



Watching over
taxpayers' money

AUDIT REPORT

№ 0300001411

on performance audit on the effective enforcement of European waste shipment regulation covering the period 01.01.2007 - 31.12.2010

February 2012

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LIST OF ABBREVIATIONS

AMNAO	Audit Manual of the National Audit Office
BICIS	Bulgarian Integrated Customs Information System
BNAA	Bulgarian National Audit Act
CA	Customs Agency
CAM	Coercive Administrative Measures
CC	Criminal Code
CDBP	Chief Directorate Border Police
CDSP	Chief Directorate Security Police
CoM	Council of Ministers
CoMD	Council of Ministers' Decree
CL	Check list
EC	European Commission
EC	European Community
ECA	European Court of Audit
EFTA	European Free Trade Association
EEA	European Economic Area
EEA	Executive Environment Agency
EA MA	Executive Agency Maritime Administration
EA RTA	Executive Agency Road Transport Administration
EA RA	Executive Agency Railway Administration
EU	European Union
IA-SAI	Inspection Activities-State Automobile Inspectorate
IMPEL	European Union Network for the Implementation and Enforcement of Environmental Law
ISSAI	International Standards of Supreme Audit Institutions
LC	Labour Code
LP	Legal Person
MoI	Ministry of Interior
MPDW	Management of Production and Dangerous Wastes
MTITC	Ministry of Transport, Information Technology and Communications
NP	Natural Person
NRA	National Revenue Agency
NSI	National Statistical Institute
OECD	Organization for Economic Co-operation and Development
PD	Penalty Decree
PP	Pre-litigation Procedure
RIEW	Regional Inspectorate of Environment and Water
RoP	Rules of Procedure
SSA	State Servants Act
WMSP	Waste Management and Soil Protection
WSAAV	Written Statement on Ascertainment of Administrative Violations

GLOSSARY

<p>Illegal shipment</p>	<p>Any shipment of waste effected:</p> <ul style="list-style-type: none"> (a) without notification to all competent authorities concerned pursuant to Regulation 1013/2006; or (b) without the consent of the competent authorities concerned pursuant to this Regulation; or (c) with consent obtained from the competent authorities concerned through falsification, misrepresentation or fraud; or (d) in a way which is not specified materially in the notification or movement documents; or (e) in a way which results in recovery or disposal in contravention of Community or international rules; or (f) contrary to Articles 34, 36, 39, 40, 41 and 43; or (g) which, in relation to shipments of waste as referred to in Article 3(2) and (4), has resulted from: <ul style="list-style-type: none"> (i) the waste being discovered not to be listed in Annexes III, IIIA or IIIB of Regulation 1013/2006, or (ii) non-compliance with Article 3(4) of Regulation 1013/2006, (iii) the shipment being effected in a way which is not specified materially in the document set out in Annex VII of Regulation 1013/2006
<p>Waste Disposal</p>	<p>Each of the following operations:</p> <ul style="list-style-type: none"> (a) deposit (into or onto land); (b) contaminated land and soil treatment (e. g. biodegradation of liquid or sludgy discards in soils); (c) deep injection (e. g. injection of pumpable discards into wells, salt domes or naturally occurring repositories); (d) surface impoundment (e. g. placement of liquid or sludgy discards into pits, ponds or lagoons and other such facilities); (e) specially engineered landfill (e. g. placement into lined discrete cells which are capped and isolated from one another and the environment); (f) release of waste into a water body except seas/oceans; (g) release into seas/oceans including sea-bed insertion; (h) biological treatment not specified elsewhere which results in final compounds or mixtures which are disposed of by means of any of the operations referred to in Litterae (a) to (l);

