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From: Danish 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 Denmark

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 a revised version of the follow-up report of Denmark regarding the recommendations that were made in the evaluation report set out in 11621/1/18 REV 1 for the Eighth Round of Mutual Evaluations.

General Secretariat of the Council

Date: 18 February 2022

Office: Police Division

Case officer:

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Updated follow-up to the evaluation report on Denmark: eighth round of mutual evaluations - 'The practical implementation and operation of European policies on preventing and combating environmental crime'

Following on from the eighth round of mutual evaluations on the practical implementation and operation of European policies on preventing and combating environmental crime, the General Secretariat of the Council asked Denmark to respond to the recommendations made to the Danish authorities in the evaluation report on Denmark (11621/1/18 REV 1 ENFOPOL 421 COPEN 278 ENV 556) (cf. page 99 of the final evaluation report). On 19 March 2020, Denmark sent a follow-up report to the General Secretariat of the Council. Following the request of the General Secretariat of 3 February 2022 to consider whether the follow-up report should be updated, please find attached an updated report.

The Ministry of Justice wishes to submit the following comments:

Re recommendation 1: ‘Waste crime should be clearly identified as a national priority at a political level, leading to the establishment of a national enforcement strategy involving all relevant authorities.’

It is clear from Objective 8 of the Danish Environmental Protection Agency's (DEPA's) Objectives and Performance Plan for 2020 ('Effective and safe on-site case management') that DEPA will carry out appropriate checks with regard to waste, including checks on imports/exports of waste and on extended producer responsibility schemes (for example, free-riders) (cf. the relevant supervisory plans).

The recommendations made in the report are to a large extent incorporated into the most recent three-year supervisory plan for imports and exports of waste with respect to the Waste Shipment Regulation¹; moreover, DEPA has set itself the operational objective of establishing, within five to seven years, a mobile supervisory unit to carry out — and help municipalities carry out — effective, risk-based checks and enforcement with regard to waste and resources.

It is regarded as a core task for DEPA, in its capacity as the administrative and supervisory authority, to ensure effective and safe case management. The Danish 'Climate Plan for a Green Waste Sector and Circular Economy' has also given political priority to strengthening both national and cross-border waste supervision. Political negotiations on the implementation of the plan are ongoing (early 2022).

The Danish Customs Agency operates on the basis of a strategy of smooth trade and effective customs controls and sets its priorities in accordance with that strategy. Consequently, some customs checks are carried out in accordance with a risk-based and intelligence-led approach which also encompasses the aspect of community protection, and hence also control tasks which the Danish Customs Agency carries out at the border on behalf of bodies including the supervisory authorities.

¹ Regulation (EC) No 1013/2006 on shipments of waste — (Waste Shipment Regulation).

Re recommendation 2: 'More formalised and systematic cooperation should be achieved at operational level.'

For several years now, DEPA and the Danish Customs Agency have had a formalised cooperation agreement in place which is continuously updated and which covers areas including waste.

In a number of the areas covered by DEPA, checks are carried out by persons other than its own employees, either by virtue of legislation or as a consequence of the outsourcing of the control task under an agreement. In addition, it is the municipalities which exercise environmental scrutiny over many of the country's businesses, while there is a high level of cooperation between the Danish Customs Agency and the police with regard to checks on cross-border waste shipments. DEPA's upcoming digitisation projects, which include the expansion of the Waste Data System and digital case management, are expected to have a positive impact on inspections insofar as the digitalisation initiatives allow for more risk-based, more effective controls. Owing to DEPA's more precise knowledge of possible infringements, cooperation with other relevant authorities will also increase, since DEPA can pass on details of businesses and transport operations which might be worth subjecting to additional scrutiny. DEPA maintains a constant dialogue with other authorities regarding the initiatives currently being worked on, which may lead to a number of formalised cooperation agreements wherever that is considered appropriate for the purpose of practical cooperation.

