

Coordinated audit on the enforcement of the European Waste Shipment Regulation

Joint report based on eight national audits



Coordinated audit on the enforcement of the European Waste Shipment Regulation

Joint report based on eight national audits

This cooperative audit on the enforcement of the European Waste Shipment Regulation is based on eight individual national audit reports, carried out by the supreme audit institutions of Bulgaria, Greece, Hungary, Ireland, Poland, the Netherlands, Norway and Slovenia. The SAI of the Netherlands coordinated the compilation of the audit findings. The coordinated audit was launched in response to a decision taken by the Contact Committee of Heads of EU SAIs and was conducted in close collaboration with the EUROSAI Working Group on Environmental Auditing.



Participating supreme audit institutions



Bulgaria
Bulgarian National Audit Office

<http://www.bulnao.government.bg/?lang=en>



Greece
Hellenic Court of Audit

http://www.elsyn.gr/elsyn/root_eng.jsp



Hungary
State Audit Office of Hungary

<http://www.asz.hu/en/home>



Ireland
Office of the Comptroller and Auditor General of Ireland

<http://www.audgen.gov.ie>

The Netherlands

Netherlands Court of Audit



Algemene Rekenkamer

<http://www.courtofaudit.nl>

Norway

Office of the Auditor General of Norway



Riksrevisjonen
Office of the Auditor General of Norway

<http://www.riksrevisjonen.no/en>

Poland

Supreme Audit Office

<http://www.nik.gov.pl/en>



SUPREME AUDIT OFFICE
nik.gov.pl

Slovenia

Court of Audit of the Republic of Slovenia

**RAČUNSKO SODIŠČE
REPUBLIKE SLOVENIJE**



<http://www.rs-rs.si/rsrs/rsrseng.nsf>

Contents

Conclusions and recommendations	5
1 Introduction	9
1.1 Compilation of eight national audits	9
1.2 Need for regulation of international waste shipments	10
1.3 International waste flows	11
1.3.1 Main international waste routes	12
1.3.2 Volume of EU waste production and exports	13
1.3.3 Waste flows in the eight participating countries	15
1.4 Three options for the shipment of waste	16
1.5 Requirements arising from the EWSR	17
2 Formal implementation and information management	19
2.1 Introduction	19
2.2 Formal implementation of EWSR requirements	19
2.3 Classification of waste	20
2.4 Two legal frameworks and two code systems	21
2.5 Information management within countries	22
2.6 Information exchange between countries	25
3 The enforcement of the EWSR	27
3.1 Introduction	27
3.2 Enforcement network	27
3.3 Enforcement strategy and implementation	29
3.3.1 Strategy and annual plans	29
3.3.2 Number of inspections	30
3.3.3 Type of inspections	31
3.3.4 Multilateral cooperation in enforcement activities	34
3.3.5 Resources	35
3.3.6 Verification of notifications	37
3.4 Information on the effectiveness of enforcement activities	37
3.5 Recent developments	39
3.5.1 European developments	39
3.5.2 National developments	39
4 Penalising infringements of the EWSR	40
4.1 Introduction	40
4.2 Warning letter	40
4.3 Fines	41
4.4 Action under administrative law	42
4.5 Action under criminal law	43
4.6 Other enforcement measures	45
5 Summary of conclusions and recommendations	46

Appendix 1	Audit approach	49
Appendix 2	Number of inspections and infringements	51
Appendix 3	Impact of the national audits: follow-up on recommendations	52
Appendix 4	Summaries of national audits	53
	List of abbreviations	65
	Literature	66

Conclusions and recommendations

The supreme audit institutions (SAIs) of Bulgaria, Greece, Hungary, Ireland, Poland, Norway, the Netherlands and Slovenia conducted a coordinated audit on the enforcement of the European Waste Shipment Regulation (EWSR). The questions answered by the eight SAIs in this audit were:

1. To what extent do the relevant authorities comply with the requirements arising from the EWSR?
2. How do the authorities enforce the EWSR?
3. What is known about the effectiveness of the enforcement measures?

This report is a compilation of the findings of the eight national audits, that were conducted between 2011 and 2013. Besides presenting the main findings, the report discusses the differences among the eight countries and makes a number of general recommendations both for the eight countries audited and for other European countries.¹ Some of these might also be of interest to the European Commission. The Commission could also facilitate the implementation of a number of the recommendations.

Main conclusion

This coordinated audit shows that all eight countries have implemented the EU regulation on waste shipments and generally comply with the formal implementation requirements. However, the audit also identifies wide discrepancies in the enforcement of the EWSR. The enforcement strategy, the number of inspections, the interpretation of regulation and the way in which infringements are dealt with all differ widely from one country to another. The authorities also lack information on the effects of enforcement measures and on the operation of the EWSR system as a whole.

The differences in the enforcement of the regulation are not in line with the basic principle of a level playing field. Enforcement pressure and the related costs for businesses differ from one country to another. This may encourage businesses and institutions to export their waste via countries where fewer inspections are performed and where milder sanctions are applied if illegal waste shipments are intercepted. Such cross-border avoidance increases the risk of waste being shipped illegally, and this may result in improper treatment of the waste.

All in all, the coordinated audit has identified significant weaknesses and challenges in the implementation practice of the EWSR.

EWSR implemented in alle eight countries

Formally, all eight countries have implemented the EU regulation on waste shipments. In all countries, national legislation is EWSR-compliant, a competent authority has been established, EWSR notification procedures have been defined, inspections are performed, sanction systems have been put in place, and there is international cooperation. One exception is the punctuality of reporting by the member states to the European Commission (and Basel Secretariat): half the countries submitted their annual reports after the cut-off date.

¹ More specific recommendations can be found in most of the eight reports on the national audits.

Differences in enforcement

All eight countries have performed at least some inspections of waste shipments. A closer look at the findings reveals that there are wide differences in terms of the number and nature of inspections, the existence of an enforcement strategy, the executive organisations involved and the available resources. The number of checks of waste shipments varies from a dozen to several thousands a year.

Enforcement policy lacks underpinning by risk assessment

The enforcement policy in six countries is not sufficiently based on an explicit risk assessment. This poses a risk that the enforcement effort is not commensurate with the specific challenges faced by the country in question.

Differences in resources and prioritisations

There are wide differences in the resources available for the enforcement of the EWSR. Enforcement in five countries is hampered by a shortage of well-trained staff and technical equipment. This poses challenges for the effective enforcement of the EWSR. The differences in this area reflect differences in priorities among the authorities of the eight countries.

Enforcement network

In all eight countries, multiple organisations are involved in the enforcement of the regulation. This poses challenges in terms of coordination and cooperation among enforcement agencies. Enforcement in three countries is hindered by a lack of coordination. The findings in the other countries suggest that enforcement benefits from cooperation and coordination within the enforcement network.

Classification of waste

The EWSR uses a broad definition of waste based on the European Waste Directive. While the EWSR distinguishes between different types of waste in its annexes, formal (quantitative) measures do not exist. Stakeholders find the interpretation of waste difficult to work with in practice. The broad definition also results in differences of interpretation within and among countries, thus complicating enforcement and raising the risk of illegal exports. These differences may also affect statistics.

There is clear evidence in several countries that hazardous waste is imported or exported as 'goods' and/or as 'green-listed waste'. This is a way of avoiding the procedures set out in the EWSR.

The situation is further complicated by the existence of two different code systems, i.e. EWSR/Basel on the one hand and the international tariff codes used by customs authorities on the other. There is no simple solution to this problem, which is recognised by all stakeholders. Practical solutions are needed. So far, only one of the eight countries has developed a conversion table so that tariff codes can be used to select high-risk shipments for inspection by customs.²

The broad definition of waste and the distinction between 'green-listed' and 'amber-listed' waste make it important to ensure that proper guidelines and information material are available to front-line officials.

² The European Commission (DG TAXUD) is also developing a conversion table.

Enforcement instruments and cooperation

In addition to inspections of shipments, countries also perform inspections at waste facilities as well as thematic inspections. All eight countries have taken part in one or more international enforcement campaigns (i.e. IMPEL-TFS, Demeter, Augias). Such international cooperation can produce synergetic benefits. National capacity-building profits from the exchange of information and experiences and the gathering of knowledge.

Information on enforcement

In all eight countries, information management is inadequate for the purpose of enforcing the EWSR. There are weaknesses in the information systems used by the authorities, in the exchange of information within and between countries and in the registration and reporting of inspections, infringements and sanctions. There are no clear policies and guidelines for tackling problems with data collection and reporting. As a result, statistical data could well be incomplete or unreliable and it is more difficult to pursue information-based enforcement, monitoring and review. The comparability of statistical data on inspections, infringements and sanctions is hampered by the lack of an EU protocol for the collection, registration and reporting of data on the enforcement of the EWSR and the penalisation of violations. Such a protocol would prevent double counting and harmonise the way in which all-round inspections and revisions of the initial registration are factored into reports on EWSR inspections.

Information on the impact of enforcement

The authorities in the eight countries have little or no information on the effects of their enforcement measures and do not have a picture of the operation of the EWSR system as a whole. Because insufficient attention is paid to reviewing receipt and processing notifications, the authorities lack information on the final link in the EWSR chain, i.e. the processing of the waste.

Penalisation of offences

This coordinated audit reveals wide discrepancies among the eight countries in the way in which infringements are penalised. The same infringement may be subject to a very different penalty in one country than in another. The findings also show that most countries make only limited use of sanction instruments. Further information is needed to establish whether national sanctions policies are proportionate and dissuasive, as required by the EWSR.

Impact of national audits

The authorities in most of the eight countries are taking steps to strengthen the enforcement of the EWSR. In most cases, these measures have been designed in response to the recommendations formulated in the national audit report. Some audit teams noted that more attention was paid to enforcement during and after the audit, and that certain authorities also took extra measures in addition to acting on the recommendations made in the report. Improvements are frequently sought in the form of closer cooperation between organisations, information management, training schemes and guidelines.

Recommendations

On enforcement policy

Countries are recommended to:

- Develop a strategic plan for the enforcement of the EWSR. The plan should be risk-based, commensurate with the actual risks and should be periodically updated. Both the plan and the national implementation practice should reflect the national goals set for the enforcement of the EWSR.

On resources and the enforcement network

Countries are recommended to:

- Appoint staff and allocate resources in line with the risks of illegal shipments.
- Adopt proper training schemes.
- Organise the enforcement network in such a way that it promotes cooperation between the authorities and makes use of their competences.

On classification of waste

Countries are recommended to:

- Draw up guidelines that help enforcement officers distinguish between the various categories of waste and between waste and second-hand goods.
- Produce a conversion table for converting customs codes into Basel codes and vice versa, so that custom declarations can be used to identify waste shipments.
- Address and solve differences in the interpretation and classification of waste within and among countries. These differences should be discussed within the existing international networks.

On enforcement, cooperation and information management

Countries are recommended to:

- Consolidate and intensify international cooperation, exchange information on waste shipments, waste flows, businesses and facilities; and facilitate the sharing of experiences and knowledge on enforcement measures in order to develop and adopt good practices.
- Make a greater effort to use and exchange information and cooperate in verifying notifications. Perform administrative checks to assess the risk of waste being processed in inadequate facilities.
- Improve their information management in relation to the EWSR.

On Penalisation of offences

Countries are recommended to:

- Assess whether their sanctions policy is proportionate and dissuasive and share information on the use that is made of sanction instruments, within the existing public prosecutors network.

European Commission can facilitate improvement of enforcement

The EC could facilitate the development of proper guidelines for identifying and classifying waste, as well as the implementation of a conversion table for converting customs codes into Basel codes and vice versa. In addition the EC could facilitate the development of an European information stem for notifications and a protocol for gathering statistical data on the enforcement of the EWSR.

I Introduction

1.1 Compilation of eight national audits

This report is a compilation of the findings of eight national audits on the enforcement of the European Waste Shipment Regulation (EWSR).³ The EWSR regulates the shipment of waste within, to and from the European Union (EU) with a view to protecting the environment both within the EU and internationally. The audits were conducted between 2011 and 2013 by the supreme audit institutions (SAIs) of Bulgaria, Greece, Hungary, Ireland, Poland, Norway, the Netherlands and Slovenia.⁴ The SAI of the Netherlands coordinated the compilation of the audit findings. The coordinated audit was launched in response to a decision taken by the Contact Committee of Heads of EU SAIs in October 2010. The audit was conducted in close collaboration with the EUROSAI⁵ Working Group on Environmental Auditing.

About the audit

The objective of this coordinated audit is to improve the enforcement of the EWSR by providing information on the participating countries' enforcement strategies and performances (in terms of results and the achievement of the desired effect). To achieve this objective, the national audits sought to answer the following questions:

- To what extent do the relevant authorities comply with the requirements arising from the EWSR?
- How do the authorities enforce the EWSR?
- What is known about the effectiveness of the enforcement measures?

This joint report gives insight into the differences among the countries involved, but does not provide systematic benchmarks. The eight national audits were not designed to provide specific benchmarks for the enforcement of the regulation. More information on the audit questions and the audit approach is provided in appendix 1. Summaries of the eight national audits are given in appendix 4.

³ Regulation (EC) no. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (European Waste Shipment Regulation).

⁴ The SAIs took part on a voluntary basis. All European SAIs were invited to participate.

⁵ European Organisation of Supreme Audit Institutions.

Supreme audit institutions

The role of supreme audit institutions (SAIs) is to conduct independent audits of government activities. These audits provide national parliaments with objective information to help them examine their government's public spending and performance.

The heads of the SAIs in the EU member states and the head of the European Court of Auditors have formed a Contact Committee to discuss matters of common interest.

The international organisation of supreme audit institutions (INTOSAI) is the international umbrella organisation for supreme audit institutions. As an institutionalised framework, its aim is to promote the acquisition and transfer of knowledge, improve government auditing worldwide and enhance the professional capacities, standing and influence of member SAIs in their respective countries.

The European regional organisation for supreme audit institutions is called EUROSAI. One of its working groups is the EUROSAI Working Group on Environmental Auditing (EUROSAI WGEA). The aim of this working group is to help raise the SAIs' capacity for auditing government environmental policies, promote cooperation and exchange knowledge and experiences on the subject among SAIs.

Structure of this report

This report consists of five chapters, starting with this introduction, which provides background information on international waste shipments and the EWSR. The second chapter discusses the formal implementation requirements, the classification of waste and the information networks. Chapter 3 examines the enforcement network and provides information on enforcement practices in each of the eight countries. Chapter 4 looks at the way in which infringements of the EWSR are punished. A summary of the conclusions and recommendations is presented in chapter 5.

1.2 Need for regulation of international waste shipments

Waste management has been recognised as an increasingly international challenge in recent years. European paper and plastic waste, for example, is often recycled in Asia. Waste from electrical and electronic equipment (WEEE) is another example. Many defunct computers and televisions are shipped from Europe to Africa, where they are incinerated in the open air after precious metals have been removed. The African countries in question then suffer the human and environmental consequences (Secretariat of the Basel Convention, 2011). Hundreds of illegal waste shipments destined for countries outside the EU are stopped every year in Europe (IMPEL, 2011). A serious risk with such shipments is that the waste is dumped illegally or processed without protecting humans and the environment.

What is waste?

The EU member states define 'waste' in the Waste Directive as any substance or object that the holder discards, intends to discard or is required to discard. Examples of waste are broken computers, car wrecks, sewage sludge, paper waste, metal slags, hydraulic fluids, used plastic and empty lead-acid batteries. The EWSR lists several hundred types of waste.

Economic growth in some countries, especially in Asia, has resulted in greater demand for raw materials. As resources become more costly, so the incentive and need to

recycle waste has also risen (EEA, 2012). The extent to which waste can and needs to be reused as a raw material differs from one country to another, depending for example on the available natural resources and degree of necessity. Moreover, each country has its own processing capacity, costs, rules and enforcement policy. It may sometimes be cheaper to export waste for recovery to an Asian country instead of to a neighbouring EU country. Consequently, waste can be a valuable commodity, even when shipped illegally. The importance of the enforcement of the regulation is illustrated by the well-known case of the Probo Koala (example 1).

Example 1: Probo Koala (the Netherlands)

In July 2006, a tanker called the Probo Koala docked in the Port of Amsterdam to discharge sludge, i.e. washing water and oil residues released after cleaning with caustic soda. The ship's operator, a company called Trafigura, planned to have the sludge processed after it had been offloaded. When the 550 m³ hold was emptied, the sludge proved to be considerably more polluted than Trafigura had stated. The recipient company was prepared to accept and process the sludge only at a far higher cost than originally quoted. The sludge (250 m³) was subsequently pumped back into the tanker when Trafigura found a company in the Ivory Coast that was willing to accept and process it. Because the sludge had been pumped back onto the tanker, it became the Probo Koala's cargo and hence a waste shipment. The shipment of the sludge to the Ivory Coast was a violation of the EWSR. According to the court of appeal, Trafigura was aware of the chemical composition of the sludge and exported it illegally to the Ivory Coast. A Dutch court imposed a fine of €1,000,000 on Trafigura in 2011.

Basel Convention

A number of incidents in the 1980s raised public awareness of the dangers associated with the export of hazardous waste. In response, the international community proposed a global regulation and the 'Basel Convention on the control of transboundary movements of hazardous wastes and their disposal' was adopted in 1989. By January 2013, 178 countries, as well as the European Union, had signed up to the Convention.