	<p>(i) physico-chemical treatment not specified elsewhere (e. g. evaporation, drying, calcination, microwave treatment etc.) which results in final compounds or mixtures which are disposed of by means of any of the operations referred to in Litterae (a) to (l);</p> <p>(j) incineration on land;</p> <p>(k) incineration at sea;</p> <p>(l) permanent storage (e. g. emplacement of containers in a mine, etc.);</p> <p>(m) blending or mixing prior to submission to any of the operations referred to in Litterae (a) to (l);</p> <p>(n) repackaging prior to submission to any of the operations referred to in Litterae (a) to (m);</p> <p>(o) storage pending any of the operations referred to in Litterae (a) to (n), excluding temporary storage, pending collection, on the site where it is produced.</p>
Hazardous waste	<p>Waste whereof the composition, amount and properties present risks to human health and the environment, which possesses one or more properties which define it as hazardous, and/or which contains components which render it into hazardous waste and/or which is designated as such according to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.</p>
Recovery of waste	<p>Any of the following operations designated by the relevant code:</p> <p>(a) use principally as a fuel or other means to generate energy;</p> <p>(b) solvent reclamation or regeneration;</p> <p>(c) recycling/reclamation of organic substances which are not used as solvents, including composting and other biological transformation processes;</p> <p>(d) recycling or reclamation of metals and metal compounds;</p> <p>(e) recycling or reclamation of other inorganic materials;</p> <p>(f) regeneration of acids or bases;</p> <p>(g) recovery of components used for pollution abatement;</p> <p>(h) recovery of components from catalysts;</p> <p>(i) oil re-refining or other reuses of oil;</p> <p>(j) land treatment resulting in benefit to agriculture or ecological improvement;</p> <p>(k) use of wastes obtained from any of the operations referred to in Litterae (a) to (j);</p> <p>(l) exchange of wastes for submission to any of the operations referred to in Litterae (a) to (k);</p>

	(m) Storage of wastes pending any of the operations referred to in Litterae (a) to (l), excluding temporary storage, pending collection, on the site where it is produced.
Waste	<p>any substance, object or part of an object which the holder discards or intends or is required to discard and which belongs to at least one of the following categories:</p> <p>(a) production or consumption residues not otherwise specified below;</p> <p>(b) off-specification products;</p> <p>(c) products whose date for appropriate use or for maximum effectiveness has expired;</p> <p>(d) materials spilled, lost or having undergone other mishap, impairing irreparably the original properties thereof, including any materials and equipment contaminated as a result of the mishap;</p> <p>(e) materials contaminated or soiled as a result of planned actions (residues from cleaning operations, packing materials, containers and other such);</p> <p>(f) unusable parts (reject batteries, exhausted catalysts and other such);</p> <p>(g) substances which no longer perform satisfactorily (contaminated acids, contaminated solvents, exhausted tempering salts, and other such);</p> <p>(h) residues of industrial processes (slags, still bottoms and other such);</p> <p>(i) residues from pollution abatement processes (scrubber sludges, baghouse dusts, spent filters and other such);</p> <p>(j) machining and finishing residues (lathe turnings, mill scales and other such);</p> <p>(k) residues from raw materials extraction and processing (mining residues, oil field slops and other such);</p> <p>(l) adulterated materials (oils contaminated with polychlorinated biphenyls and other such);</p> <p>(m) any materials, substances or products whose use has been banned by law;</p> <p>(n) products for which the holder has no further use (agricultural, household, commercial, office and shop discards and other such);</p> <p>(o) contaminated materials, substances or products resulting from remedial action with respect to land;</p> <p>(p) any materials, substances or products which are not contained in the above categories.</p>
Shipment	means the transport of waste destined for recovery or disposal which is planned or takes place:

	<p>(a) between a country and another country; or</p> <p>(b) between a country and overseas countries and territories or other areas, under that country's protection; or</p> <p>(c) between a country and any land area which is not part of any country under international law; or</p> <p>(d) between a country and the Antarctic; or</p> <p>(e) from one country through any of the areas referred to above; or</p> <p>(f) within a country through any of the areas referred to above and which originates in and ends in the same country; or</p> <p>(g) from a geographic area not under the jurisdiction of any country, to a country;</p>
Transportation	Shall be the movement of waste, including the accompanying operations of loading, reloading and offloading, where carried out by the operator as a self contained activity
Transport	Means the carriage of waste by road, rail, air, sea or inland waterways

PART ONE SUMMARY

This audit report is a result of a completed audit on the effective enforcement of the European legislation on the shipment of wastes covering the period 01.01.2007 - 31.12.2010.

The report consists of five parts: summary, introduction, findings, conclusion and recommendations.

The summary describes the grounds for the execution of the audit, the audit objectives, the scope of the audit and the criteria for assessment of the activities related to the enforcement of the Regulation (EC) 1013/2006 of the European Parliament and of the Council on shipments of waste.

Regulation (EC) 1013/2006 of the European Parliament and of the Council on shipments of waste applies from 12 July 2007. The Regulation applies to the supervision and control of shipments of waste aiming at the protection and the improvement of the quality of the environment. It applies to shipments of waste between Member States, within the European Union (EU) or with transit through third countries; imported into the EU from third countries; exported from the EU to third countries; in transit through the EU, on the way from and to third countries.