However, it is not considered appropriate at this stage to establish formalised cooperation agreements in areas where there is a legal obligation to cooperate. Such is the case, for example, for the cooperation that exists between the Danish Customs Agency/DEPA and the police, which – under the Police Act – is required to provide assistance to other authorities, including by bringing the commission of a criminal offence to an end, investigating and prosecuting offences, carrying out checks and supervisory tasks in accordance with applicable law and performing any other tasks which either arise from applicable law or are otherwise naturally associated with police activities.

Moreover, the police, the Danish Customs Agency and DEPA often participate alongside one another in network meetings at both national and international level, e.g. IMPEL meetings. Both the Danish Customs Agency and the police are also involved in the EMPACT operational action plan on environmental crime, some of whose points target waste crime, with one focusing on training in the field of waste in particular. In addition, the Customs Cooperation Working Party's recently drafted 10th Action Plan on customs cooperation includes one point addressing cross-border consignments of hazardous and other types of waste. Relevant lessons drawn from those fora are shared, and cooperation is reflected in the annual supervisory plans which form the background for the current year's checks. Up to now, those internal plans have provided an adequate basis for cooperation between the police, the Danish Customs Agency and DEPA in terms of checks on cross-border waste shipments.

Re recommendation 3: ‘Central guidelines should be issued to resolve current difficulties in interpreting the waste classification system.’

Initiative 10 of the National Strategy for Circular Economy² (‘To establish a level playing field in the market for waste and recycled raw materials’) considers it a matter of priority to encourage better functioning of the market for waste and recycled raw materials without compromising quality, health and environmental requirements. It seeks to achieve this by establishing more uniform administration and enforcement of the rules governing waste and recycled raw materials both in Denmark and at international level.

This will be accomplished, for instance, by examining how administrative and supervisory tasks in the field of waste and recycled raw materials can be gathered together in a single unit. In addition, waste supervision will target those businesses where the rules are most likely to be flouted, and where the environmental risk posed by failure to comply with waste legislation is greatest.

Since the publication of GENVAL’s report on environmental crime, DEPA has prepared new advisory opinions, while existing guidance has been updated along with the general information for waste management stakeholders and municipalities available on DEPA’s website, including, for example, guidance on used electrical and electronic equipment³. The website also contains the latest version of DEPA’s three-year supervisory plan for imports and exports of waste, which also provides some degree of central guidance. Some of the focus areas in DEPA’s future guidance material include external guidance on the classification of household plastic waste, an internal indicative table for assessing end-of-life vehicles⁴ and internal guidance on the classification of used car tyres. Political negotiations on the organisation of future waste inspections, as set out in Denmark’s ‘Climate Plan for a Green Waste Sector and Circular Economy’, are also ongoing in 2022. Ensuring the correct classification of waste is therefore a political priority.

² <https://mfvm.dk/miljoe/strategi-for-cirkulaer-oekonomi/>

³ Used Electrical and Electronic Equipment (UEEE): <https://mst.dk/affald-jord/affald/import-og-eksport-af-affald/generel-information-love-og-regler-om-import-eksport-af-affald/eksport-af-brugt-elektronik/>

⁴ End of Life Vehicles (ELV Directive)

With regard to the area of activity of the Danish Customs Agency, a set of internal instructions has been drawn up (the ‘Provisions on goods’) for those areas in which the Agency is present at the border to enforce the rules and prohibitions on imports and exports imposed by other (supervisory) authorities. Those instructions also cover the aspect of waste, and the cooperation agreement between the Danish Customs Agency and DEPA (as referred to under recommendation 2) forms part of this.

The police use internal ‘action cards’ which, in selected subject areas, can for instance provide an overview of police procedures and handling of a particular task, including tasks relating to environmental crime.

Re recommendation 4: ‘The establishment of a workable shared database, or at least of a better system for sharing information, is recommended.’

