

# The state of environmental criminal law in the European Union

## Belgian reply

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### Theme 1 : Environmental crime as a serious phenomenon

1. **Illicit trafficking of waste** represents approximately 60 % of annual environmental offences. In 2017, 10.237 waste offences were referred to the public prosecution offices, namely 1,7% of the offences referred to the public prosecution offices.

Our high waste handling costs lead to the research of alternatives such as :

- Waste exports to low-wage countries such as Africa. In the Flemish Regio, a quarter of 300 controlled waste transports were in infringement and 55% for the controlled waste transports to Africa;
  - The blending of heavy soiling (and dangerous) waste with less soiling and not dangerous waste.
2. **An increase of ship-source pollution** through pollution incidents of noxious liquids substance through chemical discharges by ships in the North Sea is noticed (<https://odnature.naturalsciences.be/mumm/en/aerial-surveillance/results> ).

In 2017, we have recorded in particular :

- 29 infringements of sulphur in shipping fuel have been recorded. 24 administrative sanctions have been applied in these cases and 4 cases are still ongoing.
  - 12 ship-generated waste infringements have been recorded.
3. As estimated by the IPBES Global Assessment, **illicit trafficking in protected species (plants and animals)**, including timber and fish, comprises the fourth largest global illegal trade after narcotics, counterfeiting of products and currency, and human trafficking:
    - 1 million animal and plant species are threatened with extinction;
    - Illegal, unreported or unregulated fishing represented up to one third of the world's reported catch.

This area of environmental offences is a lucrative business for criminal organisations because the risk involved is low compared to other crimes and high profits can be generated.

In Belgium :

- Wildlife trade of protected species such as birds can be very lucrative. For example, A European goldfinch (*Carduelis carduelis*) is worth on average 150 euros but its price can go up to 1000 euros according to his singer qualities. In the Walloon Regio, about 2000 birds are caught every year;
- Illegal import of bushmeat (meat from possibly CITES animals) can be a danger to public health. The meat is imported uncontrollably and may be marketed in restaurants. If it concerns meat from CITES animals, this is a violation of both CITES and sanitary legislation (FASFC).

In this field, Belgium can share the following figures :

#### *Inspections at the border:*

	Records	Seizures
2017	553	511
2018	185	90

#### *Inspections by the CITES inspection department:*

	Cases	Infringements	Warning	Seizures
2017	111	53	21	16
2018	325	134	45	23
2019 (jan.-avr.)	99	26	12	13

It should be noted that the CITES inspection unit went from 2 people to 8 people in September 2017. Most of these cases, approximately 90 %, are fined on an administration level.

Additional figures can also be found on the following link : <https://www.natuurenbos.be/publicaties/publicaties/handhavingsrapporten>

4. We have not experienced large-scale or frequent **forest fires** in Belgium. For example, in the Flemish Region, since 2017, 8 forest fires have been referred to the public prosecution office but are not indicated as large-scale fires.
5. Concerning the link with **organised crime** : serious environmental crimes often linked to other core criminal activities committed by criminal organisations (corruption, organised crime, fraud). In the same time, it has been found that environmental crimes are committed by well-established (legitimate) companies that increase their profits through fraud. Environmental crimes are, in this sense, subsidiary to a real and legal activity.

## **Theme 2 : Successes and challenges in countering environmental offences**

### **A. Successes**

#### **1. Flexible use of both administrative and criminal sanctions**

In Belgium, we have a mixed criminal/administrative enforcement system with different specificities for each Region.

Minor offences are considered as administrative offences according to certain conditions or categories. The system of administrative fine is a very effective tool for this kind of offences because it is fast and it makes possible to follow the infringement situation. The other offences are referred to the public prosecution offices which has a timeframe to decide to prosecute environmental offences as criminal offences. Criteria used to distinguish criminal offences from administrative offences ultimately depend on the specific circumstances of the case, and in particular the amount of damage caused and the international nature of the offence (ex. quantity and volume).

For minor offences, practical experience shows that the mechanism of immediate transaction is very effective. For example, in the Flemish region, 50% of the environmental offences are dealt with through transaction.

In the case of infringement committed by international companies, it may be noted that some companies calculate the economic cost between the investment of the regularisation and the fine. For serious offences, judicial intervention is therefore necessary, even if it raises several issues (ex. slowness of the proceedings and execution of the sentence), especially in case of cross-border infringements.

## 2. Specialisation and training

Belgium would like to underline the added-value to have a unique central contact point designated with regard to waste-related fraud at the federal police. This presence of a unique central contact point is essential and provides added value (cooperation, proactive work, exchange of information) both for national and international partners. This good practice should be usefully extended for all types of environmental crimes.