Agreements laid down in the EWSR

The EWSR is the instrument by which the EU has implemented its obligations under the Basel Convention. The EU consolidated international and European agreements and principles in the EWSR in 1993. In addition to the Basel Convention, the EWSR is based on the European Waste Framework Directive and an OECD decision.⁶ The aim of this regulation is to prevent firms and institutions from exporting waste for processing in facilities that do not offer a sufficient degree of environmental protection. The EWSR has also been adopted by members of the European Economic Area, such as Norway and Switzerland.

1.3 International waste flows

The world produces a huge amount of hazardous and non-hazardous waste every year, from domestic waste and electrical equipment to industrial waste, batteries and 'end-

⁶ This decision relates to the shipment of recyclable waste that crosses the borders of OECD member countries. 1992, revised in 2001.

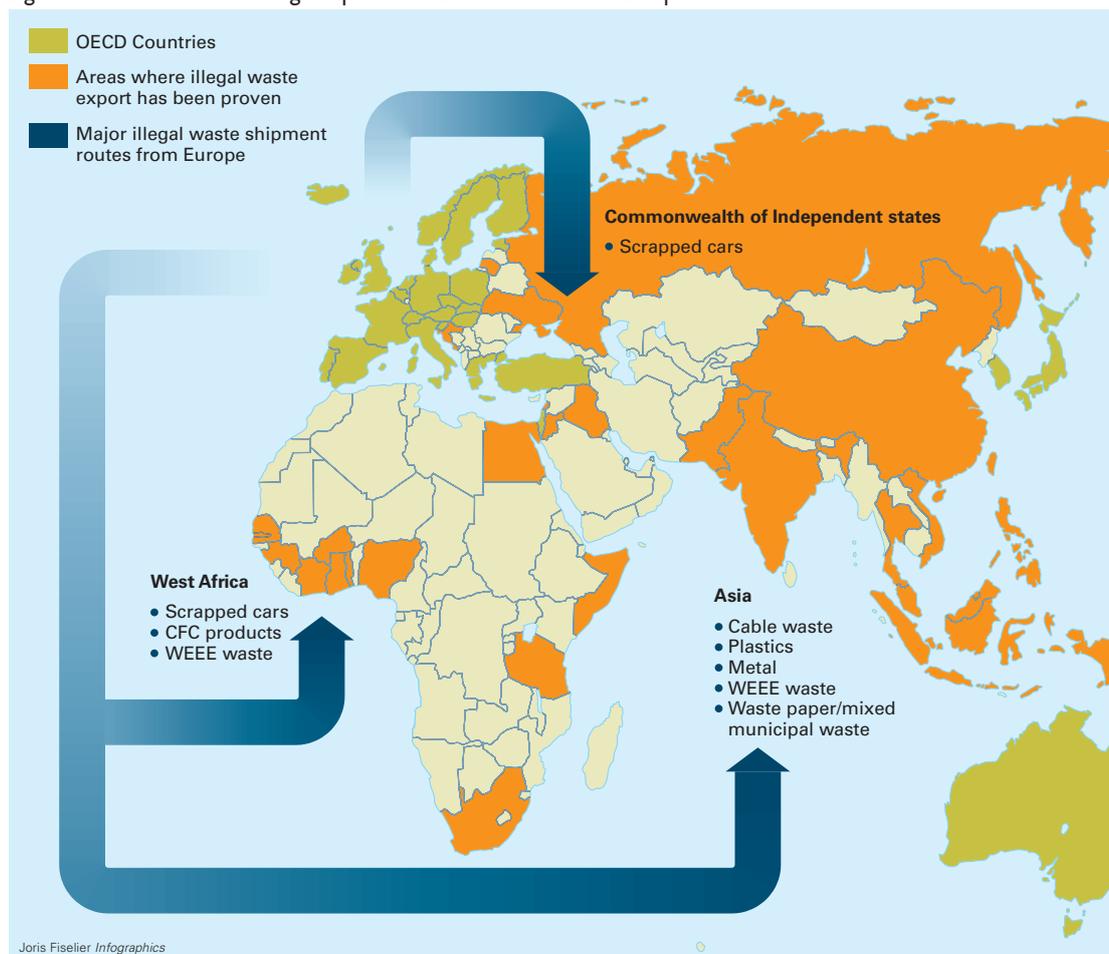
of-life' vehicles. Whether businesses and institutions export their waste usually depends on the processing opportunities and costs.

The mechanisms described above also drive the export of waste from the eight countries that participated in the coordinated audit. Several national audit reports specifically cite the lack of national treatment capacity for specific kinds of waste and differences in processing costs as key incentives for exporting waste. One of the audits also found that waste is transported due to policies adopted by certain multinational companies on the international consolidation of waste treatment. Finally, there is a risk that waste may be exported within the EU as a result of differences in the strictness of enforcement practices.

1.3.1 Main international waste routes

The main recipients of global waste are Asia and Africa. Europe, Japan and North America are the main shippers of waste. The report on the Norwegian audit includes a map of known routes of illegal exports of hazardous waste from Europe to other parts of the world (see figure 1.1). This shows that West Africa, Asia and the CIS countries are the main destinations. Illegal cross-border waste flows within Europe are not shown on the map.

Figure 1.1 - Known routes of illegal exports of hazardous waste from Europe



Source: Office of the Auditor General of Norway, 2012, based on Impel-TFS (2006) Threat Assessment Project, and World Customs Organization (2009) Operation Demeter final report; supplemented with data from the Dutch national audit (Algemene Rekenkamer, 2012).

The following description (example 2) of the Vest Tank accident in Norway illustrates the complexity of the international waste trade and the importance of the proper processing of waste and of information-sharing among authorities in different countries.

Example 2: The Vest Tank accident in 2007 (Norway)

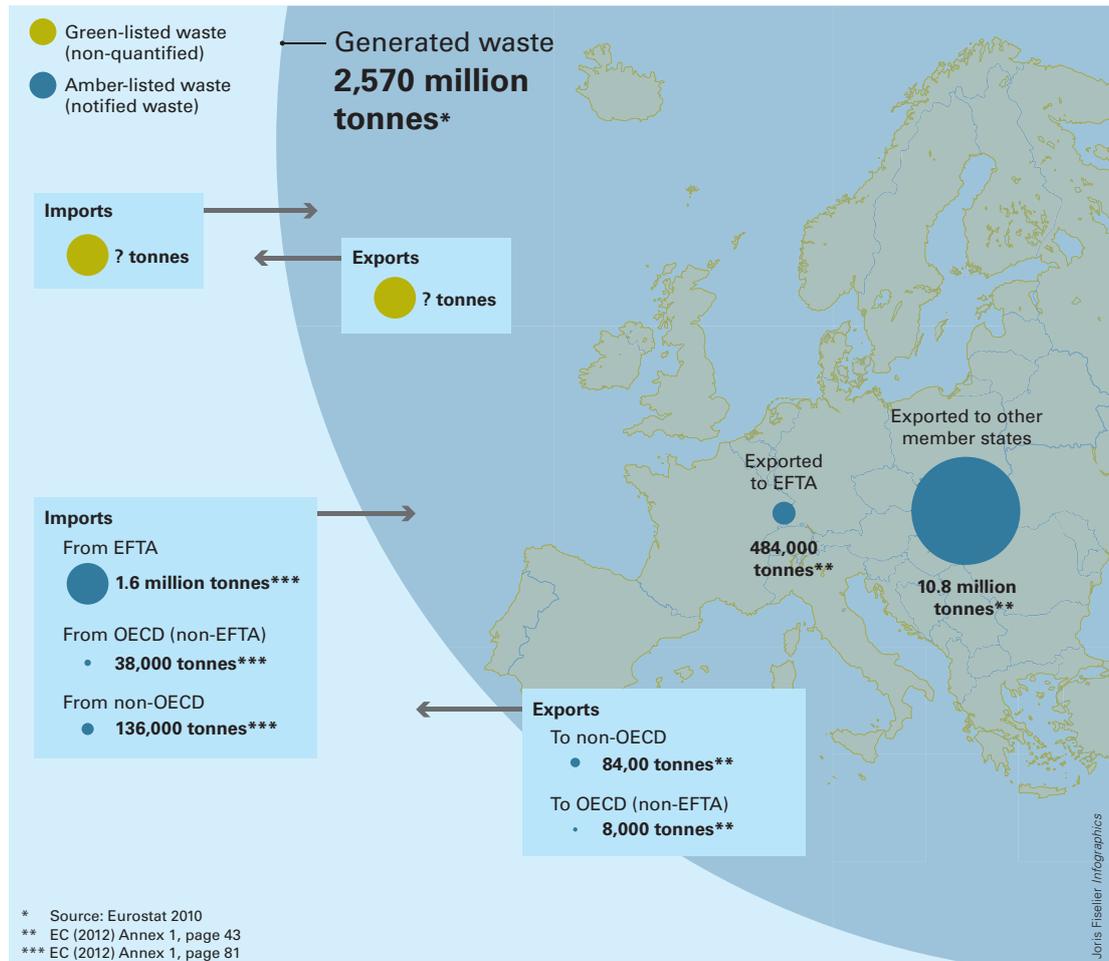
A company called Vest Tank held a permit to receive waste containing oil from ships. The company signed a contract to receive other types of waste from petroleum production. Under the terms of this contract, Vest Tank received polluted petrol from tankers (i.e. coker gasoline), desulphurised it and then loaded it back onto the ships for sale on the African market. As a result, the company was left with large quantities of waste that it was not allowed to process. The tanker that delivered the polluted petrol was Probo Emu. It was the sister ship of the Probo Koala (see example 1) and carried the same type of polluted petrol, originating from the same company that was later fined in the Netherlands. The company started to clean the desulphurisation waste. One of the tanks exploded and the contents of one of the neighbouring tanks leaked out and ignited. Local residents experienced health problems after the accident that were linked directly to the explosion. The Norwegian Climate and Pollution Agency reported the case to the police. The former general manager and chairman of Vest Tank were given prison sentences.

After the Vest Tank accident, it emerged that the ship that had delivered the polluted petrol to Vest Tank, the Probo Emu, had not been checked by the environmental authorities, even though the Dutch customs had notified the Norwegian Climate and Pollution Agency about the ship. The Agency was also notified by the Norwegian Coastal Administration that the pilot who had directed the ship to the Vest Tank facility had noticed a strong smell of sulphur on board.

1.3.2 Volume of EU waste production and exports

The 27 EU member states generated around 2,570 million tonnes of waste in 2010, including some 94 million tonnes of hazardous waste (Eurostat, 2011). Figure 1.2 shows the total production of waste and the various cross-border flows. Quantitative information on these shipments is available only for notified waste, because only this type of waste can be exported with a permit (see section 1.4). The much larger flow of green-listed waste is not reported in Eurostat's regular waste figures, nor is it included in the most recent report published by the European Commission on the implementation of the EWSR (EC, 2012).

Figure 1.2 - Waste production and transboundary waste shipments in Europe



Notified waste

The EC (2012) reported that the total volume of all notified waste shipped between the EU member states (EU-27) or out of the EU in 2009 was about 11.4 million tonnes. The vast majority of these transboundary waste shipments have destinations within the EU or one of the EFTA countries (i.e. Iceland, Liechtenstein, Norway and Switzerland). Some 84,000 tonnes of notified waste were exported from the EU to a non-OECD country in 2009.⁷

The total volume of all notified waste shipped into EU member states was about 12.4 million tonnes in 2009 (EC, 2012). Most of this waste was shipped between member states or was imported from one of the EFTA countries.

Exports and imports of green-listed waste

As has already been mentioned, the much larger flow of green-listed waste is not included in the published waste statistics. This is because green-listed waste can be exported without notification. This lack of information is reflected in figure 1.2 by the absence of quantitative data. We do know, however, that both the volume and the value of recyclable waste exported out of the EU rose considerably between 1999 and 2011. Plastics, iron and other metals are examples of such waste flows (EEA, 2012).

⁷ Source: EC (2012) Annex 1, page 43.

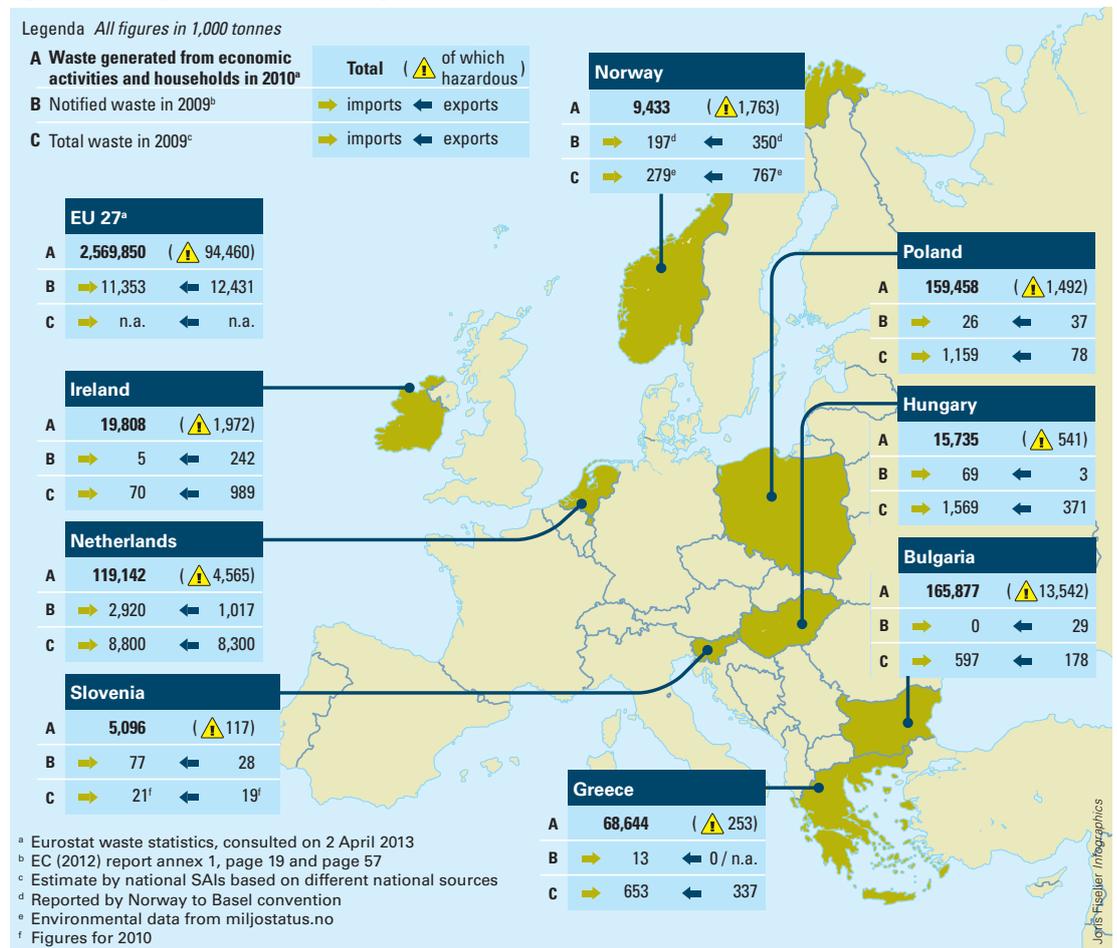
Statistics: approach with caution

The EC report on the implementation of the EWSR notes inconsistencies in the quantities reported by different member states for the same shipments (EC, 2012). Also, the figures for imports and exports of notified waste among member states do not tally (also see § 2.5). Eurostat warns that caution should be exercised when comparing waste levels in member states (Eurostat, 2011). In some countries, households are considered as sources of discarded vehicles or sources of mineral waste from construction activities. In other countries, these flows are attributed to businesses.

1.3.3 Waste flows in the eight participating countries

Figure 1.3 shows how much waste is generated in the eight countries that took part in this coordinated audit. It also includes information on exports and imports of notified waste and on aggregate waste exports and imports. Note that some figures are for 2009, others for 2010 and some are estimates.

Figure 1.3 - Key figures on waste for the eight countries included in this audit



Most intra-European waste exports by the eight countries in this audit are destined for neighbouring countries. Most waste exports outside Europe are destined for Asia, China in particular. Most waste imports by the eight countries originate from neighbouring countries. Poland, for example, imports most waste from Ukraine and Norway imports most waste from Sweden and Denmark.

The audit showed that different modalities are used for transporting waste. Sea transport is important for long-distance transport and for oil waste, whereas road transport is important for intra-European transport of EE waste and used cars, for example. In some countries, waste is also transported by inland waterway and rail.

1.4 Three options for the shipment of waste

There are three options for transboundary shipments of waste under the EWSR (see also figure 1.4):

Prohibition

The shipment may not take place. This may be on the strength of a blanket prohibition, such as a shipment of hazardous waste to a non-OECD country, intended for final disposal, or where the shipment is not in line with the national policy in the country of destination.