In its digitalisation strategy, DEPA has stated that selected case management tasks will be digitalised within two to three years, including with regard to imports and exports of waste. In 2021 and in 2022, DEPA clarified and has been continuing to clarify how this digitalisation can contribute to strategic oversight and risk-based enforcement in cooperation with other authorities/entities, where appropriate.

DEPA’s Circular Economy and Waste Unit has set itself the operational objective of working towards a significant increase in automated data collection and case management within five to seven years, starting in 2020.

The goal is for all data on waste, the circular economy and resources to be gathered together in a circular data bank, where they will be freely accessible to other authorities and businesses. The concept of circular data has been devised partly in conjunction with Statistics Denmark, the national statistics agency.

Such digitalisation will make it possible to explore the extent to which relevant data can be shared between DEPA, the Danish Customs Agency and the police, subject to issues of legal certainty and GDPR/law enforcement requirements.

Likewise, the forthcoming EU digitalisation initiatives – such as digital freight letters (CMR) and the digital exchange of documents on cross-border waste shipments (electronic data interchange - EDI) – are expected to increase opportunities for the exchange of information both across borders and between different sectors in the EU.

On 6 January 2022, the Danish Court Administration launched the court database with selected judgments from the Courts of Denmark. The court database is accessible by all and will initially contain judgments in civil cases and a small selection of criminal cases from the higher courts. Subject to the necessary digitalisation of the case management systems by Courts of Denmark, it is expected that the court database will eventually also contain more judgments in criminal matters, including cases relating to environmental crime.

The court database can be accessed via the website www.domsdatabasen.dk.

Selected summaries of judgments from local and regional courts are also still

available on the Courts of Denmark website www.domstol.dk.

Re recommendation 5: 'Exhaustive statistics including all relevant information should be kept by all the relevant authorities.'

DEPA is keen to make proactive use of the opportunities created by the new technology in DEPA's respective areas of responsibility. It is therefore one of DEPA's operational objectives to be a digital, data-driven authority with a continuous and sustained focus on how it can make use of new technology in order to develop more effective means of performing its core tasks and take advantage of the large quantity of valuable data which it collects.

One tangible example of this in DEPA's digitalisation strategy is the circular data bank, which will display all data relating to the circular economy and waste in a single location. This will make data fully accessible to public entities and businesses; at the same time, data will be better exploited on an internal level (see also recommendation 4 on a workable shared database).

The Danish Customs Agency uses the AFIS (Anti-Fraud Information System). The system is operated by OLAF.

The CIS+ (Customs Information System+) provides a means for the exchange, storage and rapid dissemination of information among the designated competent authorities, and thereby improves the effectiveness of the cooperation and control procedures of the designated competent authorities, as referred to in the Mutual Assistance Regulation (No 515/97) and the CIS Decision.

The system allows for the uploading of reports on various dossiers, including in the field of waste. The CIS+ also makes provision for the future digital exchange of documents on cross-border waste shipments (electronic data interchanges - EDI), as referred to above under recommendation 4.

In addition, the World Customs Organization has the CEN (Customs Enforcement Network), a reporting system developed to assist customs authorities with the collection of data and information with a view to compiling intelligence and analyses. It is possible to upload reports on a wide range of 'cases of breaches' which customs administrations have either uncovered or are otherwise involved in, including in the field of waste. However, the data which are uploaded are not personally identifiable.

The Danish authorities thus compile statistics which helps complement their respective areas of responsibility as well as international digital developments, thereby avoiding duplication as far as possible.

As also indicated in the evaluation report, the Danish National Police and the Director of Public Prosecutions can clarify that the police hold certain statistics concerning the number of notifications and charges brought, as well as the number of indictments and final judgments in the area of waste crime, in POLSAS (the Danish police force's filing and case management system). POLSAS is not a statistical system as such. It contains a range of information relevant to the day-to-day work of the police and of the public prosecution service.

