYKE makes a decision obligating the exporter to deliver the goods classified as waste for disposal. If the exporter fails to comply with the deadlines specified in such a decision, SYKE will take care of disposal and charge the cost to the exporter (Articles 24 and 25 of the Waste Shipment Regulation).

- **Recommendation:** Finland should improve cooperation with third countries.

Follow-up: Finnish Environment Institute co-operates with waste shipments authorities in third countries in cases of suspected illegal waste shipments case-specifically. General co-operation occurs within the framework of Impel Waste and TFS group.

Eurojust has international agreements with some third countries which allows co-operation in criminal matters between Eurojust and those third parties. Finland is active member of Eurojust.

Law enforcement cooperation on countering illegal trade in endangered species has been stepped up with Norway and Iceland.

- **Recommendation:** Finnish authorities tackling environmental crimes, mainly the Ministry of the Environment, should regularly organize public information campaigns in order to encourage people to abide by the law and explain what it is allowed and what is not. Environmental authorities should play a key role in raising general awareness of the damage and the harm caused to the environment by environmental permit violations and they should also actively inform the public of cases detected and damage caused.

Follow-up: One of the objectives of the 2021 – 2022 Action Programme for Preventing Environmental Crime is to increase general awareness of the obligations imposed by environmental and nature conservation legislation. The programme underlines that it is important for the public to file reports on environmental crimes. Responsibility for the practical implementation of this objective is assigned primarily to regional operators and, more specifically, to the cooperation teams established by regional authorities.

Regional actors are encouraged to participate in thematic weeks on preventing environmental crimes and to carry out effective monitoring. Awareness campaigns will be carried out to implement the recommendation and awareness will be raised through the media on the prevention of environmental crimes. Positive experiences have already been gained from regional surveillance and information campaigns.

- **Recommendation:** The participation of the private sector should be increased.

Follow-up: The awareness of interest groups will be enhanced of the possibilities to prevent Environmental Crime.

The police have attempted to provide information about different events for monitoring subjects through the media in order to achieve preventive influence.

The Customs has taken action in order to promote cooperation with foreign trade and logistics operators in its field of activity. The cooperation creates the conditions for the operators to identify risks and agree on reporting of occurrences.

- **Recommendation:** A method to collect systematic, reliable and updated statistics comprising the number of notifications, investigations, prosecutions and convictions should be devised.

Follow up: The Police collects follow-up data on environmental crimes and related investigations through its existing police data collection system (Patja), which will in future be replaced by a more advanced system called Vitja. The National Police Board of Finland, in cooperation with other authorities, prepares annually a summary report on environmental crime.

Since 2021, the police have used a situational awareness function focusing on environmental crimes, which collects statistics and monitors the numbers, phenomena and convictions of environmental crimes. The numbers are reported three times a year in a review.

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

- **Recommendation:** In order to expedite the procedure, Member States should be encouraged to enter all relevant data (email, phone number of the person making the request etc.) in the letters rogatory.