Notification procedure ('amber-listed waste')

Under this procedure, the shipment may go ahead on condition that a permit is issued before the shipment takes place. The waste holder must apply for a permit to the competent authority in the country of origin. The competent authority assesses whether the proposed shipment is permitted under the EWSR and whether the shipment is in accordance with national (waste) policy, and communicates with the competent authorities in the country of destination. After the shipment has taken place, the competent authorities in the country of origin must be sent two notifications from the country of destination:

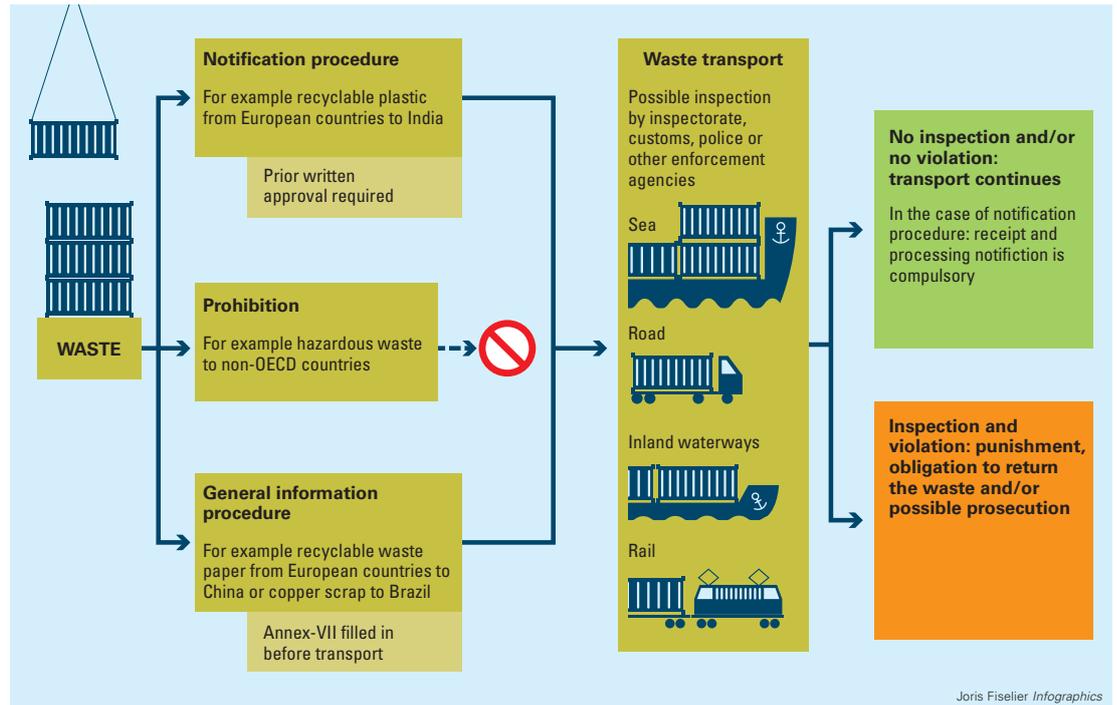
1. a notification of receipt (i.e. confirmation that the waste has arrived); and
2. a notification of processing (i.e. confirmation that the waste has been treated).

The waste shipments that are subject to this procedure are generally considered harmful to the environment and human health. Examples of shipments made under this procedure are shipments of used agricultural sheeting from an EU country to Malaysia for recovery, and shipments of many types of waste for final disposal within the EU/EEA/EFTA.

General information procedure ('green-listed waste')

Under this procedure, the shipment may go ahead if the waste holder satisfies a general requirement to provide information (as prescribed in Annex VII of the EWSR) and guarantees that the shipment is physically accompanied by the requisite information. The shipper must be able to hand over the information in the event of an inspection. The waste shipments that are subject to this procedure are generally considered less harmful to the environment and human health. An example of a shipment under this procedure is a shipment of waste paper from an EU country to India for recycling.

Figure 1.4 - The three EWSR procedures in simplified form



The notification and general information procedure requisite different international information flows, which will be further elaborated upon in section 2.6.

Which of the three options applies depends on different factors, including the country of destination, the type of waste involved, the processing method, national policy or a combination of these. The following text box uses scrap metal as an example to illustrate the complexity of the problem.

Which of three EWSR options applies?

Uncontaminated scrap metal is a form of green-listed waste. An Annex VII form is sufficient if the scrap metal is exported from the Netherlands to France for recovery (e.g. recycling). If the holder wishes to dispose of the scrap, the notification procedure applies. Scrap metal may not be exported to a non-OECD country for disposal (prohibition). Although less stringent rules apply to recycling, the situation still depends on the individual preferences of non-OECD countries. Argentina, for example, has chosen to prohibit imports of scrap metal, while Mali has opted for the notification procedure and Hong Kong has adopted additional national procedures.

1.5 Requirements arising from the EWSR

The EWSR applies directly to EU member states. As the regulation gives member states some latitude in certain areas, amendments have to be made to national legislation. Important examples of such amendments are the rules on financial guarantees for shipments, enforcement and the penalisation of infringements. Article 50 of the EWSR lists the requirements for enforcement (see text box below). The EWSR also stipulates that a competent authority should be designated.

In order to evaluate the implementation of the EWSR, this coordinated audit assessed how the requirements set out in the EWSR are met in the eight countries. Special attention was paid to the following points:

- the formal implementation requirements (see chapter 2);
- the number and nature of inspections (see chapter 3);
- international cooperation aimed at preventing and detecting illegal shipments (see chapter 3); and
- the sanctions designated and as actually used in practice (see chapter 4).

Article 50 of the EWSR (on enforcement in the member states):

1. Member States shall lay down the rules on penalties applicable for infringement of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify the Commission of their national legislation relating to prevention and detection of illegal shipments and penalties for such shipments.
2. Member States shall, by way of measures for the enforcement of this Regulation, provide, inter alia, for inspections of establishments and undertakings in accordance with Article 13 of Directive 2006/12/EC, and for spot checks on shipments of waste or on the related recovery or disposal.
3. Checks on shipments may take place in particular:
 - a. at the point of origin, carried out with the producer, holder or notifier;
 - b. at the destination, carried out with the consignee or the facility;
 - c. at the frontiers of the Community; and/or
 - d. during the shipment within the Community.
4. Checks on shipments shall include the inspection of documents, the confirmation of identity and, where appropriate, physical checking of the waste.
5. Member States shall cooperate, bilaterally or multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments.
6. Member States shall identify those members of their permanent staff responsible for the cooperation referred to in paragraph 5 and identify the focal point(s) for the physical checks referred to in paragraph 4. The information shall be sent to the Commission which shall distribute a compiled list to the correspondents referred to in Article 54.
7. At the request of another Member State, a Member State may take enforcement action against persons suspected of being engaged in the illegal shipment of waste who are present in that Member State.

2 Formal implementation and information management

2.1 Introduction

The EWSR requires member states and other countries that have adopted the regulation to check shipments of waste. However, various formal arrangements need to be made before countries can start enforcing the regulation. This chapter begins by describing the implementation of these arrangements (section 2.2) before discussing the classification of waste and the two relevant legal frameworks. Finally, information management in relation to the EWSR is discussed in section 2.5 en 2.6.

2.2 Formal implementation of EWSR requirements

Designation of competent authority

All eight countries have designated a competent authority that has overall responsibility for issuing permits, reporting to the European Commission and communicating with the competent authorities in other countries about notification procedures. In most countries (except Ireland, see example 3), the tasks of the competent authority are performed by a national inspectorate, ministry or agency.

Example 3: Public and private enforcement tasks (Ireland)

In Ireland, a local authority, i.e. Dublin City Council, has been designated as the national competent authority for the EWSR. The City Council has established a National Transfrontier Shipment Office (the NTFSO) to implement and enforce the regulation. The NTFSO also performs related functions to educate stakeholders about the implementation of the regulation and to collaborate and coordinate with the business community and external agencies.

The enforcement tasks in relation to the EWSR are performed by a private enforcement company employing nine staff. The enforcement team is fully accountable to Dublin City Council and reports directly to the head of the NTFSO. Inspections are made of imports, exports, waste facilities, dealers and brokers. Following an inspection, the enforcement officer concerned makes a recommendation to the NTFSO on what, if any, enforcement action needs to be taken. The NTFSO takes the final decision on the action to be taken.

Inspections are performed and rules on sanctions are in place

The audit shows that inspections are carried out in all eight countries and that sanction measures have been incorporated in national legislation. Moreover, EWSR procedures (both the notification and the general information procedures) have been put in place and different types of inspections are carried out. Inspections and sanctions are discussed in detail in chapters 3 and 4.

Bilateral cooperation

The auditors found that all eight countries had bilateral cooperation agreements or routines (i.e. cooperation not based on a formal cooperation agreement) with other countries, in most cases their neighbouring countries. Bilateral cooperation consists

of information-sharing between the competent authorities about specific shipments, meetings (such as expert meetings), bilateral enforcement operations and arrangements for shipments that are returned due to infringements of the regulation. In two countries, the agreements or cooperation structures have a specific EWSR focus. Norway, for example, cooperates with the other Nordic countries in forming a single common market for the treatment of hazardous waste in accordance with the principles of self-reliance and proximity. In other countries, bilateral cooperation has a broader and less specific focus: Greece and Bulgaria have agreed to cooperate in general terms in the field of environmental protection.

Example 4: Bilateral cooperation

The Netherlands cooperates with its neighbours (i.e. Belgium, Germany and the United Kingdom) as well as with countries such as China and Ghana. Cooperation with China is on the rise due to the volume of European waste, plastic in particular, that is shipped to China via Dutch ports. In suspicious cases, the competent authority in the Netherlands may request the Chinese authorities to inspect certain shipments.

Multilateral cooperation

All eight countries were found to be involved in multilateral cooperation. The most common activities are Impel-TFS operations and Demeter (see chapter 3 for further information).

Reporting to the European Commission (and Basel Secretariat)

The audit teams found that all eight countries reported to the European Commission and/or the Basel Convention on the implementation of article 50 of the regulation. However, four of the eight countries were late in presenting their annual reports. In two countries, the delay was caused by staff shortages at the competent institutions. In one of the other countries, the delay was due to the large number of corrections that needed to be made to improve the reliability of statistics.

In its most recent report on the enforcement of the EWSR, the European Commission refers to the missing and delayed reports from member states (EC, 2012). The Commission writes that, although no infringement action has been taken to date, it has nevertheless launched EU Pilot Requests to investigate the missing reports.

2.3 Classification of waste

The definition of waste given in the EWSR is based on the European Waste Directive. Waste is defined as ‘any substance or object which the holder discards or intends or is required to discard’. This broad definition means that the competent authority has to place its own interpretation on the term, for example when assessing whether a shipment should be classified as electronic waste or as second-hand computers. Classification is also necessary in order to determine whether a shipment is green-listed or amber-listed and hence whether the notification or general information procedure applies.

In many cases, the auditors found differences of interpretation in identifying and categorising waste shipments. For example, in an inspection of plastic waste, one inspector might classify the goods as clean plastic (requiring the general information

procedure), while another inspector might conclude that the plastic is contaminated with metal scrap and paper, which means that the notification procedure needs to be followed.

Differences of interpretation between inspectors are unavoidable, however, as the EWSR does not explicitly define the difference between clean and mixed waste. The fifth example illustrates the Dutch situation, where an attempt was made in 2011 to introduce policy guidelines. The example shows the practical and legal difficulties faced by national authorities in attempting to harmonise their interpretation of the EWSR.

Example 5: Dutch attempt to harmonise the interpretation of waste

When does waste paper become so contaminated that it becomes domestic waste? The EWSR does not set quantitative limits. In 2011, the Dutch environmental inspectorate tried to set quantitative limits in the form of contamination standards for three common types of waste: scrap metal, plastic and paper. In preparing these standards, the inspectorate consulted several industry organisations and studied the standards used in other countries. In practice, however, the standards met with resistance. The inspectorate even lost a court case, although it did launch a successful appeal.

Two consequences of the broad definition of waste are:

1. That it complicates the enforcement of the EWSR, especially where waste is intentionally shipped under the general information procedure (for green-listed waste), despite the fact that the notification procedure (for amber-listed waste) is required.
2. That information management becomes less valid, because it causes an overall bias in recording data on waste, and also in comparing information among different organisations and countries.

2.4 Two legal frameworks and two code systems

Enforcement agencies have to deal with two legal frameworks: the international statutory framework for customs and the Basel/EWSR framework. The differences between the frameworks complicate the enforcement of the EWSR, because the codes used in custom declarations need to be converted into Basel codes in order to identify waste.

For example, a shipment may be declared as aluminium partials at customs, despite actually being aluminium waste. Similarly, a shipment may be documented as being electronic equipment components, even though the goods are classified as waste under the EWSR. Without an explicit or automatic linkage to the Basel codes, waste shipments may not be identified as such, which means that customs may not always 'realise' that a passing shipment of goods is in fact waste. For customs the conversion can be difficult to do, for example in the case of mixed types of waste and because customs officers usually lack detailed technical knowledge.

The differences complicate the use of customs declarations for the risk-based enforcement of the EWSR. Although the EC (DG TAXUD) is currently working on a conversion table, it is not yet operational. One of the eight countries involved in the audit (i.e. the Netherlands) has also started building a conversion table linking

customs (goods) codes with the Basel codes and other relevant sources. Since EU goods codes and the country data constantly change, the table requires regular updating.

The EC (2010) recognises the challenge of the Basel codes versus customs codes and the Directorate-General of Taxation and Customs Union is currently adapting and harmonising some of the Basel codes and integrating them with the custom codes. The idea is for some of the codes to be harmonised by 2017.

The second difference between the two frameworks is that the EWSR requires the waste-holder to disclose the final destination in the documents, whereas the customs regulation requires the next country in transit to be disclosed on the customs declaration; the final destination is not always stated. This difference complicates enforcement of the EWSR. An example is where a waste shipment from a European country is destined for India, but is shipped via the United Arab Emirates (UAE). According to the EWSR, the waste is allowed to be shipped to UAE but not to India. Under the EWSR, the documentation should name India as the country of (final) destination. However, if the documentation states that the destination is the UAE, the customs may allow the shipment to pass. From a customs perspective only the next destination has to be documented, which is not necessarily the final destination. This is not correct, however, from the perspective of the EWSR, as the export of the waste to India may require other procedures to be followed or may even be prohibited.

2.5 Information management within countries

The eight SAIs assessed how information management (see text box) is organised in their country and how this affects the enforcement of the EWSR.

An **information management system** in the context of the EWSR refers to all data, IT systems and facilities concerned with information flows and the storage and filing of information. The central audit standard is that both within and between countries, IT systems and information on enforcement activities, findings and evaluations exist and are shared, so that enforcement activities can be monitored, evaluated and improved. The enforcement information should be reliable, valid and up to date. This implies, for example, that different sources of information and databases are well-connected, so that no gaps or double counts are registered. Also, the way in which information is gathered and processed by all enforcement agencies should be based on the same principles and definitions.

Registration of EWSR data within countries

EWSR data is any information that is relevant to the EWSR (and its enforcement). i.e. data on a country's waste production and treatment, on the number of waste shipments (both green and amber), the number of notification procedures, the number of inspected shipments, the number and type of EWSR infringements detected, the waste stream involved and the quantity of waste, and the sanction measures applied.

The eight audits show that the reliability of the recorded data is weak in many countries and that the way in which data is recorded varies from one organisation to another.

Example 6: Electronic information exchange and access to databases (Poland)

In Poland, the computer databases used by the Inspectorate of Environmental Protection, the Customs Service and the Border Guard were not linked and functioned separately. The limited sharing of data on cross-border waste shipments by the above agencies caused delays in the exchange of information on permits, shipments and disclosures of illegal shipments. This detracted from the effectiveness of the enforcement of the EWSR.

1. Data on total waste production

To a greater or lesser extent, all the audits reported problems with the reliability of the information on waste production, which was rated as very low in relation to two countries. This is because data on different types of waste is collected from annual reports drawn up by waste producers and then processed by various competent institutions, but is not cross-checked and verified before being entered, first in administrative databases, and later in official databases. Consequently, there can easily be wide discrepancies between data from different sources.

The method of calculation may be another reason for the unreliability of data on the total volume of waste generated. For example, quantities of municipal and construction waste in Slovenia are sometimes estimated rather than being measured. Also, the statistics do not include all waste and ignore waste that does not fall under the notification procedure. Finally, figures on annual waste production may not be comparable on a year-on-year basis because of changes in the definition of waste.

2. Data on waste treatment facilities

Four countries stated that they did not have precise data on waste treatment facilities, e.g. recycling and processing facilities, and their domestic treatment capacities. They do not maintain comprehensive national registers and central databases on all treatment facilities, which means that their competent institutions do not have a full picture of disposable treatment capacities for all waste types and all treatment procedures. As a result, it is difficult to assess their self-sufficiency in terms of waste treatment and explain the reasons for exports and imports of waste.

Example 7: No central data collection (Bulgaria)

In Bulgaria, a large amount of data is registered on waste imports and exports. However, all this information is collected by different organisations for different purposes and the statistics generated from them are not comparable. There is no national authority that collects and systemises data on waste shipments.

3. Data on export and import

Some countries reported, to a greater or lesser extent, a lack of comprehensive data on waste exports and imports. For this reason, it is difficult to estimate the actual volume of waste exported from or imported to a given country each year. The first reason for this is that green-listed waste does not require an export permit.⁸ The second reason lies in the fact that businesses apply for a notification for the maximum amount of

⁸ The notification and general information procedure require different international information flows, which will be further elaborated upon in section 2.6.

amber-listed waste they expect to ship. In most cases, no information is available on the volume of waste actually shipped.

Problems with data quality are also mentioned in the most recent report from the European Commission on the implementation of the EWSR (EC, 2012). In a large number of cases, the data reported by the country of dispatch does not tally with the data reported by the country of destination. More specifically, there was a 27% mismatch between reported exports and imports of hazardous waste among EU member states in 2009, with a higher margin of error for exports than for imports. In the same year, the gap between reported exports and imports of other notified wastes among EU member states was about 36%; the margin of error was higher for imports than for exports.

The European Court of Auditors (2012) has also pointed to the problem of producing reliable and credible European statistics.

4. Data on the number of EWSR inspections

The competent agencies in most countries provide information on the number of inspections carried out each year, as well as on the number and subject of infringements detected. However, the information is not always complete and accurate, because inspections are conducted by different organisations, each of which has its own method for recording inspections. Inspections of waste shipments are often performed as part of broader inspections or investigations of waste and are therefore not always identified as such.