The Regulation determines two procedures and two lists for control of waste shipment. Exports to third countries of waste intended for disposal are prohibited, except to the European Free Trade Association (EFTA) countries (Iceland, Norway, Lichtenstein, Switzerland) which are party to the Basel Convention unless the country has prohibited such import or the competent authority of dispatch has considerations not to allow this export.

Exports of hazardous waste intended for recovery to countries to which the OECD decision does not apply and are not party to the Basel Convention are prohibited.

Import of waste intended for disposal within the European Community is allowed from countries which are party to the Basel Convention. Prohibition for import of waste intended for disposal in Bulgaria is introduced by paragraph 75 of the Waste Management Act.

Import of waste intended for recovery is allowed from countries which are party to the Basel Convention or to which the OECD decision applies. For all other cases import is allowed only when the country of export is bound by bilateral or multilateral agreements compatible with the EU legislation.

It is allowed to import hazardous waste intended for recovery from the "Amber List" after prior written notification and consent only from countries to which the OECD decision applies and which are party to the Basel Convention.

The Regulation provides for shipment of non-hazardous waste from the "Green list" intended for recovery without prior written notification.

Part three "Findings" describes the findings and assessments made during the audit. The created conditions and executed activities related to the enforcement of Regulation (EC) № 1013/2006 are checked and assessed.

The normative preconditions for the implementation of the activities for the enforcement of the Regulation (EC) № 1013/2006 are created.

Within the Ministry of Environment and Water (MOEW) and the Regional Inspectorates of Environment and Water (RIEW) there are established structural units with clearly defined functions as regards the issuing of consent for shipment in accordance with the Regulation and the execution of control on the transboundary

shipment of waste through the territory of the country. The responsible units within the other authorities that execute checks on the shipment of waste at the Community borders and/or during the shipment within the Community are designated according to the powers vested therein.

Risk for the effective enforcement of the Regulation and the legislation is the lack of sufficient knowledge and expertise outside the structures of the MOEW.

Issuing of notifications is done in accordance with the normative requirements. The lack of control on the operators as regards the quantity of recovered waste from national origin is a precondition for taking inappropriate management decisions with respect to the import of waste into the Republic of Bulgaria.

The numerous manners of the activities undertaken upon the application of coercive administrative measures by the control authorities when illegal waste shipment is detected indicate a problem either in the application of the section of the Waste Management Act (WMA) regulating these matters, or in the formulation of the act.

As there are a few legal proceedings with final ruling (at a court of the first instance and a court of cassation) it cannot be concluded about the effect, the result from the fines and pecuniary penalties and their execution.

Sound arrangements for interaction between the bodies of the Regional Inspectorates of Environment and Water and the Customs Agency and between the Regional Inspectorates of Environment and Water and the Chief Directorate Border police are established. In practice, the other competent authorities do not carry out the functions assigned to them in the WMA and there was no need to do such interaction.

The interaction between the competent control authorities responsible for the transboundary shipment of waste done without statutory rules and procedures creates a precondition for ineffective enforcement of the Regulation.

The information kept concerning the quality of waste, exported, imported or in transit through the territory of the country is large in quantity, intended for different purposes and not comparable. At national level, there is no designated body to summarize and systemize the information concerning the shipment of waste. Therefore the actual quantity of the waste, imported and exported annually to/from the Republic of Bulgaria cannot be determined. A juxtaposition of the correlation of imported and exported waste to the national production cannot be done, neither of the correlation of imported and exported waste to the capacity of the waste treatment facilities.

There is not developed and endorsed internal act which regulates the format and content of the registers kept, as well as the process of submission, entry and update of data thus the quantity and quality of the information therein is not guaranteed.

Part IV Conclusion comprises the conclusions based on the assessments in the particular findings.

Part V comprises the recommendations given to the minister of the environment and water and to the minister of interior.

Part Two

INTRODUCTION

1. Grounds for Performing the Audit

The audit is performed on the grounds of article 5, paragraph 5, point 1 of the National Audit Office Act, audit activity № 654 from the Audit Activity Program of the BNAO for 2011 and implementing Ordinance No OD-3-014 of 26.04.2011 of a Vice-President of the Bulgarian National Audit Office.