## 3. Cooperation and collaboration on a structured and multidisciplinary approach

In each area of environmental crimes (illicit trafficking of waste, wildlife trade, ship-source pollution, Belgium authorities set up networks in order to promote the cooperation between investigators and prosecutors (police/customs/judicial/environmental authorities) in a multidisciplinary approach such as the Marpol-Network, the Interministerial Conference on the Environment (CIE) or the Environmental experts Network of the Public prosecution office.

## 4. Structure exchange of information

As pointed out during the 8th mutual evaluation, Belgium could mention the 'ECO-form Waste' request form as a good practice that might be extended as a single, harmonised European form. This electronic form includes detailed information on waste shipments collected during waste shipment inspections. This information is forwarded to the central environmental service of the federal police and is included in a database. It ensures an exchange of information on waste-related offences. The Eco-form Waste reflects shipments and trends and is used as input for expert database on waste movements, notably to identify some risks in groups of behaviours. Such central database should also be developed for other types of environmental crimes such as wildlife trafficking.

## 5. Technology innovation

An example of innovation is also the CompMon project that developed a sniffer, in cooperation with universities, aiming at monitoring ships at sea with respect to their SO<sub>2</sub> emissions.

## B. Challenges

The major problems in countering environmental offences lie mainly on the lack of **sufficient resources** in terms of human and material resources as well as the need to consider prosecuting environmental offences as a matter of **priority**.

Given the meagre budget and the fact that other areas have been prioritised, there is clearly a reduction of inspections and investigations in the field of environmental offences, which has a direct effect on the number of environmental offences detected, even though these offences are in fact increasing.

Beside these major problems, Belgium can also mention the following challenges :

- **Training and specialisation of authorities** – Due to the specificity and complexity of the environmental legislations, it is of utmost importance to organise regular trainings and specialisation for competent authorities throughout the whole enforcement chain (police/customs/judicial/environmental authorities);
- **Cross-border cooperation in criminal matters** – Environmental offences know no borders. The ubiquity of road transport and the presence of the port in Antwerp mean crime in Belgium is very mobile. Investigations move very quickly beyond national borders and collaboration, data collection and prosecution often involve several neighbouring Member States.

In this regard, we consider useful to stimulate the cooperation between Member States, for example by designating single contact points to enable exchange of information, good practice and expertise in a network that could meet regularly.

- **Clarity of the applicable legal framework** – The ambiguity and complexity of the legislations in this field has an impact on their effectiveness.
- **Availability of relevant data or information, or sharing of it between authorities** – As mentioned in our successes, Belgium would like to underline the added-value of a central database and the need to develop such central database for each type of environmental offences.

### **C. Problems to be addressed at EU level**

Ambiguous legislations and their interpretation raise difficulties in the application of the EU instruments. For example, the notions of substantial damage and 'negligible quantity' in the Directive 2008/99/EC raise discretionary evaluation on the environment conditions. These criteria are interpreted by judges independently and on a case-by-case basis.

Therefore, there is a need for ensuring that the existing legislations are less interpretative and complex through. This could be made either through an adaptation of EU legislation or by way of non-legislative instruments.

In addition to the definition, there is a need to recognise a notion of pure ecological damage and to ensure the possible use of appropriate investigative tools, such as controlled deliveries, to facilitate investigation and prosecution of environmental crimes, avoiding significant loopholes in the criminal justice response.

With regard to the annexes to Directive 2008/99/EC, it is not considered necessary by the Belgium authorities to amend them.

### **Theme 3 : Sanctions**

Belgium does not currently see a specific need for additional sanctions but remains open to an in-depth examination on the need for future additional minimum rules, in particular with regard to cross-border cases.

If deemed necessary, these provisions should focus mainly on :

- Preventive measures (ex.seizure of assets);
- Additional sanctions such as limitations or ban to operate in the national or international markets.

### **Theme 4 : The clarity of environmental criminal law**

The ambiguity and complexity of the legislations in this field has an impact on their effectiveness. For example, the notions of substantial damage and 'negligible quantity' in the Directive 2008/99/EC raise discretionary evaluation on the environment conditions. These criteria are interpreted by judges independently and on a case-by-case basis.

Therefore, there is a need for ensuring that the existing legislations are less interpretative and complex through. This could be made either through an adaptation of EU legislation or by way of non-legislative instruments.

In this regard, it should also be mentioned that this ambiguity and complexity also lie to national legislations and should therefore be also solve at national level.

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