Extensive data on the enforcement of the EWSR is available in Hungary. The Hungarian authorities have data on waste production, waste flows and on detected infringements. The total number of inspections is unknown, however, because customs officers often perform all-round inspections by checking waste shipments as part of the customs clearance procedure and do not categorise inspections of waste shipment as separate inspections.

The audit teams found that the eight countries had not formulated policies for giving inspectors guidance on registrations and for avoiding gaps in registration and double counting of inspections and infringements.

5. Data on illegal shipments

All countries have data on the number of intercepted shipments and detected infringements. However, most countries do not keep records on the enforcement of sanctions. Different organisations are involved in these procedures and they do not always share information with each other.

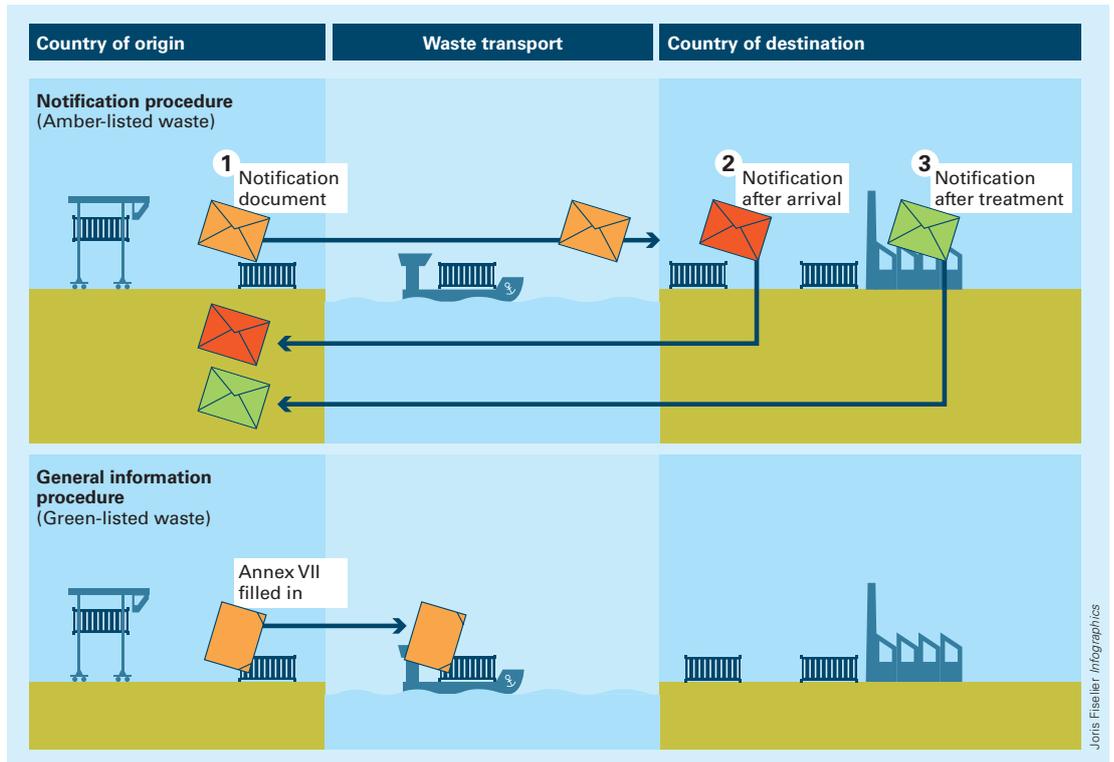
Information systems not integrated

The enforcement agencies in all the participating countries have IT systems for recording data in support of the enforcement of the EWSR. However, no country has information systems that are fully compatible with each other (e.g. in terms of the interpretation of definitions and the registration of activities), nor are they linked with other organisations' databases. None of the eight countries has a fully integrated database containing all relevant data. Without such a comprehensive database, it is difficult to use the information for enforcement purposes, such as risk analysis.

2.6 Information exchange between countries

The EWSR procedures (as described in section 1.4) envisage two type of information exchange between countries. As is shown in Figure 2.1, three data flows are relevant to the notification procedure, whereas the general information procedure does not require a structural information flow between countries.

Figure 2.1 - Requisite international information flows for the notification and general information procedures.



Information flows in relation to amber-listed waste

Under the notification procedure, the international exchange of information on shipments consists of three information flows:

1. Information from the country of origin to the country of destination on the (intended) notification approval of a waste shipment. The competent authority in the country of origin exchanges information about the planned shipment with the competent authority in the country of destination;
2. A receipt notification is sent from the country of destination to the country of origin, to inform the latter that the waste has arrived at its destination.
3. A processing notification is sent from the country of destination to the country of origin, to inform the latter that the waste has been treated.

There is an initiative to develop an system for the exchange of digital notifications (European Data Interchange for Waste Notification System). At the moment, the EUDIN-initiative is still limited to some European countries.

Example 8 illustrates that the possible unreliability of notification (see also section 3.3.6). Example 9 illustrates the difficulties faced by Norway in following a shipment from its origin to its destination.

Example 8: Export of plastic waste from the Netherlands to Hong Kong⁹

It is estimated that half of all the plastic waste in the Netherlands is exported to Hong Kong, despite the latter's limited capacity for handling such waste (VROM-Inspectorate, 2010). Most likely the bulk of the waste (possibly all of it) is sent through to China, with no guarantee of processing by a licensed recycler. With the last link in the chain out of the picture, information on the operation of the waste chain as a whole is limited.

Example 9: Declaration and administration errors (Norway)

In Norway, the current declaration system is based on the submission of paper forms. Much waste is incorrectly declared, and errors are also made during the manual transfer of data to the declaration database. Although the system is particularly important in relation to the supervision of the waste producers' duty to hand over their waste for processing, not all of it can be traced all the way to final disposal. The declaration system is thus not suited to documenting whether waste has been properly handled, making it is more difficult to effectively check the progress of waste that is submitted for processing. Errors also result in inaccuracies in statistics, which may be glaring in relation to certain types of waste.

Information management in relation to green-listed waste

Waste shipped under the general information procedure does not require case-by-case registration, as is required for waste shipped under the notification procedure. All countries reported that waste shipped under the general information procedure was not included in statistics. There is no international information system for monitoring and evaluating waste shipments under the general information procedure. The statistics used internationally about these shipments are based on annual declaration reports produced by waste shipping companies, reports published by the waste processing industry, trade statistics or other secondary sources. It is generally recognised, for example, by cross-checking the total figures, that it is only possible to estimate the volume of green-listed waste in each country, except for countries on the EU's borders, where the customs authorities register all cross-border shipments. However, these situations are complicated by the problem of customs codes and Basel codes.

⁹ An in-depth discussion of the position of Hong Kong within the international waste trade can be found in a study commissioned by the European Commission (O'Laoire Russell Associates, 2011).

3 The enforcement of the EWSR

3.1 Introduction

The EWSR requires member states, and other countries that have adopted the regulation, to check waste shipments. In other words, they are obliged to enforce the EWSR. However, it is up to the national authorities themselves to decide how to do so. They are free to design their own policies for the type and number of inspections, and other types of enforcement measures. As a result, the way in which the EWSR is enforced tends to differ from one country to another.

This chapter describes how the eight countries included in the audit enforce the EWSR and whether the measures taken are in line with the aim of the EWSR in general, and with the provisions on enforcement in particular (see section 1.5). This implies that checks should be organised that include documents and, where appropriate, a physical check of the waste. The authorities are also required to cooperate in combating illegal shipments.

Section 3.2 discusses the enforcement network. Section 3.3 examines the enforcement strategy, its implementation, the resources available for enforcement and the verification of notifications. Section 3.4 focuses on the information available on the effectiveness of enforcement measures. The chapter concludes with a discussion of a number of recent developments (section 3.5).

3.2 Enforcement network

Enforcement agencies

In all eight countries, multiple organisations are involved in the enforcement of the EWSR. The enforcement network usually consists of the competent authority, customs and the police. Customs play a key role in inspecting waste shipments at the European borders, while police forces in many countries check inland shipments by waterways, road and rail. Other organisations that form part of the network in some of the eight countries are public prosecution services, inspectorates, border agencies and agencies for administrative policy implementation. Most, if not all, of the enforcement agencies have other tasks to perform besides enforcing the EWSR.

The number of enforcement agencies differs from one country to another: in some countries, three organisations are involved, in others more than six. Figure 3.1 is a diagrammatic representation of the enforcement network and the organisations involved.

As a result of the many organisations involved, the enforcement of the EWSR is fragmented in most countries. This poses challenges for the coordination of the network. The national audits show that fragmentation hinders enforcement in three countries; in the other countries, there is sufficient coordination of enforcement activities and cooperation among the organisations involved.

Figure 3.1 - Possible EWSR enforcement networks in the eight countries



Cooperation between network partners

In most countries, the enforcement agencies have signed cooperation agreements, in some cases specifically in relation to the EWSR. No formal agreements exist in two countries, although there is an informal cooperation network.

The level of cooperation also differs from one country to another. Some audit teams reported extensive cooperation, including joint inspections, while no regular joint enforcement campaigns are held in other countries. In some of the audited countries, the enforcement agencies also cooperate in staff training. Most audit reports rate the level of cooperation as adequate in the light of the agreements or lack of them, as the case may be. Most audit teams concluded that cooperation had a positive impact on enforcement activities.

The exchange of digital information within the enforcement network is limited in all eight countries (see also section 2.5). There are no comprehensive databases holding all sorts of data relevant to inspections and the evaluation of enforcement activities. Most of the national audit reports suggested that the lack of information-sharing may complicate inspections and cooperation. Some audit reports also noted that the lack of a digital interface hampered information-based enforcement and the evaluation of enforcement policy.

Some examples of cooperation are given below (examples 10-12).

Example 10

Customs in Hungary have started to harmonise customs, environmental and police regulations in the form of a common operating procedure. The customs authorities have also drafted new cooperation agreements with the competent authorities and the organisation responsible for checking hazardous goods and performing disaster management.

Example 11

The all-round road transport checks performed in the Netherlands are an example of a comprehensive approach by multiple enforcement agencies. Compliance with a wide range of regulations, including the EWSR, is checked with the aid a check list that takes 20 to 30 minutes to complete. Police officers are assisted by customs officers and inspectors from a number of national inspectorates who can either assist with or take over the more complex cases.

Example 12

The enforcement agencies in Greece decided to use a model ‘autopsy report’ for their EWSR inspections. This model report is now also used by environmental inspectors.

3.3 Enforcement strategy and implementation

This section first discusses the strategy and annual plans in the eight countries. It goes on to examine the number and type of inspections and describes the multilateral cooperation employed in enforcing the EWSR, the resources available for enforcing the regulation and the verification of notifications.

3.3.1 Strategy and annual plans

The participating SAIs sought to ascertain whether the authorities had developed a strategy for enforcing the EWSR and whether the organisations involved had drawn up a plan for their inspections. They also analysed the contents of the strategy and inspection plans and assessed whether priorities had been set and whether a risk assessment had been carried out.

The audits showed that all but two of the eight countries had produced an enforcement strategy and/or annual plans for the enforcement of the EWSR. However, the nature of the strategy and plans was found to differ from one country to another. Two countries have adopted a detailed strategy or a comprehensive annual plan. In all but one of the other countries, annual audit plans for the organisations involved are available specifying the number of inspections to be performed by the organisation involved. In some countries, these are to some extent based on previously identified risks.

An important difference between the countries that have prepared a strategy or a comprehensive plan and the other five countries is that enforcement in the former group of countries is more risk-based. They seek to focus inspections on shipments where there is a relatively high risk of non-compliance. In order to pursue such a strategy, the authorities need to have information on the main waste flows and the market forces behind them. Also, they need to have analysed the risks of non-compliance and to have an IT infrastructure enabling them to select high-risk shipments for inspection by well-trained front-line inspectors. In the two countries with an enforcement strategy, these conditions are satisfied in full or in part. No explicit risk analysis underpins the enforcement activities in the other countries. Example 13 describes the strategy adopted in Poland.

Example 13. The Polish strategy

In Poland, the Inspectorate of Environmental Protection, the Border Guard and the Ministry of Finance (the Customs Service is subordinated to the Minister of Finance) approved annual inspection plans outlining the work to be performed by the inspection services. The heads of regional units were made responsible for the detailed planning of the number, frequency and location of inspections.

3.3.2 **Number of inspections**

Information on the number of inspections performed in 2008, 2009 and 2010 is given in figure 3.2 (with more detailed information given in Appendix 2). During this period, all eight countries performed at least some inspections of international waste shipments.¹⁰ Full or partial information is available for seven countries: the number of inspection performed on an annual basis ranges from around ten to many thousands. The Netherlands and Ireland perform by far the most inspections. In relation to the Netherlands in any event, this reflects its status as a big exporter of waste and as a important transit country for waste exporters in other European countries. For most countries, however, it is difficult to draw any conclusion about the adequacy of the number of inspections in relation to the size of the international waste flow. This is due to the lack of reliable data on the number of inspections, the lack of information on the compliance rate and the effectiveness of enforcement measures (see section 3.4), and the absence in most countries of any risk analysis underpinning the enforcement strategy.

Several national audits raised questions about the reliability of the number of inspections and the number of infringements reported by the authorities. For example, in one country the information supplied by the competent authority was not consistent with the information supplied by customs and the police, because different methods were used to improve data-quality. In several countries, data on certain years or in relation to certain enforcement agencies was missing. This may be due to the absence of a comprehensive information system (see section 2.4), errors during initial registration and the lack of guidelines for dealing with these, double counting in joint inspections and incomplete registration during all-round inspections (i.e. front-line officers may not report a check if no infringement is detected). Also, a broad definition of waste may distort the figures, for example where waste is shipped as second-hand goods (see section 2.3).

¹⁰ No information is available on the number of inspections performed in two countries, but the fact that infringements were reported implies that inspections did take place there.

Figure 3.2

EWSR inspections performed and infringements detected by the authorities in the eight participating countries in 2010

**Example 14: Efforts intensified in Hungary**

Hungary's SAI concluded that enforcement activities increased after the audit period, i.e. in 2011. Regulations were harmonised and procedures were updated. There was also an increase in the number of audits, specialist courses followed and other educational activities.

3.3.3 Type of inspections

Member states are obliged to take action to enforce the EWSR by inspecting establishments and performing spot checks of waste shipments or of the related recovery or disposal. These checks may be performed at the EU borders and/or during shipments within the EU. It is up to the national authorities to decide on the number and nature of these inspections.

Checks should include documentation and, where appropriate, the nature of the waste. It also follows from the EWSR that the following criteria should be applied:

- no waste may be exported to a prohibited destination;
- waste must be exported in line with the notification procedure; or
- the Annex VII document must be present and complete.

Inspections of shipments

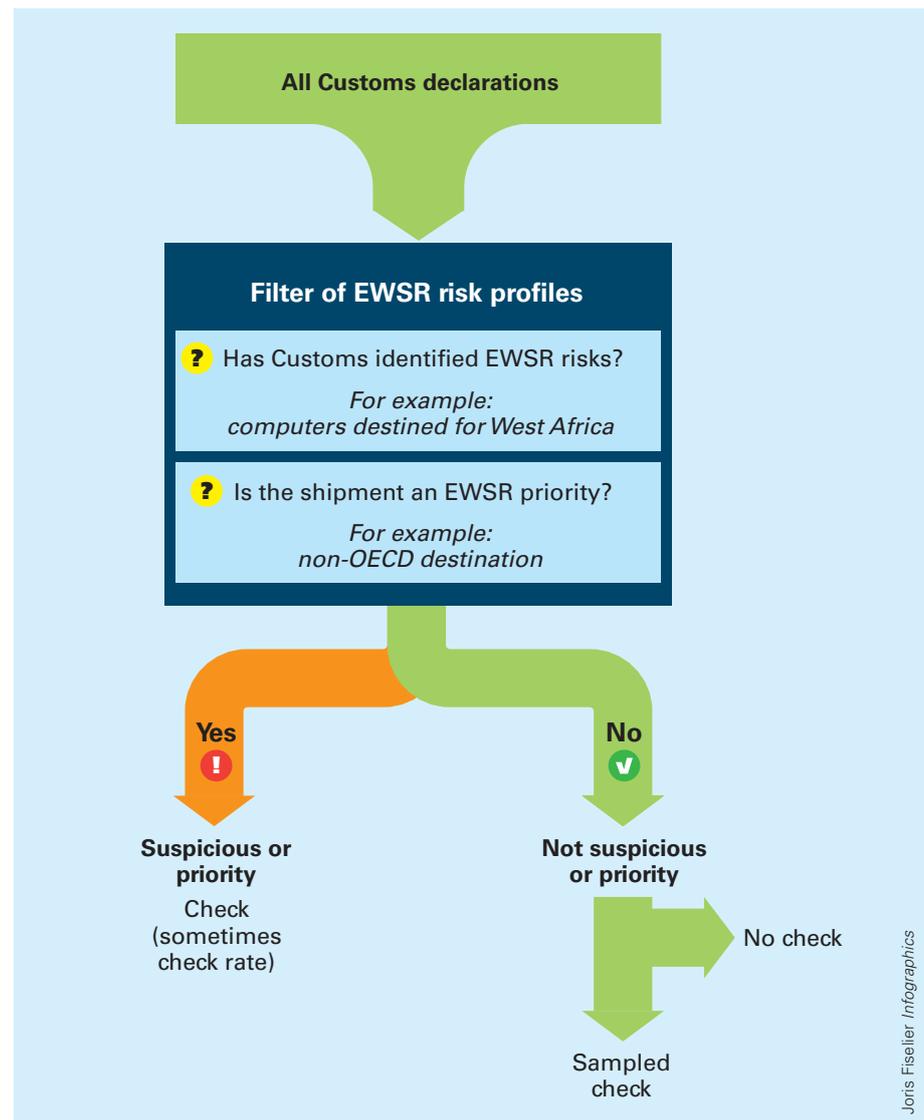
All countries use traditional inspections of shipments by customs officers, the environmental authorities, police officers, border guards or a combination of the above. The selection of shipments is either random or risk-based. Half of the audited countries used risk-based inspections or both types, and the others relied on random sampling. It was not possible to compare the results of the two strategies due to the problems with data quality discussed above.