The audit is performed as part of the coordinated audit initiated by the Contact Committee of the Heads of the EU Supreme Audit Institutions and the ECA with the participation of the SAIs of Bulgaria, Greece, Ireland, Norway, Poland, Slovenia, Hungary and the Netherlands.

2. Information about the Activities of the Audited Entity

Regulation (EC) 1013/2006 of the European Parliament and of the Council on shipments of waste applies from 12 July 2007. The Regulation applies to the supervision and control of shipments of waste aiming at protection and improvement of the quality of the environment. It applies to shipments of waste between Member States, within the European Union (EU) or in transit through third countries; imported into the EU from third countries; exported from the EU to third countries; in transit through the EU, on the way from and to third countries.

The Regulation determines two procedures and two lists for control of waste shipment:

- the procedure of prior written notification and consent applies to all waste intended for disposal, and to waste intended for recovery that is listed in Annex IV of the Regulation – “Amber” List of hazardous waste (includes the wastes from Annex II and VIII of the Basel Convention), in Annex IVA of the Regulation or is not listed in neither of the positions of the Annexes IVA, III and IIIB, as well as mixtures of wastes that are not listed in Annex IIIA;
- procedure that applies to non-hazardous waste intended for recovery if the amount of waste exceeds 20 kg, then the shipment is subject to general information requirements. The format and content of the supporting document are given in Annex VII of the Regulation. This procedure applies to non-hazardous waste listed in Annex III of the Regulation – “Green” List of wastes (including the wastes in Annex IX of the Basel Convention), to waste, listed in Annex IIIB and to mixture of two or more of the wastes in Annex III-Annex IIIA of the Regulation.

Exports of waste **intended for disposal** to third countries are prohibited, except to the European Free Trade Association (EFTA) countries (Iceland, Norway, Lichtenstein, Switzerland) which are party to the Basel Convention unless the country has prohibited such import or the competent authority of dispatch has considerations not to allow this export.

Exports of **hazardous waste intended for recovery** to countries to which the OECD decision does not apply and are not party to the Basel Convention are prohibited.

Import of **waste intended for disposal** within the European Community is allowed from countries which are party to the Basel Convention. A prohibition for import of waste intended for disposal in Bulgaria is introduced by paragraph 75 of the Waste Management Act.

Import of waste intended for recovery is allowed from countries which are party to the Basel Convention or to which the OECD decision applies. For all other cases import is allowed only when the country of export is bound by bilateral or multilateral agreements compatible with the EU legislation.

The import of hazardous waste intended for recovery that is listed in the “Amber List” is allowed after prior written notification and consent only from countries to which the OECD decision applies and which are party to the Basel Convention.

The Regulation provides for shipment of non-hazardous waste intended for recovery that is listed in the “Green list” without prior written notification in/between countries from the European Community in case there are no additional specific arrangements and for export into countries to which the OECD decision applies. In accordance with article 63 of Regulation (EC) 1013/2006 for all shipments of non-hazardous waste intended for recovery prior written notification and consent for some Member states with transitional arrangements, including Bulgaria till 31.12.2014 is required. The other countries with transitional arrangements are Latvia – till 31.12.2010, the Slovak Republic – till 31.12.2011, Slovakia – till 31.12.2011, Poland – till 31.12.2012 and Romania – till 31.12.2015.

If the shipment cannot be completed (including the recovery or the disposal), the notifier should take back the waste at own expense. In case the shipment is illegal and is caused by the notifier, it is compulsory the notifier to take back, recover or dispose the waste.

The Regulation includes other general provisions, such as a ban on the mixing of waste during shipment, the making available to the general public of appropriate information, and the obligation on the part of the notifier, the competent authority, the consignee and the facilities concerned to keep documents and information.

The Member states should undertake activities thus guaranteeing that the waste being imported and shipped throughout the Community is controlled during the whole period of the shipment, including that the recovery or the disposal in the country of destination is done without hampering the human health and without using processes and methods that may damage the environment.

3. Audit Objectives

3.1. To provide the legislative and executive authorities, the management of the audited entity and other users of information with independent and objective assessment concerning the effective enforcement of the European legislation concerning the waste shipment;

3.2. To support the management of the audited entity to improve the activities concerning the enforcement of the European legislation concerning the waste shipment.

4. Audit Questions

Main Question: Is the European legislation concerning the waste shipment effectively enforced?

Specific Questions:

1. Are there conditions created for the enforcement of the Regulation?
2. Are the requirements of the Regulation effectively enforced?