In order to allow further statistical information regarding environmental and waste crime to be extracted from POLSAS, the system would need to be expanded with new record fields, etc. In that connection, it may be noted that the level of complexity for the individual police force employee working with POLSAS increases each time a new record field is added. It would also make the associated IT operations and maintenance tasks more complex.

In the opinion of the Danish National Police, there is currently no need from a police operational point of view for a separate means of recording additional types of waste crime. Consequently, the Danish National Police considers that there are no grounds for amending POLSAS so as to be able to extract additional statistical information.

With regard to the courts, it is currently not possible to extract separate statistics on criminal cases in the field of environmental crime (or on other types of offences) from the courts' criminal case management system.

In the context of the development of a new penal system, which is currently ongoing, the Danish Court Administration will take note of the recommendation concerning statistics on environmental crime, and will endeavour to make that a priority in the new penal system.

Re recommendation 6: 'It is recommended that each authority provide more training to its staff and build on cross-cutting training established through close cooperation between DEPA, the police and the customs authority, as well as some prosecutors and judges involved in this sector.'

The control strategy of the Ministry of the Environment and Food establishes the framework for the Ministry's future control activities across its various agencies (DEPA, the Danish Veterinary and Food Administration and the Danish Agricultural Agency).

The aim of the strategy is to reinforce the impact of controls so as to ensure that citizens receive the highest level of safety, health and nature and environmental protection for their money.

The idea is for controls to take place on the basis of dialogue, responsibility and trust, so that those businesses which are fulfilling their responsibilities undergo checks which focus on the essential, and which promote growth and development. It is crucial that controls should be up-to-date and flexible; this includes the exploration of new technologies and digital opportunities.

Heading 6 of the control strategy concerns: 'Principles of skills development with regard to controls'. This heading has been translated into a common basic process with regard to the supervisory role played by new inspectors across the Ministry's agencies and control systems in order to ensure synergy, uniformity and the exchange of experience across the agencies.

Knowledge is also shared between DEPA, the police and the Danish Customs Agency through joint networking meetings and presentations, including the EMPACT training component described under recommendation 2. In addition, in 2021, the Danish Customs Agency set up a training course for their new customs officers, to which the Environmental Protection Agency and the police contribute in the form of presentations. As a follow-up to the training course, the three authorities subsequently take part in a joint control operation in order to put course theory into practice.

DEPA will continuously monitor any additional need to develop training courses, etc.

The office of the Director of Public Prosecutions reports that it offers a course in environmental litigation. The course is aimed at public prosecutors in the police districts' special law prosecution offices, in the regional state prosecutors' offices or in the offices of the Director of Public Prosecutions. The objective of the course is to strengthen public prosecutors' knowledge of the many regulatory systems applicable to matters relating to the environment and nature. The course addresses such issues as the interplay between the municipality, the police and the Prosecution Service in terms of their case management, and also examines environmental protection legislation, nature conservancy legislation and planning and building legislation. The course is of one day's duration, and the instructors are experienced public prosecutors. The course is offered through the Prosecution Service's training catalogue, which is also sent each year on publication to bodies including the Danish National Police and the Danish Court Administration in order to enable police personnel and judges, for example, to take part in the Prosecution Service's courses.

Whenever the Director of Public Prosecutions offers courses in special law crime, colleagues from the special law authorities (e.g. DEPA) are also often invited to take part.

Finally, it should be noted that, as far as possible, the Prosecution Service willingly takes part in, for instance, (parts of) the training courses run by DEPA and the Danish Customs Agency in the area in question, including training in the form of an introduction to the way in which the Prosecution Service handles environmental litigation, inter alia in order to raise awareness of the correlation between administrative and criminal enforcement.

The Danish National Police reports that, further to the GENVAL evaluation, the police have launched a new training session on cross-border waste control. According to the police, public prosecutors dealing with environmental litigation have taken part in those courses, and DEPA has also been invited to attend.

In addition, the police have established informal cooperation with DEPA to ensure better preparation of those cases which are to be referred to the police.