Figure 3.3 shows an example of a risk-based enforcement strategy using both risk-based and random inspections.

Example 15

In Ireland, the NTFSO has adopted a risk-based approach to inspections at waste facilities. However, all inspections carried out at ports on imports, exports and products are carried out on a random basis.

Figure 3.3 - Risk-based strategy for inspections by a customs organisation



Inspections of facilities

The enforcement strategy in six countries includes inspections at waste collection points or at waste exporters' facilities. Inspections may also include the handling of return goods. In Norway, for example, the monitoring of WEEE take back companies has uncovered illegal waste shipments. Inspections of this type can help both to raise awareness of EWSR procedures among businesses and to prevent waste from entering the illegal circuit.

In two of the countries, the environmental inspectorates also performed ‘back to the source’ checks of the source of intercepted waste; such inspections may also form part of a criminal investigation.

Example 16

The customs authorities in Greece gather information in order to conduct audits focusing on customs and financial offences. The audits carried out by environmental inspectors are based on specific information obtained from past reports, complaints about environmental offences or any other available data.

Thematic enforcement operations

Two of the audit teams found that the authorities conducted thematic checks of specific types of illegal waste. The checking of containers and second-hand vehicles destined for West Africa at loading sites is one example. Another example is where the bulk of enforcement activities are targeted at a given waste flow over a set period. Such an approach can also generate information on the proportion of illegal shipments in a specific waste flow.

Ex-post inspections

The authorities in most countries can conduct ex-post inspections to find out whether a shipment reached the destination cited in the notification and whether it can be established that the waste in question was recycled in a suitable installation. Post-export checks are important because there are indications that the system of receipt and processing notifications is inadequate (see example 7). However, most of the national audits showed that ex-post inspections are rare.

Information as an enforcement measure

In all countries information is constantly distributed to stakeholders by the competent authority and the media, including during the course of enforcement campaigns, even during international inspections of waste shipments. This may help to induce compliance. Example 17 shows how this approach works.

Example 17

To reach a broad audience, the competent authority in Norway tries to make use of the media in cases where hazardous waste is returned to Norway after an attempted export to non-EU or non-OECD countries (via Germany or the Netherlands, for example). Such cases are likely to often involve WEEE, used products containing CFCs or used cars. So as not to unwittingly export illegal waste, Norway has prepared a leaflet in English describing the regulations and setting out practical criteria for deciding whether or not a particular cargo may be classified as waste. The leaflet is illustrated with photographs and focuses on WEEE waste and end-of-life vehicles.

AEO-certification

A relatively new strategy for custom organisations involves basing supervision and enforcement on trust rather than on suspicion, and hence reducing the supervisory burden placed on businesses. This is done by means of a system of ‘horizontal supervision’, in which the number of audits or checks depends on the quality of a

firm's operating procedures. A mechanism for certifying 'authorised economic operators' (AEOs) has been introduced to this end. Under this system, individual goods shipments made by AEOs do not need to be checked as often as other shipments. AEO certification is based on the standards applied by the World Customs Organization.

One of the audit reports stated that national customs had started working with AEO certifications. The audit team pointed out that fewer checks might not be desirable if the party filing a customs declaration was certified but the exporter was not.

3.3.4 Multilateral cooperation in enforcement activities

There are several international networks and projects for strengthening capacity for enforcing the EWSR (and related regulations). This is achieved by exchanging information and experience, developing enforcement tools, capacity-building (during on-site inspections) and also by organising joint and/or coordinated inspections. The following organisations and networks should be mentioned in this regard:

- the World Customs Organisation (WCO);
- the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL);
- the International Network for Environmental Compliance and Enforcement (INECE);
- the Waste Shipments Enforcement Platform.

The network of public prosecution services, Europol and a number of European police forces also play a role in multilateral cooperation. The following example describes the most important joint enforcement activities: IMPEL-TFS, Demeter (WCO) and Augias (police). All eight countries involved in the audit have taken part in at least one of these joint enforcement campaigns.

Example 18

Polish enforcement agencies have participated in joint inspection operations organised as part of the IMPEL TFS, Demeter and Augias programmes. For example, nine inspection operations were performed in Poland in 2008-2011 in the framework of IMPEL-TFS. Over 8,500 shipments were inspected during these operations: 23 illegal transboundary waste shipments and 27 violations of statutory regulations were identified. In the framework of IMPEL TFS, the enforcement agencies also participated in an exchange programme for inspectors and in inspection operations in Belgium, the Netherlands and Lithuania.

International cooperation in IMPEL-TFS, Demeter and AUGIAS operations

impel is the EU Network for the Implementation and Enforcement of Environmental Law. To improve the enforcement of the EWSR (one of IMPEL's priorities), IMPEL has organised two 'Transfrontier Shipment of Waste' (TFS) enforcement operations. The most recent operation was TFS Enforcement Actions II (October 2008 to March 2011), in which 25 European countries took part (IMPEL, 2011). A total of 3,897 checks were performed of waste shipments and businesses (some risk-based, some random). Infringements of the EWSR were detected in 833 cases; 95 additional EWSR violations were detected during follow-up checks.

The *Demeter* operations (I and II) performed by the World Customs Organization are targeted at illegal waste shipments. Their objective is to encourage organisations in a variety of countries to work together in order to map out international illegal waste flows and destinations. The first *Demeter* operation was held in 2009 (WCO, 2009). The participants included customs organisations and their network partners from 65 countries (including many European countries but also China, New Zealand, Malaysia, Ivory Coast, Ghana, Egypt, India and Indonesia). The operation included more than 2,000 physical checks of waste shipments in over 300 ports. The customs authorities also worked with the other national inspectorates and services. The World Customs Organization carried out a second *Demeter* operation in early 2012.

The *Augias* programme, which was funded by the EU and initiated by the Belgian Federal Police, was aimed at combating international illegal waste shipments. The practical testing of the knowledge gathered in the course of the *Augias* programme was completed in 2010 as an international operation.

According to the national audits, countries that took part in multilateral enforcement initiatives such as *IMPEL-TFS* and *Demeter* reported positive effects on the enforcement of the *EWSR* at both national and international levels. Among the frequently cited benefits were more information on existing and new inspection techniques, the detection of illegal shipments, the opportunity to gain experience with inspection methods, and the sharing of knowledge and experience among inspectors from different countries. A further benefit of multilateral inspections, in addition to the outcome of the operations themselves, is that they result in the production of instruction materials, formats and manuals that can help to harmonise the international enforcement of the *EWSR*. Joint or coordinated enforcement activities also generate information on differences between countries and as a result provide input for a debate on the creation of a level international playing field. Some of the positive effects are described in example 19.

Example 19: Operation *Demeter* II in Hungary

This was a high-priority operation, according to customs, and helped to prevent illegal waste shipments. The operation was conducive to cooperation at both a national and an international level and helped to boost knowledge of inspection techniques. The experiences were used to improve national inspection procedures.

3.3.5 Resources

The national audits looked at the resources available for enforcing the *EWSR*. More specifically, they focused on the availability of well-trained staff, equipment and information on waste shipments. As the available resources at least partially reflect political priorities, these were also taken into account.

The national audits found that the enforcement of the *EWSR* is a political priority in only one country. However, three other countries have decided to attach greater priority to the issue. The audit team in one country concluded that not much political priority was given to enforcing the *EWSR*. The conclusion drawn in another country was that customs does not prioritise waste. In two audits, political priorities were not rated.

Training and support from specialists

The presence of a well-trained team of staff, including specialists who can advise front-line officers, is essential for the enforcement of the EWSR. The need for training and the presence of specialists team members follows from the complexity of the EWSR (see chapter 2).

Five countries reported challenges ensuing from a shortage of well-trained staff. Although some specialists are available in most countries, only a small number of specialist staff are employed in certain countries. Four countries reported that specialists can only be consulted during office hours. As shipments in some countries can be held up only for a limited amount of time, this problem may severely hinder the enforcement of the EWSR.

Example 20: Help desk in Greece

In Greece, a help desk was set up to provide information and clarification to customs officers during inspections of cross-border shipments. However, the help desk operates only during office hours on working days. There are often not enough specialists available to help customs officers working around the clock. The Greek audit concluded that priority had not been given to the enforcement of the EWSR and that the agencies involved had not been given the legal powers they need.

Example 21: Flexibility in Ireland

In Ireland, the enforcement team (consisting of one environmental manager and eight enforcement officers employed by a private company) are required to work flexible hours. Training procedures are in place to ensure that all team members receive adequate training to effectively perform their enforcement work.

Staff training programmes have been set up in a number of countries. Some examples are:

- In Hungary, customs officers are encouraged to acquire specialist knowledge. More training courses were provided in 2012 than in 2011.
- In Poland, all agencies involved in enforcement have provided training for their staff. Front-line officers were given training, at least once at the beginning of their contracts. Most of them also attended professional training courses.
- At the Bulgarian Customs Agency, newly appointed customs inspectors receive a seven-month course of basic training. One of the topics addressed in this course is the transboundary shipment of waste. Customs inspectors were also trained as EWSR trainers as part of a twinning project.
- In Ireland, detailed guidelines and briefing documents are available for all stakeholders. An annual forum is organised by the enforcement agencies to update the police on new developments in the field of waste management. Quarterly briefings are given to the association representing private waste management companies.
- In the Netherlands, some front-line customs officers are given EWSR training and are instructed as to when to consult a specialist from the environmental inspectorate. Other front-line officers are told that, when dealing with an actual or potential waste shipment, they should always consult a colleague who has had special training in the enforcement of the EWSR.

Equipment

There are wide differences among the eight countries in terms of the technical equipment used for inspections. For instance, customs officers in Ireland and the Netherlands have installed x-ray scanners to inspect containers in ports.

Example 22

In Greece, environmental inspectors have access to basic inspection equipment, but lack equipment for performing chemical analyses of solid waste and for detecting metals or radioactivity. Customs officers do not have facilities for storing seized shipments of waste.

Information

One of the national audit reports pointed out that access to information may also be a problem. Insufficient information was available during inspections about the number and types of permits granted to companies or about the current state of utilisation of the permits in terms of the amount of waste shipped.

3.3.6 Verification of notifications

Five of the eight audits found that the receipt and processing notifications were not properly reviewed by the competent authorities, in two countries this was not part of the audit. For example, one of the national audit reports stated that the authorities did not check whether the receipt and processing notifications were substantively correct; the only check performed was of whether a processing statement had been compiled for every disposal notification. The authorities did not check, for example, whether the recycling facility in the country of destination was actually operational or whether the waste had actually been processed there. It is up to the authorities in the country of destination to check these things. In another audit it was found that notifications were reviewed only occasionally. When confronted with a new the treatment facility, the authorities contact their counterparts to check if the facility has a permit.

There are several methods that the authorities of exporting countries could use to gain insight into validity of the processing notifications. Contacting the authorities in the importing countries, post-export control procedures by Customs and administrative controls of the exporting firm. Some of the countries in this coordinated audits occasionally carry out such checks, but it is certainly not part of standard procedure. One obstacles faced by the authorities is that there is no specialised international database on waste processing facilities and waste exporters.

3.4 Information on the effectiveness of enforcement activities

This section examines the extent to which the authorities know how successful they are at intercepting illegal shipments and how this contributes to achieving the objective of the EWSR, i.e. protecting the environment. Information on both these aspects is important for evaluating the EWSR at both national and international levels. It is absolutely vital for refining the enforcement measures taken.

Effectiveness of enforcement measures

Measuring the effectiveness of enforcement measures is easier said than done. Establishing causal effects requires a carefully planned research method, access to

information and enough time and other resources. The difference between output and outcome should be taken into account, as well as possible unintended effects (such as cross-border avoidance). Apart from basic methodological problems, measurement is also complicated by the fact that illegal transboundary goods flows are difficult to study by nature. This also applies to the illegal export of waste. It is therefore difficult to relate the number of EWSR offences to the total number of illegal waste shipments. In other words, it is difficult to estimate how much of the illegal flow is intercepted and to draw conclusions about EWSR compliance and the effectiveness of enforcement activities.

Notwithstanding these difficulties, the national audit teams examined what is known about the effectiveness of enforcement measures. The audits show that the authorities in the eight countries have little or no idea about the effects of their enforcement measures. Past reviews in four countries focused typically on the number of inspections and infringements, the practical aspects of enforcement measures, and on cooperation between the agencies involved. These reviews do not provide any insight into the effectiveness of enforcement measures.

Compliance rate

Establishing the compliance rate is even more difficult where enforcement activities are risk-based. Although such an approach is in itself an efficient strategy, the number of offences detected cannot be used to calculate the overall level of compliance. A rough estimate of the compliance rate was available in only one country. This is based on multiple investigations and statistical data on electronic waste, thematic investigations of plastic waste and the outcome of transport inspections by the police.

The lack of information in certain countries is due to the small number of inspections performed in practice. In other countries, it is due to the lack of reliable information on inspections and infringements. Weaknesses in the IT systems used to manage inspections can also make it very hard to perform the necessary analysis.

Example 23

Ireland exemplifies the overall finding that performance effectiveness has not been reviewed. The competent authority has information on the level of enforcement activity, such as the number of inspections and investigations carried out. It also records the numbers and nature of infractions detected but information in relation to the quantities and types of waste involved is not readily available. This poses difficulties in reporting on performance effectiveness.

Chain supervision essential for achieving EWSR objective

The objective of the EWSR can be achieved only if the entire system functions correctly - from the creation of waste to its ultimate processing. Accordingly, there must be adequate supervision of the various links in the chain and supervision itself must form a chain. A comprehensive analysis of the whole EWSR chain not only requires cooperation between the authorities in the exporting and the importing countries, but also needs to take account of procedures, the quality of notifications, enforcement, cooperation and information exchange. To date, none of the eight audited countries has performed such a comprehensive analysis.

As a result, the authorities may not have a clear picture of the operation of the system as a whole, which they could then use to refine their EWSR enforcement activities. A comprehensive analysis might reveal, for example, that certain destinations are suspect. Businesses exporting to these destinations could then be checked more rigorously. The findings might also prompt inspections of the businesses concerned.

3.5 Recent developments

3.5.1 European developments

During the past couple of years, a debate has arisen among the EU member states and within the European Commission (i.e. DG Environment) on the degree of freedom that is available to countries in terms of the way in which they enforce the EWSR. In its report on the implementation of the EWSR (for 2007-2009), the European Commission stated that the vast majority (i.e. 89%) of stakeholders in the member states favoured new EU legislation strengthening inspection requirements. Some of the options proposed were upstream inspections, the training of officials and the imposition of an obligation on operators to produce evidence in certain cases where there are reasonable grounds to suspect circumvention of the regulation. The European Commission (i.e. DG Environment) has conducted an impact assessment of the environmental, economic and social consequences of strengthening the enforcement of the EWSR. On 11 July 2013, the Commission adopted a proposal to strengthen inspections on waste shipments through an amendment of the Waste Shipment Regulation (EC, 2013). It proposes risk-based inspections to be carried out regularly by Member States, with greater co-operation between authorities and better training of inspectors.

3.5.2 National developments

The authorities in most of the eight countries audited are taking action to strengthen the enforcement of the EWSR. Most of this action is based on the findings and the recommendations formulated in the national audit report (see Appendix 3 for an overview). Some audit teams found that more attention was given to enforcement during and after the audit in question, and that, in addition to acting on the recommendations, the countries concerned had also taken a number of extra measures. Improvements are frequently sought in the form of better cooperation among the agencies involved, information management, training courses and the production of guidelines. Appendix 3 shows the impact of the national audits.

4 Penalising infringements of the EWSR

4.1 Introduction

While the basic principle is that infringements of the EWSR must be penalised, the member states are free to pursue their own policies on the penalisation of infringements. This chapter examines the penalties available and the extent to which they are used in the eight countries audited.¹¹

Types of sanctions used

Penalties come in different forms and the member states are responsible for choosing those penalties which they expect to have the maximum effect. The audit teams found that, while all eight countries had put a penalty system in place, some penalties were more common than others. All eight countries are empowered to impose fines and administrative measures, while seven countries may impose custodial sentences, four countries send warning letters, and three countries have chosen to use the following additional measures: community service, the confiscation of cargo and the suspension of the offender's business operations.

These measures are discussed in further detail in the following sections. While the measures are formally in place in the eight countries, the audit teams found that most countries make only modest use of them, and that the number of infringements actually brought to court (whether an administrative or a criminal court) is very small in most countries. This makes it difficult to compare the situation in different countries.

4.2 Warning letter

In the event of a minor infringement of the EWSR, some countries do not wish to go so far as to impose a fine or an administrative measure. Although the EWSR does not define a 'minor' infringement, this is typically a violation which was not committed on purpose, can be undone, and has caused no harm to the environment or to public health. A warning letter is a possible enforcement instrument in four of the eight countries. In the other four countries, an infringement always results at least in an administrative procedure.