5. Scope of Audit

The audit assignment includes:

5.1. Analysis and assessment of the normative provisions and the resources for enforcement of the Regulation

5.2. Analysis and assessment of the implementation of activities concerning the enforcement of the Regulation as regards:

5.2.1. Waste shipment for which a notification is required;

5.2.2. Control of waste shipment;

5.2.3. Keeping and exchanging data related to shipment;

5.2.4. Carrying out interaction between the competent authorities.

6. Audit Approach

The audit is carried out in accordance with the National Audit Office Act. In the course of implementation of the audit assignment the result-oriented approach has been applied to answer the question how the requirements of the Regulation (EC) № 1013/2006 are being applied as concerns the supervision and control of waste shipment.

7. Assessment Criteria

The assessments are based on the following criteria:

7.1. Adopted legal basis related to import, export and transit of waste;

7.2. Established structural units within the competent authorities;

7.3. Providing resources for the activities related to enforcement of the Regulation – administrative capacity, financial security, provision of information and material and technical foundation;

7.4. Observing the procedure for issuing of notifications;

7.5. Carrying out of checks by the competent authorities;

7.6. Applying of coercive administrative measures;

7.7. Keeping registers;

7.8. Participation of national experts in international exchange of data between the EU Member States, the countries, which are parties to the Basel Convention, the IMPEL network, etc.

7.9. Existence of agreements, exchange of letters, guidelines, manuals, etc.

8. Methodology

The audit has been carried out in accordance with the Basic Auditing Principles of INTOSAI and ISSAI 3000, ISSAI 3100 and the Audit Manual of NAO. The methods used for collecting and analyzing data are review and analysis of documents, questionnaires, data research and comparative analysis. To check the observance of the procedure for issuing of notifications the direct substantive testing approach of 50 per cent of the dossiers has been applied. Non statistical random sampling has been used.

Part III FINDINGS

1. Analysis and Assessment of the Normative Provisions and the Resources for Ensuring the Enforcement of the REGULATION

1.1. Adopted Legal Basis related to the Import, Export and Transit of Wastes

The Republic of Bulgaria signed the Accession Treaty to the European Union on 25.04.2005 and since 01.01.2007 is an EU member state. Since then the obligation to observe the provisions of the Community's legislation is effective.

As a type of legal act and a source of secondary legislation, the Regulation is binding in its entirety and is directly applicable in all Member states. One of the features of the Regulation is its direct application in all Member states without the necessity to issue an act for its transposition into national legislation. Upon entering into force (on the date stated in the Regulation or if no concrete date is laid down on the 12th day following its publication in the Official Journal of the EU) its provisions become part of the national legal framework on the territory of all members simultaneously. The aim is to ensure uniform application of the Community's law in all Member states. In principle, the Regulation negates the provisions of those national acts that are incompatible with the essential clauses of the Regulation. Article 15, paragraph 2 of the Bulgarian Law on the normative acts provides that in case a normative act is in a discrepancy with a EU Regulation, then the Regulation prevails. The measures that the Member states undertake to enforce the Regulation should not change or complement its scope and action (principle of loyal cooperation stated in article 10 of the EU Treaty).

Regulation (EC) 1013/2006 of the European Parliament and of the Council on shipments of waste (hereafter called the Regulation) is published in the EU Official Journal on 12.07.2006 and in accordance with article 64 applies from 12 July 2007, since when it is binding in its entirety and should be applied in the Republic of Bulgaria.

With the creation of a new section in the Waste Management Act¹ the shipment of wastes in, out and through the European Community is set to be executed in accordance with conditions and procedures of the Regulation. This section is revoked with the amendments to the WMA² from June 2010. The provisions of the Regulations are transposed again but following a different approach – referring to concrete texts and amendment of the provisions of the WMA that relate to the coercive administrative measures and administrative violations and sanctions, applied upon violation of the provisions of the Regulation.

Even before the transposition of the Regulation, the provisions of Chapter 5 “Waste-related operations authorization and control” of the WMA regulate the order and the procedures of the permits' regime concerning the import, export and transit through the territory of the Republic of Bulgaria. The competent authority is the minister of environment and water. An ordinance regulates the arrangement and manner for import, export and transit of the waste and the cases for which a bank guarantee or insurance is

¹ SG, issue 105 from 9.12.2008

² SG, issue 41 from 1.06.2010

required.³ The border crossing points (12 in total) through which the import, export and transit of waste are carried out are determined in an annex to the ordinance. With the modifications of the ordinance from June 2008 (SG, issue 53 from 2008), the provisions related to the execution of transboundary shipment of waste, its registration and reporting, as well as the execution of control of the transboundary waste shipment are repealed. Other provisions are modified, for which related definite terms are introduced (till 31.12.2009 or until the entry into force of the Bulgaria's Accession Treaty to the EU).