In conjunction with the courts, the Danish Court Administration undertakes an annual review of the skills development requirements of the Courts of Denmark. As part of that review, consideration is also given to matters such as legislative changes and new legislation, as well as contributions by the courts' national and international interlocutors. Recommendations on training will form part of that process.

In the light of the review of training requirements, the Danish Court Administration develops and carries out around 250 skills development activities each year for Courts of Denmark employees.

See also the Danish Court Administration's comments concerning international cooperation in skills development under recommendation 11.

The Danish Court Administration also takes the view that the use of expert witnesses or statements etc. generally helps to ensure that judges and magistrates are provided with adequate explanations in criminal proceedings, regardless of whether or not they have prior specific technical knowledge of a given issue in such a technically complex area as environmental crime.

Re recommendation 7: 'Systematic inspection schemes for plants and facilities handling hazardous waste should be established on the basis of a prior risk assessment.'

Ever since the IED was implemented, DEPA and the Danish municipalities have undertaken a risk assessment and prioritisation of businesses and livestock holdings that are subject to approval with a view to conducting environmental scrutiny.

The risk assessment currently consists of two main basic elements or dimensions:

- One which describes the likelihood of the event arising, and
- One which describes the seriousness of the event (impact of the event on human beings and the environment).

The risk assessment results in a score that determines which businesses will be subject to additional environmental scrutiny by the municipalities. Environmental scrutiny focuses mainly on air, soil or groundwater on the basis of the two risk factors, while waste supervision is different in nature and therefore does not form part of the risk inspection.

Over the past few years, DEPA has been working on clarifying the interfaces between environmental scrutiny and waste supervision with a view to determining whether waste supervision can be better organised and implemented in a more systematic and risk-based manner. Waste supervision will target those businesses where the rules are most likely to be flouted, and where the environmental risk posed by failure to comply with waste legislation is greatest, including businesses which generate or handle hazardous waste. Political negotiations on the organisation of future waste inspections, as set out in Denmark's 'Climate Plan for a Green Waste Sector and Circular Economy', are ongoing in 2022.

Re recommendation 8: 'Border controls and harbour inspections should be implemented more systematically.'

With reference to the answers provided under recommendations 4 and 5, DEPA wishes to make proactive use of the opportunities created by the new technology in DEPA's areas of responsibility. It is therefore one of DEPA's operational objectives to be a digital, data-driven authority with a continuous and sustained focus on how new technology can be used to develop more effective means of performing supervisory and control tasks, e.g. by processing the large quantity of valuable data which it collects.

Once the circular data bank can display relevant data and those data have been made available to other public entities, the data will be used, for instance, to carry out more systematic, risk-based controls and inspections.

Until development of the data bank is finalised, work on the data which are accessible will take place across the Danish Customs Agency and DEPA in accordance with an analysis and risk-based approach, with due regard for existing knowledge of past infringements and with a focus on problematic waste fractions.

Re recommendation 9: 'An on-call service should be established at the EPA.'

DEPA will explore the opportunities for eventually establishing an on-call service for illegal shipments of waste.

Re recommendation 10: 'Special investigative measures should be used for waste crime offences.'

Generally speaking, when they are investigating criminal offences, the police have a range of criminal procedural coercive measures at their disposal.

Provided that a number of conditions are satisfied, the police can implement the following coercive measures subject to prior judicial authorisation:

- Interception of communications
- Surveillance
- Reading of non-publicly available data in an information system
- Jamming or disconnection of radio or telecommunications
- Body searches, including the taking of fingerprints, non-intimate body searches or intimate body searches, extraction of saliva or blood samples
- Searches
- Seizures and confiscation orders

The requirement for prior judicial authorisation may be waived if the purpose of the measure would otherwise be forfeited. In such cases, the police may implement the measure, and then – either on their own initiative or at the suspect's request, depending on the nature of the measure – refer the matter to the court for approval. This should happen without delay, and within 24 hours at the latest.