Ireland issued 565 letters in 2010, while the Netherlands generally issues a couple of dozen a year.¹² In Slovenia, three warning letters were sent in 2010. The Norwegian authorities did not send any during the audit period.

¹¹ The central audit standards for this chapter are based on article 50 of the EWSR (discussed in section 1.5): Member States shall lay down the rules on penalties applicable for infringement of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

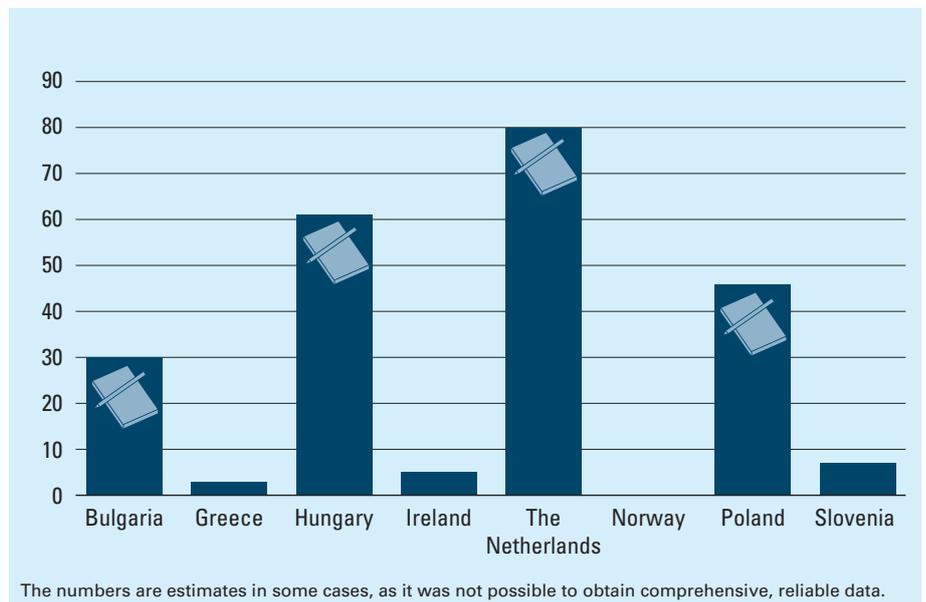
¹² The exact numbers are not known due to registration problems and overlaps.

4.3 Fines

All eight countries are empowered to impose fines. The number of fines imposed each year differs widely from one country to another; see figure 4.1. The figures quoted for the number of fines are estimates, as it was not possible to obtain comprehensive, reliable data.

The Netherlands and Hungary issue the largest number of fines (80 and 60 respectively). Other countries that impose relatively large numbers of fines are Poland (46) and Bulgaria (46) and Greece. Greece and Ireland stand out as imposing relatively few fines compared with the other countries. In Norway, the competent authority has chosen not to use fines and to rely instead on administrative measures.

Figure 4.1 - Estimated number of fines imposed in different countries (2008-2010)



Differences in the size of fines

All eight countries have designated fines as a formal penalty, yet the audit identified certain differences between countries. The maximum fine ranges from around €25,000¹³ to around €2 million. In most countries, the fines for EWSR infringements are lower than €4,000. In Poland and Slovenia, the average fine is higher, i.e. between €10,000 and €14,000.

The method used to fix the size of the fine also differs from one country to another:

- In one country, the size of the fine depends on the type of waste. Fines for infringements of the rules on green-listed waste are lower than for infringements of the rules on amber-listed waste;
- In one country, the size of the fine is the result of a mathematic formula linked to the volume of the waste. The basic amount of the fine is multiplied by a number indicating the volume of waste;
- In one country, all proceedings are criminal proceedings, i.e. no administrative action is taken.

¹³ Precise figures cannot be quoted due to exchange rates.

- The other countries apply factors or combinations of factors that influence the size of the fine. Among the factors taken into account are the damage caused by the infringement, the volume of waste, and prior infringements.

The following text box illustrates the differences among countries.

Differences in penalties imposed

The situation: a private company illegally ships 15 containers of plastic waste (weighing about 200 tons) to India. Domestic waste is an amber-listed type of waste and India requires a notification procedure. Instead of following the notification procedure, the company deliberately follows the general information procedure, which is less stringent.

Bulgaria: In principle, a company (i.e. a legal person) receives a fine ranging in size from € 10,000 to € 20,000 and is also subject to a coercive administrative measure, i.e. the company is ordered to process the waste in an environmentally sound manner.

Greece: The offender is given an administrative fine of about € 28,000, and may also have its business operations suspended either temporarily or permanently. A criminal court may impose a prison sentence of between 1 and 10 years on the offender, as well as a supplementary fine ranging from € 1,000 to € 500,000.

Hungary: The size of the penalty depends on the weight of the waste: 200 tons of waste equals € 133,330, that is € 667 per ton. The basic minimum penalty is € 667. If the volume of waste is exactly 200 tons, the penalty is € 140,000.

The Netherlands: The fine would be around € 90,000, although circumstances such as prior infringements may affect the size of the fine.

Poland: Depending on the circumstances (i.e. the amount and type of waste and whether it constitutes an environmental hazard and public health risk), the size of the fine ranges from around € 12,500 to around € 75,000. Under the Polish Criminal Code, offences against the law on transboundary waste shipments carry a custodial sentence of between three months and five years.

The other countries were not able to indicate the size of the fine.

4.4 Action under administrative law

In the event of an infringement of the EWSR, the enforcing agency may decide to apply an administrative measure. Administrative measures are used primarily to ‘undo’ violations, i.e. to revert to the prior situation rather than to penalise the offender. Administrative measures include, for example, an obligation to take back a shipment and undo the infringement (e.g. where the infringement involves a failure to complete the relevant form). If the offender does not comply with the administrative measure, other measures are taken, such as the imposition of a fine or the withdrawal of the offender’s licence.

All eight countries have designated certain administrative measures as enforcement instruments, although the actual use made of them again varies. Four countries have

either never used this instrument or only used it on a few occasions in the past few years, while others report using it dozens of times a year.

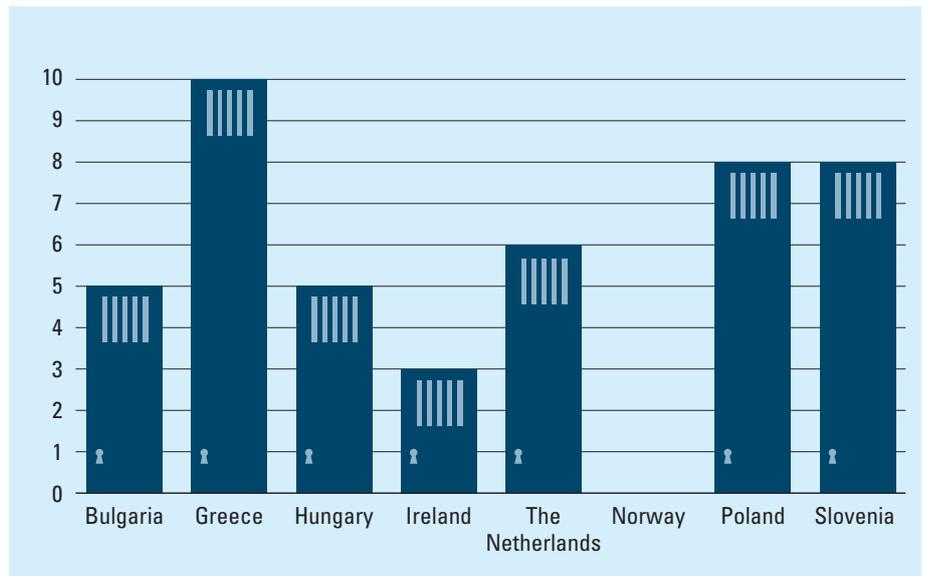
4.5 Action under criminal law

If an offender has infringed the EWSR in a way that cannot be dealt with by applying administrative measures, for example due to the gravity of the case, the public prosecutor may look into the possibility of taking the matter to court. This may result in either of the following decisions:

1. a decision not to prosecute;
2. a court case resulting in a custodial sentence if the offender is convicted.

In all countries except Norway,¹⁴ a custodial sentence (under criminal law) may be imposed on a person who has committed an infringement of the EWSR. As figure 4.2 shows, the maximum prison sentence in the eight countries varies from three to ten years. The number of years of imprisonment depends on the circumstances. In Greece, the maximum sentence is ten years, but if the environmental pollution or degradation caused by the infringement is found to be due to negligence, the term of imprisonment may not exceed one year. Similarly, in the event of negligence, the maximum sentence imposed by a Bulgarian court is two years or probation.

Figure 4.2 - Maximum custodial sentences (in years) for EWSR infringements



In practice, prison sentences are very rare. In most cases, either the offender is fined or the charges are dropped.

A number of examples follow. In Hungary, no criminal proceedings were instigated under the EWSR between 2008 and 2010. The most recent case dates from 2006. In Bulgaria, one instance of criminal proceedings followed from the detection of an illegal shipment. In Greece, no information is available on the number of court cases, as there is no database that allows such information to be extracted.

¹⁴ After the audit was completed, the Norwegian Ministry of the Environment proposed introducing a custodial sentence of no more than two years' imprisonment for illegal export and import of hazardous waste.

In the Netherlands, many prosecutions are dropped¹⁵ by the public prosecutor: of the 505 cases that might have ended in court between 2008 and 2010, the public prosecutor decided not to press charges in around 21% of cases. This is a high proportion given that the public prosecution department has set itself an internal target of no more than 10% of potential cases dropped. The department is not able to explain why this target was not reached in cases relating to the EWSR. The department has launched an investigation into the high proportion of cases that do not go to court.

Whereas the number of dropped charges would appear to be a typically Dutch problem, court cases are rare in other countries. For this reason, there are again few examples of dropped charges in four other countries. No specific information is available on the number of dropped charges in three countries. Example 21 is an illustration of a case dismissed in court.

Example 21: Dismissal due to lack of evidence

In 2010, the Austrian police returned a shipment of waste accumulators to Slovenia, because the shipment was not accompanied by a valid export permit and there was no reliable evidence detailing where the accumulators would be recycled. The Environmental Inspectorate decided that the owner of the waste and the transporter did not have the right licences or equipment for storing and handling such waste. The Inspectorate passed on the case to the public prosecutor, but the case was subsequently dismissed because the court could not find enough evidence to prove that the illegal shipment had actually harmed or destroyed the environment, posed a threat of environmental destruction or constituted a danger to human life.

The audits revealed wide differences among the eight countries in the way in which infringements are penalised. The same violation may be punished very differently in one country than in another. The European public prosecution departments have recently started a cooperation project for exchanging information on the penalisation of offences.

The audits also revealed that most countries make only limited use of penalties. Further research is needed in order to assess whether national policies on penalties are proportionate and dissuasive, as is required by the EWSR.

4.6 Other enforcement measures

Two countries use community service as a penalty. The competent authority in one of the other countries is empowered to suspend a company's business operations and to confiscate cargos and trucks. These penalties are seldom imposed, however: all three countries reported only a few cases. One of them, for example, confiscated only one waste shipment in 2009 and just two in 2010.

¹⁵ A case is dropped where the public prosecutor is planning to take a case to court, but decides not to proceed before it actually gets to court.

International cooperation in prosecutions

The findings in this chapter show that there are wide differences in the way in which the eight countries deal with offences. Until recently, public prosecutors in the European countries did very little in the way of information-sharing about guidelines for the prosecution of EWSR infringements. Also, the courts do not exchange information on penalties or on the interpretation of the EWSR (De Rijck, 2011). An important new development in this regard is the establishment of a public prosecutors' network in 2012. The network aims to facilitate such exchanges and has started developing an international database of court rulings on EWSR offences.

5 Summary of conclusions and recommendations

This chapter contains a summary of the conclusions and recommendations presented in the report.

Section	Conclusions	Recommendations
To what extent do the relevant authorities comply with the requirements arising from the EWSR?		
2.1	<p>Formal implementation requirements</p> <p>All countries have implemented the regulation. All eight countries: have ensured that their national legislation is in compliance; have designated a competent authority; have adopted the EWSR notification procedures; perform inspections; have put penalty systems in place; are involved in international cooperation.</p> <p>There is one exception to the above rule: not all member states report in time to the European Commission (and the Basel Secretariat).</p>	
2.2	<p>Classification of waste and two existing legal frameworks</p> <p>Stakeholders find it hard to agree on a strict definition of the term 'waste'. As a result, in several countries hazardous waste is imported or exported as goods and/or as 'green-listed waste'. This is more likely to lead to EWSR inspections being avoided.</p>	<p>The broad definition of waste and the distinction between 'green-listed' and 'amber-listed' waste mean that it is important for proper guidelines and information material to be made available to front-line officers. Countries are recommended to draw up guidelines that pay specific attention to second-hand goods and green-listed waste shipments. The EC could facilitate the development of such guidelines.</p>

		<p>There are differences of interpretation within and among countries, which complicates enforcement and increases the risk of illegal exports. These differences may also affect statistics.</p> <p>The situation is further complicated by the existence of two different code systems (i.e. EWSR/Basel and the international tariff codes used by customs).</p>	<p>Differences among countries in the interpretation and classification of waste need to be addressed and resolved. The authorities are recommended to discuss these differences within existing international networks and with the EC.</p> <p>Countries are recommended to use a conversion table for converting between Basel and tariff codes. The EC could facilitate the production of such a conversion table.</p>
2.3	Information management	<p>Information management for the purpose of enforcing the EWSR is inadequate in all eight countries. There are weaknesses in information systems within countries and in the exchange of information within and among countries. This hampers comprehensive, reliable monitoring and the evaluation of enforcement practices.</p>	<p>Countries are recommended to improve their information management in relation to the EWSR. The EC could facilitate the development of an European information system for notifications.</p> <p>The comparability of statistical data would benefit from the development of EU-wide guidelines for the collection, registration and reporting of data on the enforcement of the EWSR and the penalisation of infringements.</p>
How do the authorities enforce the EWSR and what is known about the effectiveness of the enforcement measures?			
3.1	Enforcement network	<p>Multiple organisations are involved in enforcement in all countries. This poses challenges in terms of coordination and cooperation among enforcement agencies.</p>	<p>Enforcement benefits from cooperation and coordination in the enforcement network. The countries are recommended to organise their enforcement network so that it promotes cooperation among the authorities and uses the competences of different authorities.</p>
3.2	Enforcement strategy and its implementation, including international cooperation for preventing and detecting illegal shipments	<p>Enforcement policies in many countries are not sufficiently based on explicit risk assessments. There is a danger in these countries that the enforcement effort may not be commensurate with the specific risks faced by the country in question.</p>	<p>Countries are recommended to draw up a strategic plan for enforcing the EWSR. This plan should be risk-based, commensurate with the actual risks and periodically updated.</p>

		In addition to inspections of shipments, countries also carry out inspections at waste facilities and undertake theme-based inspection campaigns. Coordinated national and international campaigns are important for obtaining synergetic benefits, for exchanging experiences and gathering knowledge.	Countries are recommended to consolidate and intensify international cooperation, exchange information on waste shipments, waste flows businesses and facilities, and facilitate the sharing of experiences and knowledge on enforcement measures in order to develop and adopt good practices.
3.3	Resources available for enforcement	There are wide differences among national authorities in terms of resources and prioritisation. There is a shortage of resources in five of the eight countries audited, especially technical equipment and well-trained staff. Insufficient priority is given to enforcement in some countries. This poses a challenge to the effective enforcement of the EWSR.	Countries are recommended to appoint staff and allocate resources in line with the risks of illegal shipments. They should adopt proper training schemes.
3.4	Information on the effectiveness of the enforcement	All countries have access to little or no information on the effects of enforcement measures and no information on the operation of the EWSR system as a whole. The authorities do not have information on the final link in the EWSR chain, i.e. the processing of waste.	Countries are recommended to improve their information management in relation to the EWSR. Countries are recommended to step up their efforts to use and exchange information, and work together in verifying notifications. Administrative checks should also be performed to assess the risk of waste being processed in a facility that is not up to standard.
Penalisation of EWSR infringements			
	Different penalties and the degree to which they are used in practice	There are wide differences among the eight countries in terms of the use made of sanction instruments. The same infringement may attract a very different penalty in one country than in another. Most countries make only limited practical use of penalties.	Further research needs to be performed in order to assess whether national penalty systems are proportionate and dissuasive, as is required by the EWSR. Countries are recommended to assess whether this is the case and share information on the use made of sanction instruments, within the existing public prosecutors network.

Appendix I Audit approach

Audit objective and questions

The objective of this coordinated audit is to improve the enforcement of the EWSR by providing information on the enforcement strategies used by the participating countries and on their performance in terms of results and the achievement of the desired effect. In order to achieve this objective, the national audits asked the following questions:

- To what extent do the relevant authorities comply with the requirements arising from the EWSR?
- How do the authorities enforce the EWSR and what is known about the impact of enforcement measures?

About the national audits

The audits focused on the legal and institutional implementation of the EWSR, including cooperation among the competent authorities; the enforcement of the EWSR and the punishment of offenders; and information systems and reporting obligations.

A design matrix was used to achieve uniformity among the eight audits. This matrix listed the audit questions and the information that was needed in order to answer them (see below).¹⁶ For most SAIs, the main forms of fieldwork were interviews with staff of the relevant authorities, analysis of documents and procedures, analysis of administrative databases and statistics on inspections, infringements and penalties, and observations during enforcement operations.