The conditions, terms and necessary documents that the notifier should present to the competent authority for issuing of permit for import, export and transit of waste in, out and through the territory of the Republic of Bulgaria, including waste intended for recovery, are described in detail in section V of the WMA before the amendments made in June 2010. In the presence of certain conditions and circumstances the competent authority refuses the issuing of permit with a reasoned decision/order. There is a possibility foreseen that the competent authority deprives the already issued permit/withdraws the consent. The wastes for which an import prohibition is imposed are determined.

Regulation (EC) 1013/2006 of the European Parliament and of the Council on shipments of waste is published in the EU Official Journal on 12.07.2006 and in accordance with article 64 applies from 12 July 2007, since when it is binding in its entirety and is to be applied in the Republic of Bulgaria.

The existing arrangements and procedures concerning the transboundary shipment of waste, regulated in detail in the WMA are analogous in essence to the respective provisions of the Regulation (EC) 1013/2006.

The Regulation's provisions are transposed into the WMA in two stages – in December 2008 and June 2010. The transposition is done by referring law provisions to concrete texts in the Regulation. Coercive administrative measures and administrative violations and sanctions are defined in the WMA in compliance with article 50 from the Regulation. They are applied by the competent authorities in case of violation of the provisions of the Regulation.

1.2. Established Organizational Units in the Competent Authorities applying the Regulation

The institutions that are responsible for the enforcement of the Regulation and of the national legislation concerning the transboundary shipment of waste are specified in the WMA. The minister of environment and water, the minister of interior, the minister of transport, information technologies and communications and the director of the Customs Agency or empowered thereby officials control the transboundary shipment of wastes in accordance with the WMA and the Regulation according to the powers vested therein.

Member state designate the competent authority or authorities responsible for the implementation of the Regulation. Each Member State designates only one single

³ Ordinance for the arrangement and manner for import, export and transit of waste and the cases for which a bank guarantee or insurance is required, adopted with the Decree of the CoM № 298 from 2004 (promulgated SG, issue 102 from 2004, amended issue 53 from 2008, amended with §1 from Decree of the CoM №76 from 2011– promulgated SG issue 29 from 2011)

competent authority of transit.⁴ The minister of environment and water or an official empowered thereby is the competent authority of the Republic of Bulgaria.⁵ The Directorate “European affairs coordination and international cooperation” has notified the European Commission through the EC notifications’ system that the minister of environment and water is the competent authority. The information published on the EC website as of November 2011 concerning the competent authorities and the correspondents of the Republic of Bulgaria is not up to date, including the contact details.

Member States designate one or more correspondents responsible for informing or advising persons or undertakings making enquiries. The Commission correspondent shall forward to the correspondents of the Member States any questions put to him/her which concern the latter, and vice versa.⁶ Senior expert from Management of Industrial and Hazardous Wastes Department, Waste Management and Soil Protection Directorate within the MOEW carries out the obligations of a correspondent, responsible for informing and consulting persons or undertakings.

The designation of the other institutions evolves from the powers vested therein that are related to the execution of control in case of import, export and/or transit. Their main function is to support the competent national authority upon implementation of control as per the relevant provisions and prohibitions imposed by the Regulation and the national legislation.

1.2.1. Ministry of Environment and Water

The responsible bodies within the Ministry of Environment and Water are the Waste Management and Soil Protection Directorate, the sixteen Regional Inspectorates of Environment and Water (RIEW) and the Executive Environment Agency (EEA).

Waste Management and Soil Protection Directorate

The activities, functions and number of the employees of the directorate are specified in the Rules of Procedure of the MOEW. The Directorate named Waste Management is part of the specialized administration⁷. New RoP of the ministry are adopted with a Decree of CoM № 274 from 20.11.2009 that empower the directorate to perform new functions through introduction of additional changes⁸ and it is renamed to Waste Management and Soil Protection.