The conditions under which the police may implement the aforementioned coercive measures depend on the intensity of the measure in question.

Furthermore, the Administration of Justice Act lays down certain specific rules for the investigation of particularly serious crimes which are applicable, for example, to infringements of environmental legislation under particularly aggravating circumstances pursuant to Section 196 of the Criminal Code, according to which the police may undertake coercive measures in respect of a suspect (e.g. covert searches) without first notifying the suspect. In addition to the criminality requirement, there is also a requirement as regards the measure's importance to the investigation. It is the courts which decide whether such a measure should be implemented.

According to the Danish National Police, the police make appropriate use of the investigative measures available to them under the Administration of Justice Act for matters relating to environmental crime. The police may use investigative tools such as telephone tapping in the context of both environmental crime under aggravating circumstances (when the matter falls within the scope of the Criminal Code) and economic crime, which can be a type of crime deriving from environmental crime, since the requirement to investigate particularly serious crimes will be satisfied in such cases.

The police also investigate environmental crime in special law cases within the limitations imposed by the penalty threshold of up to two years. In that connection, the police consider that, on the face of it, there are sufficient investigative means at their disposal under the Administration of Justice Act, that those means are proportionate to the nature and seriousness of the crime, and that, consequently, there is no need to take other investigative measures when investigating waste crime.

Re recommendation 11: 'Deeper cooperation should be achieved with the neighbouring countries' authorities, as well as with countries in western Africa and the Far East directly concerned by waste trafficking.'

DEPA has recently established closer cooperation with the authorities in Norway with regard to exports of end-of-life vehicles and electronics from Norway to Africa via Denmark. That cooperation has been brought about in close collaboration with the Danish Customs Agency and the police.

Moreover, the Danish Customs Agency and DEPA have been involved in joint control operations with the Swedish customs and environmental authorities on the Øresund bridge connecting Denmark to Sweden.

Efforts will be made to develop cooperation with Swedish and Norwegian authorities even further in future.

In neighbouring Germany, there has for many years been good cooperation with the German transit authority in particular.

Both the Danish Customs Agency, the police and DEPA are currently involved in several international initiatives including the working parties under the Commission, the Council, IMPEL and EMPACT Environmental Crime.

In addition, the Danish Customs Agency takes part in international control operations in the field of waste. Those activities are organised by the WCO, OLAF or other bodies. One of the objectives of the international control operations is closer cooperation both within and between the various countries and authorities.

With regard to the courts, Denmark takes part in a range of international cooperation fora focusing on relevant skills development in the courts. The Danish Court Administration is a member of the EJTN (European Judicial Training Network), which offers a number of seminars each year along with the possibility of inter-judge exchanges and study visits to bodies including the Court of Justice of the European Union, the European Court of Human Rights and the EU institutions. The Danish Court Administration is also a member of ERA (the Academy of European Law), which organises courses and seminars on EU-related subjects with the support of the European Commission. In addition, the Danish Court Administration is involved in Nordic cooperation within the framework of SEND, which offers one or two seminars for judges in the Nordic countries each year. Finally, the Danish Court Administration takes part in the work of the global organisation IOJT (International Organization for Judicial Training), which supports judicial training institutions and facilitates knowledge-sharing on matters such as judicial learning, learning methods and management development.

The Danish National Police reports that the police are already making use of international police channels such as Europol and Interpol, where Denmark takes part in specific EMPACT operational action plans in this area together with other law enforcement agencies.

Re recommendation 12: 'The role of NGOs could be strengthened, in particular by giving them more possibilities for jurisdictional actions and a more substantial role in shaping public policies.'

This recommendation is in line with the government's desire to involve stakeholders and the outside world in work on greening, and to build up relevant expertise in that field.

As far as DEPA is aware, however, no specific measures have been taken for the sole purpose of gathering NGOs' views on environmental crime.

DEPA is always willing to engage in dialogue with all stakeholders, including NGOs.

(Complimentary close)

Maria Carlsson