About the joint report

This joint report is a compilation of the findings of the eight national audits. It highlights good practices, weaknesses and challenges. As the coordinated audit is limited by the scope of the national audits, the findings apply only to the participating countries. However, the conclusions and recommendations could also be relevant to other countries. Each audit institution is responsible only for its own national audit findings.

¹⁶ Differences in national legislation on SAIs and different audit traditions inevitably meant that there were slight differences between the audits. Moreover, the Norwegian audit formed part of a wider-ranging audit of hazardous waste management that began before this coordinated audit was launched.

Design matrix

Question 1	How much waste is imported and exported each year (to and from EU and EEA countries as well as non-European countries; what is the mode of transport)? What are the main types of waste? What are the main countries of origin and destination? How does the volume of imported and exported waste relate to the national output of waste and to the capacity of domestic recycling and processing facilities? How many illegal waste shipments are intercepted by the authorities each year (i.e. number of shipments and tonnage)? Are estimates available of the total volume of waste illegally imported or exported each year?
Standards	The information must be clear and of good quality.
Question 2	When and how were the provisions of the EWSR incorporated into national legislation?
Standards	In accordance with the EWSR, in good time and with clear provisions on enforceability.
Question 3	How are offenders punished? How many and what kinds of penalties have been imposed during the past two years?
Standards	Article 50 (1) of the EWSR: Member States shall lay down the rules on penalties applicable for infringement of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Phrased in less legal terms: the available penalties should be such as to effectively correct offenders' behaviour.
Question 4	What organisations have been charged with enforcing the EWSR and with issuing permits for and clearing international waste shipments? What are their tasks and responsibilities? Do they have sufficient powers (i.e. a legal framework) to discharge their responsibilities? What are their objectives in relation to the enforcement of the EWSR? Is their organisational structure adequate for enforcing the EWSR?
Standards	A clear division of responsibilities (among and within organisations). Sufficient powers and an adequate organisational structure for discharging their responsibilities.
Question 5	What agreements have been reached on cooperation among the organisations responsible for enforcement? To what extent do the organisations concerned observe cooperation agreements? To what extent is cooperation adequate for ensuring that the EWSR is properly enforced?
Standards	Agreements on communications and coordination at various levels. Compliance with agreed procedures. Exchange of information required for proper enforcement.
Question 6	Do the organisations concerned have enough funding, time, staff, information, equipment and other resources to discharge their responsibilities?
Standards	Sufficient capacity in terms of funding, time, staff and other resources to carry out enforcement tasks.
Question 7	What sort of enforcement strategies do the organisations pursue? How do these strategies differentiate between compliance with EWSR procedures and measures for countering illegal waste shipments? How did these strategies come about? How are they pursued in practice? What guidelines are used to define 'waste', 'disposal', 'recovery' and other relevant terms, and how are these guidelines used in an enforcement context? What are the results of enforcement activities? How do the organisations concerned account for their enforcement performance?
Standards	See below.
Question 8	What kind of information do the organisations concerned exchange with environmental authorities in other countries? How is this exchange of information organised? Is it adequate for the proper enforcement of the EWSR?
Standards	Agreements on communication and reliable information. Compliance with agreed procedures.
Question 9	What obstacles do the enforcement agencies encounter? What factors affect the effectiveness of enforcement practices?
Standards	None.

Appendix 2 Number of inspections and infringements

Country	Year	Customs		Environmental authority		Police	
		No. of inspections	No. of infringements	No. of inspections	No. of infringements	No. of inspections	No. of infringements
Bulgaria	2008-2010	n.a.	5	n.a.	9	n.a.	17
Greece ¹	2008	n.a.	n.a.	3	2	n.a.	13
	2009	n.a.	n.a.	16	15	n.a.	7
	2010	n.a.	n.a.	14	14	n.a.	20
Ireland ²	2008			4,950	511		
	2009			4,395	429		
	2010			4,271	389		
Hungary ³	2008	n.a.	n.a.	1	31	n.a.	n.a.
	2009	n.a.	n.a.	6	96	n.a.	n.a.
	2010	n.a.	n.a.	7	56	n.a.	n.a.
Netherlands ⁴	2008	7,664	146	95	29	1,187	85
	2009	5,915	182	47	14	1,075	76
	2010	5,238	145	75	14	920	83
Norway	2008	0	11	0	0	0	0
	2009	60	17	See Customs	0	0	0
	2010	133	48	See customs	0	0	0
Poland ⁵	2008	n.a.	32	n.a.	36	n.a.	27
	2009	n.a.	27	n.a.	30	n.a.	37
	2010	n.a.	37	n.a.	26	n.a.	42
Slovenia	2008	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
	2009	6	3	10	5	n.a.	n.a.
	2010	7	3	18	13	n.a.	n.a.

1. Greece: Although inspections were performed by Customs and Police and infringements may have been detected, there is no record of the total number of inspections and no data is available on the number of infringements detected by Customs.
2. Ireland: The NTFSO coordinates inspections. The figures include joint inspections performed with other enforcement agencies.
3. Hungary: The number of infringements reported by the Environmental Authority includes offences subject to administrative proceedings instigated by Customs, Police and other organisations. Although customs and police are known to perform general inspections, no information is available on the number of inspections performed.
4. The Netherlands: the number of checks by the Environmental Authority covers on-site inspections of companies only; several hundred road checks are excluded.
5. Poland: The data for the Police refers to the number of infringements disclosed by the Border Guard and the Inspection of Road Transport.

Appendix 3 Impact of the national audits: follow-up on recommendations

Bulgaria	The authorities have already implemented four of the seven recommendations and are currently acting on the remaining recommendations. The recommendations focus on training, organisational issues and policy information on waste shipments.
Greece	The authorities accepted the basic thrust of the audit team's observations. The recommendations focus on the formulation of an enforcement strategy and guidelines, and inter-agency cooperation, information management.
Ireland	The final report has not been presented to the authorities yet.
Hungary	The competent authority and customs have drawn up activity plans in response to the audit findings. The main recommendation focuses on inter-agency cooperation. The audit team observed that the authorities had started making a number of improvements after the audit period and had stepped up the number of inspections and training activities.
The Netherlands	The authorities were pleased with the general conclusion drawn by the audit team. They acknowledged that improvements could be made in certain areas and said that measures had already been taken to improve information management, coordination and the exchange of information. The authorities had also launched an investigation into the reasons for the relatively frequent decisions not to prosecute EWSR violations. The authorities did not act on a recommendation to analyse the operation of the entire EWSR system and the enforcement chain.
Norway	<p>The Norwegian parliament stressed the importance of strengthening controls of hazardous waste exports by means of both regular and risk-based border checks. It also emphasised the need to check notifications of the final treatment of the waste. The Norwegian parliament acknowledged that the quality of databases and statistics needed to be improved in order to provide a better basis for follow-up action.</p> <p>The Ministry of the Environment is preparing a strategy for addressing the problems associated with hazardous waste. A proposal has been made for amending the Pollution Control Act so as to improve the action taken in combating illegal exports of hazardous waste. This includes strengthening the penalties for illegal exports of hazardous waste.</p>
Poland	The authorities have taken measures to implement the recommendations made in the national audit report. The recommendations focus on supervising the relevant organisations, the timely exchange of information and ensuring that officers have on-line access to a central database.
Slovenia	<p>The authorities will have to report on the implementation of the measures taken in response of the audit. The most important measures concern the reporting system for the processing of waste, establishing a register of national treatment facilities, the re-evaluation of sanction policy and the improvement inter-agency cooperation and information management.</p> <p>The authorities have not yet announced what improvements they are planning to make in response to the audit. The relevant audit findings include a lack of information on transboundary waste shipments and national treatment facilities, a sanctions policy, inter-agency cooperation and information management.</p>

Appendix 4 Summaries of national audits

National abstract for Bulgaria

Name of audit: Performance audit on the effective enforcement of the European Waste Shipment Regulation during the period from 1 January 2007 to 31 December 2010.

Publication Date: 23 February 2012.

Website: <http://www.bulnao.government.bg/index.php?p=2062&lang=en>

Objective

1. To provide the legislative and executive authorities, the management of the audited entity and other users of information with an independent and objective assessment of the effective enforcement of the European legislation on waste shipments;
2. To support the management of the audited entity in improving the enforcement of European legislation on waste shipments.

Scope

The audit assignment includes:

1. analysis and assessment of the normative provisions and the resources for enforcement of the Regulation;
2. analysis and assessment of the activities concerning the enforcement of the Regulation as regards:
 - 2.1 waste shipments for which a notification is required;
 - 2.2 inspections of waste shipments;
 - 2.3 maintaining and exchanging data on shipments;
 - 2.4 interaction between the competent authorities.

The audit was carried out in the period from May to December 2011.

Main findings

The necessary normative preconditions for the performance of activities relating to the enforcement of the Regulation have been put in place.

Structural units have been set up at the Ministry of the Environment and Water (MOEW) and the Regional Inspectorates of the Environment and Water (RIEW) with clearly defined functions as regards the issuing of permits for shipments in accordance with the Regulation and the inspection of transboundary shipments of waste through the country's territory. The responsible units at other authorities that perform checks of waste shipments at the Community borders and/or during shipment within the Community have been designated in accordance with their powers.

The lack of sufficient knowledge and expertise outside the MOEW constitutes a risk for the effective enforcement of the Regulation and the legislation.

Notifications are issued in accordance with the normative requirements. The lack of control of the facilities as regards the quantity of waste recovered is a precondition for inappropriate management decisions on the import of waste into Bulgaria.

The six types of activity performed in the application of coercive administrative measures by the enforcement agencies when an illegal waste shipment is detected suggest there is a problem either with the application of the Waste Management Law regulating these matters or with the Regulation itself.

As there are few legal proceedings with final rulings (at a court of first instance or a court of appeal), no conclusions may be drawn about the effects, the effects of fines and penalty payments and their enforcement.

The interaction between enforcement agencies responsible for transboundary waste shipments done without statutory rules and procedures creates a precondition for the ineffective enforcement of the Regulation.

The information on the quantity of waste notified, imported, exported and transited through the country's territory is not sufficient and reliable, thus creating a precondition for ineffective and inefficient management decisions on transboundary shipments of waste.

The format and contents of registers are not regulated, nor is the process of submission, entry and update of data. This means that the quantity and quality of the information contained in the registers is not guaranteed.

The conditions for the implementation of activities for the enforcement of the Regulation have been created. Activities for supervising and inspecting transboundary shipments of waste are undertaken. The lack of sufficient expertise outside the MOEW and the insufficient quantity and quality of the information collected means there are no guarantees that the Regulation is effectively enforced.

Recommendations

1. The functional characteristics of the Waste Management and Soil Protection Directorate and the job descriptions of the experts responsible for transboundary waste shipments should be updated in accordance with the MOEW Rules of Procedure adopted in 2009.
2. The necessity of training all bodies and persons responsible for performing transboundary inspections should be explored and relevant training should be provided.
3. Files on notifications issued should be organised and kept in accordance with the MOEW's instructions for record-keeping.
4. The format and contents of the registers, as well as the technology for submitting, entering and updating data, should be defined.
5. The established differing practice concerning the application/non-application of CAM should be analysed in order to standardise the response of the enforcement agencies to detected illegal shipments of waste.
6. A procedure for regulating interrelations between the competent authorities and the enforcement agencies in enforcing the Regulation and the WMA should be elaborated.
7. Rules and procedures should be formulated for the type, quantity and quality of the information to be collected from the various authorities on transboundary shipments of waste.

Government response

A follow-up audit was conducted to check whether the recommendations had been implemented. The Ministry of Environment and Water had implemented four recommendations, i.e. nos. 1, 3, 4 & 5. Three recommendations, i.e. nos. 2, 6 & 7, were in the process of implementation.

National abstract for Greece

Name of audit: The implementation of the EWSR in Greece from 2008 to 2010.

Publication Date: September 2012.

Website: www.elsyn.gr (available in Greek).

Objective

To find whether and to what extent the relevant authorities complied with the EWSR requirements during the above-mentioned period.

Scope

- evaluation of national policies and activities relating to the enforcement of the EWSR;
- results and impact of the enforcement of the EWSR by the Greek competent authorities;
- weaknesses and challenges arising from implementation practices;
- evaluation of relevant information systems and of the competent authorities' reporting activities under the EWSR, as well as of the legal framework for penalties for infringements of the EWSR.

The audit was carried out from June 2011 to April 2012.

Audited authorities: The Department of Environmental Planning and the environmental inspectors of the Ministry of the Environment, Energy and Climate Change, customs offices, the police force (i.e. the Road Traffic Police), the national statistical office, public prosecutor's offices, criminal and administrative courts.

Main findings

The audit team found that national legislation is generally in compliance with the EWSR. A competent authority (i.e. the Ministry of the Environment, Energy and Climate Change) has been designated and notification procedures have been adopted. Inspections by environmental inspectors, customs and the police have been performed, albeit on a random basis, although the penalties for EWSR infringements have not been adapted specifically to waste shipments.

The audit team noted the absence of a strategic plan for the implementation and enforcement of the EWSR, as well as a limited degree of cooperation between the competent authorities in seeking to achieve the objectives of the Regulation. There were two exceptions to the latter: the establishment of a help desk to assist customs officers with their checks and inspections under the EWSR, and the issue of a model 'Autopsy Report' used by environmental inspectors during their EWSR inspections.

There is no effective mechanism for monitoring the enforcement of penalties imposed on EWSR offenders or offenders' compliance with EWSR procedures, due to the absence of a unified information and communication system.

The existence of two different code systems for waste (i.e. the EWSR/Basel codes and the international tariff codes used by customs officers), the unreliable waste data supplied by the national authorities, as well as the shortage of well-trained staff and the lack of sufficient funding and equipment for conducting inspections all affect the effective enforcement of the EWSR.

Recommendations

1. A joint committee should be set up consisting of representatives of the enforcement agencies. The committee should be charged with the following tasks:
 - a) designing and periodically updating a multi-annual risk-based strategy as well as annual audit plans for enforcing the EWSR, b) issuing detailed guidelines and audit manuals for inspectors, and c) evaluating the efficiency and competence of enforcement measures (especially inspections).
2. The competent authorities should improve cooperation, and share experiences with and knowledge of enforcement measures so as to develop good practices.
3. Every competent authority should also develop a fully integrated information system linked to the information systems of other enforcement agencies, so that all relevant data is made available.
4. A number of customs offices should be designated for the sole purpose of inspecting waste exported to or imported from countries outside the EU, in order to improve the monitoring and effective control of this type of transport.

Government response

The authorities were in general agreement with the audit team's observations and had no serious objections to them. Regarding the enhancement of cooperation and coordination among the authorities, the customs offices argued that, under national legislation, the authority implementing the EWSR notification procedures was solely responsible for taking the initiative in this respect.

National abstract for Hungary

Name of the audit: Audit on the enforcement of the European Waste Shipment Regulation.

Publication Date: May 2012.

Website: www.asz.hu (in Hungarian and English).

Objective

The main audit objective was to evaluate whether the institutional and legal frameworks established for the supervision and control of transboundary waste shipments and their operation were consistent with the requirements of the European Waste Shipment Regulation (EWSR).

Scope

The audit focused on the legal and institutional framework, resources, inspections, the exchange of information at national and international levels, and the system of penalties.

Audit period: 2008-2010. The on-site audit took place between 28 October and 12 December 2011.

Audited entities: national organisations designated under the EWSR, i.e. the competent authority, the supervisory body of the competent authority, the customs office and two local agencies on EU customs borders.

Main findings

In order to comply with the EWSR, the Hungarian authorities have set up mechanisms for supervising and controlling cross-border waste shipments. The supervision and the control of waste shipment have not yet been implemented in full compliance with the EWSR and its objectives. There were discrepancies as regards cooperation among authorities, the exchange of data and information, as well as the detailed regulation of controlling processes and the harmonisation of rules on commodities and waste. This practice did not contribute to the prevention of illegal shipments. The emphasis was on the detection of illegal shipments.

It was forward-looking that, following the audit in 2011, the government began taking action to harmonise statutory regulations on customs, police, and environmental protection - including regulations on waste shipments and financial management - and to prepare and update detailed procedural rules. The number of audits, specialised training courses and educational activities increased.

Recommendation

For the purpose of controls of waste shipments based on different perspectives (i.e. hazardous, non-hazardous; within or outside the EU customs territory; using road or rail transport), the cooperation agreements in force among all the designated authorities should be revised in order to strengthen cooperation, and a coordinated protocol should be developed.

Government response

According to the Act on the State Audit Office of Hungary, the audited entities were obliged to make action plans to implement the audit findings requiring further measures. The customs office and competent authority drew up the relevant action plans which the Hungarian SAI can audit in an ex-post audit.

National abstract for Ireland

Name of the audit: An examination of the enforcement of the European Waste Shipment Regulation.

Publication date: Not yet published.

Website: Publication will be available at www.audgen.irlgov.ie.

Objective

To examine Ireland's compliance with European Waste Shipment Regulation (EWSR).

Scope

The examination focused on the implementation and enforcement of the EWSR by the National Transfrontier Shipment Office (NTFSO). The NTFSO was established by

Dublin City Council (the national competent authority for Ireland) in 2007 and has overall responsibility for the enforcement of the EWSR.

Main findings

Dublin City Council currently contracts out the enforcement role to a private contractor. The enforcement role includes carrying out inspections on imports, exports, waste facilities and dealers and brokers.

While the competent authority adopts an annual plan setting out the planned enforcement actions for the coming year, there is no enforcement strategy in place outlining the strategic direction of the NTFSO over a 3-5 year period.

All inspections carried out by the private contractor on imports and exports as set out in the annual plan are performed on a random, rather than a targeted basis.

The NTFSO has information on the level of enforcement activity, such as the number of inspections and investigations carried out. It also records the numbers and nature of infractions detected but information in relation to the quantities and types of waste involved is not readily available. This poses difficulties in reporting on performance effectiveness.

The NTFSO database used by the private contractor to record enforcement information is not linked to the other IT systems used by the NTFSO.

Government response

The report has yet to be finalised. A final draft report including recommendations will be submitted to the Department of Environment, Community and Local Government seeking specific responses to each recommendation made. The Department's responses will be incorporated in the final report.

National abstract for the Netherlands

Name of the audit: Enforcement of the European Waste Shipment Regulation (EWSR).

Publication date: 4 October 2012.

Website: www.rekenkamer.nl (in Dutch and English).

Objective

The main objective is to improve the enforcement of the EWSR by providing an insight into the enforcement strategies and performance of the participating countries (in terms of results and the achievement of the desired impact).

Scope

The audit focused on the regular enforcement of the EWSR by the Dutch competent authority, i.e. the Environmental Inspectorate and its enforcement partners (mainly customs and police). The prosecution of infringements was also included in the audit.

Audit period: 2008-2011.

Main findings

The Minister of Infrastructure & the Environment has access only to limited information on the impact of enforcement activities. For most waste flows, the enforcement partners (i.e. the Netherlands Shipping Inspectorate, customs and the police) do not know precisely what impact enforcement has on compliance with the EWSR. It is therefore not entirely clear whether the enforcement of the EWSR deters illegal waste flows. This is partly because illegal flows are difficult to spot and partly because of weaknesses in the partners' IT systems. The computer system used by customs, for example, cannot calculate compliance rates.

Information on the operation of the waste system as a whole is limited. There are indications that the system of receipt and processing notifications issued by importing countries does not work properly. The minister does not know for sure whether the company issuing the notification is also the company that actually processes the waste. Since there is no information on this final link in the chain, the minister does not have a clear picture of whether the EWSR's objectives have been achieved.

In three out of every ten cases, the public prosecution department decides not to prosecute EWSR infringements. This is far higher than the service's own 10% target for the dropping of environmental charges. We found no explanation for this high non-prosecution rate and are concerned that it means either that EWSR offences go unpunished or that time is wasted preparing official reports on cases that have no chance of success.

Recommendations

1. The State Secretary for Infrastructure & the Environment and the State Secretary for Finance should together improve information management so that they gain a clear insight into the impact of enforcement and individual enforcement instruments.
2. The Minister of Infrastructure & the Environment should gain an understanding of the operation of the EWSR system as a whole. The Netherlands Shipping Inspectorate can investigate this by sampling the plausibility of receipt and processing notifications.
3. The Minister of Security & Justice should investigate the reasons for the relatively large number of decisions not to prosecute EWSR infringements and should seek ways to reduce the non-prosecution rate. The public prosecution department should also better inform customs and the Dutch Police Agency of the outcomes of EWSR cases so that they can take them into account when preparing new official reports.

Government response

The State Secretaries for Infrastructure & the Environment and Finance agree with our recommendations on information management. The State Secretary for Infrastructure & the Environment and the Minister of Security & Justice believe the Inspectorate's system and system modifications at customs will produce more information on the impact of enforcement.

The State Secretary for Infrastructure & the Environment is not planning to act on our recommendation to improve information on the operation of the waste system as a whole. He notes that measures have already been taken to improve enforcement

activities, such as the introduction of Inspectieview, the transfer of tasks from NL Agency to the Netherlands Shipping Inspectorate, and a study by the Strategic Environment Centre. We note that there is a risk that these separate measures might not produce a coherent overall picture.

The Minister of Security & Justice shares our concern about the high rate of non-prosecution of EWSR infringements. The public prosecution department is studying the causes and its findings will be used to improve criminal proceedings.

National abstract for Norway

Name of the audit: The Office of the Auditor General's investigation into the management of hazardous waste. Document 3:7 (2011-2012).

Publications date: 31 January 2012.

Website: <http://www.riksrevisjonen.no/en/Reports/Pages/hazardouswaste.aspx>

Objective

To evaluate the authorities' work in ensuring that hazardous waste is properly handled.

Scope

Among the four main issues that were pursued were: 'to what extent do the authorities have control of the export of hazardous waste?' Responsibility for ensuring that hazardous waste is properly handled lies with the Ministry of the Environment. The Norwegian Climate and Pollution Agency is responsible for processing applications for the export of hazardous waste and for supervisory activities. Norwegian Customs and Excise is the responsible border control authority.

The time frame of the audit was from May 2010 to June 2011.

Main findings

According to official statistics, Norway exported 15 per cent of the hazardous waste submitted in 2009, and exports are on the rise. The Norwegian Climate and Pollution Agency performs proper checks of applications for waste exports. However, the agency does not always receive confirmation that the waste has been treated in line with the application. Moreover, the authorities do not have a clear picture of re-exports from the countries to which the waste is initially exported. This means that there is a risk that Norwegian waste may end up in countries that lack the capacity to treat the waste properly. This also implies that the statistics may underestimate the actual amount exported and may give misleading information about the destination of waste exported from Norway.

Controls performed by the Norwegian Climate and Pollution Agency have uncovered several cases of illegal exports, in particular of EE waste and scrapped cars. The EWSR does not require a permit to be issued by a country's authorities for the export of products or pure waste fractions for recovery in an EU country. Some types of hazardous waste are illegally exported as products or pure fractions for recovery, thus bypassing the requirements for an export permit.

Norway is obliged to supervise transboundary waste shipments. Although the Norwegian Climate and Pollution Agency has started to cooperate with the customs authorities, few supervisory activities have been carried out to uncover illegal exports

of hazardous waste. Nor have adequate systematic procedures been put in place for uncovering attempted illegal exports. Moreover, the authorities have few sanctions available to them to penalise illegal exports of hazardous waste. Accordingly, the authorities do not deem supervisory activities to be expedient.

Government response

The Ministry of the Environment has prepared a strategy for addressing various forms of waste, including hazardous waste. A proposal has been made to amend the Pollution Control Act, in order to in order to strengthen possible sanctions against illegal waste exports and import.

National abstract for Poland

Name of the audit: Execution of chosen provisions of the European Waste Shipment Regulation.

Publication Date: January 2013.

Website: www.nik.gov.pl (available in Polish).

Objective

The purpose of the audit was to assess the governmental administration organs' compliance with their obligations under Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, hereinafter referred as the European Waste Shipment Regulation (EWSR).

Scope

The scope of the audit included examinations of:

- the adjustment of the Polish law to the requirements of the EWSR;
- ensuring the administration organs, hereinafter referred as the services, responsible for implementing the EWSR have access to appropriate resources in terms of staff and equipment;
- the operation of these services in terms of planning, issuing permits, supervising and checking waste shipments, including the prevention of illegal waste shipments;
- national and international cooperation among the services responsible for implementing the EWSR.

The audit was conducted between 6 March and 13 June 2012, at nine organisational units responsible for implementing the EWSR, i.e. the Chief Inspectorate for Environmental Protection, the Ministry of Finance (the Customs Service is subordinated to the Minister of Finance), the Headquarters of the Border Guard, two voivodship inspectorates for environmental protection, two customs offices and two regional units of the Border Guard.

Main findings

In Poland, the rules for implementing the EWSR are laid down in the Act of 29 June 2007 on International Waste Shipments hereinafter referred to as the act on IWS, and its seven executive acts. The national legislation describes organisational and procedural issues related to the implementation of the EWSR, sets the size of penalties for infringements of obligations in relation to international waste shipments, and lists a number of waste products which may not be imported into Poland for disposal.

Under Article 3 (1) of the act on IWS, the authority responsible for enforcing the EWSR as stated in Article 53 of the Regulation is the Chief Inspector for Environmental Protection, hereinafter referred as CIEP. This is the competent authority especially in matters of waste imports, waste exports and waste transit through the territory of the country.

The Head of the Customs Service, the Commander-in-Chief of the Border Guard, the Chief Inspector of Road Transport and voivodship inspectors for environmental protection supervise international waste shipments, hereinafter referred as IWS. From 2008 to 2011, a total of over 5 million Mg of waste was imported into, exported from Poland and transported through Polish territory. Waste shipments - the observance of permits and other CIEP decisions relating to IWS were not adequately supervised.

The difficulties occurred in inspections of waste transports performed by the Border Guard and the Customs Service, and during checks of waste recovery and disposal performed by the Inspection of Environmental Protection. These difficulties were caused by a lack of information on the IWS and inconsistencies in the activities performed by the services enforcing the EWSR in preventing illegal shipments. There was no comprehensive, rapid exchange of information among the above-mentioned services, for example on IWS permits issued by the CIEP, transports of waste carried out, and detected illegal shipments. IWS databases held by the Customs Service and the Border Guard operated independently as internal systems, and were fed with data from the CIEP, which was often delayed.

The register of IWS notifications and decisions held by the Chief Inspectorate for Environmental Protection was incomplete. A new database was created in CIEP in 2011, and data input subsequently commenced in 2012.

The CIEP's decisions relating to the recognition that damaged vehicles imported into Poland are waste or goods were issued without paying proper attention to the collection of evidence. Some of these decisions were based on an assessment of the technical state of vehicles and the loss in their value reported by vehicle owners.

The Polish Supreme Audit Office did not raise any objections to the cooperation among the audited entities in relation to inspections of international waste shipments, nor to the reporting to the European Commission by the Chief Inspector of Environmental Protection.

Recommendations

In addition to the recommendations presented in the post-audit statements to the heads of the audited entities, the Polish Supreme Audit Office formulated the following general recommendations:

1. Minister of the Environment: effectively supervise the Chief Inspector for Environmental Protection in performing tasks related to IWS, for example by conducting periodic audits;
2. Chief Inspector of Environmental Protection, among others: send notifiers timely confirmations of properly completed notification on intended IWS and timely issue of permits for the IWS; immediately send the competent authorities copies of

permits issued and decisions taken in relation to the IWS; ensure on-line access to the IWS database for services responsible for monitoring the IWS; perform internal audits of IWS tasks;

3. Voivodship's Inspectors for Environmental Protection: perform internal audits of tasks related to the supervision of the IWS.

The recommendations mentioned above were presented in the national report on audit findings.

Government response

The audited governmental entities did not object to the audit team's conclusions and recommendations and took action to implement the recommendations made

National abstract for Slovenia

Name of the audit: Transboundary waste shipments

Publication date: September 2013.

Website: <http://www.rs-rs.si/rsrcs/rsrs.nsf/uvod?openForm>

Objective

The objective of the national audit was to determine whether:

- the competent institutions had established a comprehensive and up-to-date database on transboundary waste flows and waste shipments;
- the competent institutions had set up an efficient system of checks and inspections of waste shipments.

Scope

The audit covered the implementation and enforcement of the EWSR, the creation of a database, the monitoring of transboundary waste flows and waste shipments, and the effectiveness of inspections of waste shipments performed in the period from 2009 to 2011. The national audit was conducted in 2012.

Main findings

The audit revealed that no comprehensive, reliable information was available on transboundary waste flows. Although information is available on waste shipments made with permits, there is no reliable information on flows of green-listed waste. The competent institutions do not have full information on recycling and disposal facilities, which makes it difficult to conduct EWSR-based procedures and guarantee Slovenia's self-sufficiency in exporting waste for disposal. The data on recycling and disposal is questionable, because different sources quote different figures, and the data is often not compatible. The audit team asked for a complete overview of Slovenia's disposal and recovery facilities, so as to know whether the EWSR's main objectives had been achieved.

The EWSR is a very complex regulation and requires demanding and time-consuming procedures. The audit team found delays in reporting to the European Commission because of a shortage of competent staff to carry out the requisite duties and maintain an up-to-date database on shipments. The audit team asked the competent institutions to undertake an in-depth analysis of all tasks required by the EWSR and estimate and recruit the number of staff required to perform the statutory procedures.

The audit team found that Slovenia has a very rigid system of penalising EWSR infringements. The penalties imposed do not depend on the quantity of waste shipped illegally, which therefore raises the risk of illegal shipments of large quantities of waste. The audit team suggested analysing the systems of penalties used by other countries and adopting a system of sanctions that would have a more preventive effect.

There was a big rise in the number of illegal shipments detected in 2012 compared with the number detected in the period from 2009 to 2011. This was due to a more focused, comprehensive and risk-based approach to the planning of inspections. However, there is still not enough cooperation and exchange of basic information among the competent authorities, such as on permits issued or shipments made, as well as on the outcome of investigated cases. The audit team therefore recommended establishing a permanent system for sharing all relevant information and establishing a common database so that the competent authorities have access to all the requisite information.

Government response

The audited entities are required to prepare a report setting out the corrective action they are planning to take, within 90 days of the publication of the final report.

List of abbreviations

AEO	Authorised Economic Operator
CFC	Chlorofluorocarbon
CC	Contact Committee
CIC	Commonwealth of Independent States
EC	European Commission
EEA	European Economic Area
EFTA	European Free Trade Association
EU	European Union
EUROSAI	European Organisation of Supreme Audit Institutions
EWSR	European Waste Shipment Regulation
INECE	International Network for Environmental Compliance and Enforcement
IMPEL	European Union Network for the Implementation and Enforcement of Environmental Law
NTFSO	National Transfrontier Shipment Office (Ireland)
OECD	Organisation for Economic Cooperation and Development
SAI	Supreme Audit Institution
TFS	Transfrontier Shipment of Waste
WCO	World Customs Organisation
WEEE	Waste from Electric and Electronic Equipment

Literature

Algemene Rekenkamer (Netherlands Court of Audit) (2012). Enforcement of European Waste Shipment Regulation.

Bulgarian National Audit Office (2012). Audit report N° 0300001411 on performance audit on the effective enforcement of European waste shipment regulation covering the period 01.01.2007 - 31.12.2010.

Comptroller and Auditor General of Ireland (2013). Not yet published.

Court of Audit of the Republic of Slovenia (2013). Not yet published.

European Commission, DG TAXUD (EC DGTAXUD) (2010). Study on the role of customs in enforcement of European Community legislation governing the protection of the environment and its best practice.

European Commission (EC) (2012), Report from the Commission to the Council and the European Parliament on the implementation of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community, and on the implementation of Regulation (EC) No 1013/2006 of 14 June 2006 on shipments of waste Generation, treatment and transboundary shipment of hazardous waste and other waste in the Member States of the European Union, 2007-2009. Brussels, COM (2012) 448 final.

European Commission (EC) (2012), Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1013/2006 on shipments of waste. Brussels, COM(2013) 516 final.

European Court of Auditors (ECA) (2012). Did the Commission and EUROSAT improve the process for producing reliable and credible statistics? ECA Special Report NO 12/2012, ECA, Luxembourg.

European Environment Agency (EEA) (2012). Movements of waste across the EU's internal and external borders. EEA report No 7/2012], EEA, Copenhagen.

Eurostat (2011). Europe in figures - Eurostat yearbook 2011. Luxembourg: Publications Office of the European Union.

Hellenic Court of audit (2012). The implementation of the EWSR in Greece from 2008 to 2010 (available in Greek).

Impel-TFS (2006) Threat assessment project.

IMPEL (2011). IMPEL-TFS Enforcement Actions II, Final Project Report October 2008 - February 2011 (report no. 2011/18)

O'Laoire Russell Associates (2011), Study on the role of customs in enforcement of European Community legislation governing the protection of the environment and its best practice. Commissioned by European Commission Directorate-General Taxation and Customs Union (Service Contract TAXUD/2009/DE/321)

Riksrevisjonen (Office of the Auditor General of Norway) (2012). The Office of the Auditor General's investigation into the management of hazardous waste. Document 3:7 (2011-2012).

Secretariat of the Basel Convention, 2011. Where are WEEE in Africa? Findings from the Basel Convention E-waste Africa Programme.

State Audit Office of Hungary (2012) Audit on the enforcement of EU Regulations on Waste shipments.

Supreme Audit Office of Poland (NIK) (2013). Execution of chosen rules of the EU regulation on shipment of waste.

VROM Inspectorate (2010), Handhaving van de EVOA bij de export van kunststofafval in 2009 (Enforcement of the EWSR on the export of plastic waste in 2009), The Hague.

World Customs Organization (WCO) (2009) Operation Demeter, Executive Summary. Brussels, WCO.

Participating supreme audit institutions

Bulgaria : Bulgarian National Audit Office
www.bulnao.government.bg

Greece: Hellenic Court of Audit
www.elsyn.gr

Hungary: State Audit Office of Hungary
www.asz.hu

Ireland: Office of the Comptroller and Auditor
General of Ireland
www.audgen.gov.ie

The Netherlands: The Netherlands court of audit
www.courtsofaudit.nl

Norway: The Office of the Auditor General's
of Norway
www.riksrevisjonen.no

Poland: Supreme Audit Office
www.nik.gov.pl

Slovenia: Court of Audit of the Republic
of Slovenia
www.rs-rs.si

This coordinated audit was launched in response to a decision taken by the Contact Committee of Heads of EU SAI's and was conducted in close collaboration with the EUROSAI Working Group on Environmental Auditing.

The Netherlands Court of Audit

Algemene Rekenkamer
Lange Voorhout 8
P.O. Box 20015
2500 EA The Hague
phone +31 70 342 43 00

Cover

Design: Corps Ontwerpers, The Hague
Photo: Court of Audit of the Republic of
Slovenia

The Hague, October 2013