The Directorate performs: issuing of permits for waste shipment to and from the Republic of Bulgaria with or without transit through third countries, import from third countries, export to third countries and transit through the Republic of Bulgaria from and to third countries in accordance with the provisions of the Regulation; issuing of permits for pursuing waste recovery and/or disposal operations including pretreatment prior to recovery and/or final disposal; drafting and implementation of programs and projects in the area of waste management, including the elaboration and coordination of the implementation of the National Waste Management Programme; elaboration of annual reports on waste management operations; waste classification; methodological guidance to the RIEWs on the control operations performed by the inspectorates in the field of waste management and others.

⁴ article 53, Regulation (EC) 1013/2006

⁵ article 72, paragraph 2 from the WMA

⁶ article 54, paragraph 3, Regulation (EC) 1013/2006

⁷ Rules of Procedure of MOEW, promulgated SG, issue 104 from 1999

⁸ SG, issue 16 from 2011., effective 1.03.2011

The Directorate⁹ maintains the functioning of registers for the issued permits for pursuing of operations related to waste treatment including import and export of wastes. With the changes of the RoP in 2009 and 2011 this activity is not included.

The Directorate comprises two Departments - Management of Household and Construction wastes and Management of Production and Hazardous Wastes, the latter carrying out the activities related to transboundary shipment of wastes.

The Functional characteristics of Management of Industrial and Hazardous Wastes Department is endorsed on 21.09.2009. It does not contain the activity on methodological guidance to the RIEWs in relation to the control operations performed by the inspectorates on the transboundary movement of wastes. The functional characteristics has not been updated after the adoption of the new RoP of the MOEW in November 2009.¹⁰

RIEW are administrative structures to the minister of environment and water, ensuring the implementation of the state policy on environmental preservation at regional level. The Regional Inspectorates of Environment and Water are legal entities to the minister of environment and water at state budget support. The Directors of RIEW are organs of the executive power and second level budget spenders to the minister of environment and water. RIEW carries out its operations on the territory of one or more municipalities in accordance with their seat and territorial scope of activities.

The Director of RIEW organizes, manages and controls the entire operations of the RIEW. With Order¹¹ of the minister of environment and water the directors of RIEW are empowered to:

- issue an order obligating the notifier to transport the waste back to the Republic of Bulgaria and to treat the said waste in an environmentally sound way in the cases referred to in Article 22, item 2 and Article 24, item 2 of the Regulation;¹²
- issue an order obligating the consignee to treat the waste in an environmentally sound manner in the cases referred to in Article 24, item 3 of the Regulation¹³;
- Carry out control on the transboundary shipment of waste in accordance with the WMA and the Regulation;
- Give opinions for the application of coercive administrative measures as per the WMA, comprising the respective instructions;¹⁴
- Inform the competent authorities of the prosecuting magistracy and the Ministry of Interior and dispatch copies of all documents in case of doubt that the administrative violation of the WMA in connection with the requirements of the Regulation within the meaning given by Article 102a (1) constitutes a criminal offence under Article 353b of the Criminal Code;
- Issue penalty decrees in connection with drawn up written statements on ascertainment of committed violations under article 108a of the WMA.

The Executive Environment Agency is an administration to the Ministry of Environment and Water to carry out the application of the legislative requirements

⁹ By virtue of article 25b, point 12 from the Rules of Procedure of the MOEW, promulgated SG, issue 104 from 1.12.1999, effective 1.12.1999.

¹⁰ Audit evidence №1

¹¹ Audit evidence № 2.

¹² Article 82, paragraph 1 from the WMA

¹³ Article 82, paragraph 2 from the WMA

¹⁴ Article 102a, paragraphs 2 and 3 from the WMA

related to the environment, including the management of the National System for Environmental Monitoring.

The Environmental Monitoring and Assessment Directorate collects, analyzes and provides data on waste at national level, including information on the management of ordinary waste. The Environmental Monitoring Department within the Directorate is responsible for the maintenance of the register of issued permits for pursuing waste recovery and/or disposal operations including pretreatment prior to recovery and/or final disposal. The Department summarizes the information for the purposes of elaboration of annual report as required by the Basel Convention and provides information to the National Statistical Institute (NSI) for the waste formed and/or treated at national level. In case, the persons that form and/or treat wastes have also performed transboundary shipment of wastes, this information is provided too.¹⁵

1.2.2. Customs Agency (CA)

The customs authorities exercise customs supervision and control over cross-border shipments of waste in accordance with the Waste Management Act and customs legislation and may take the relevant steps for the prevention of administrative violations of the Act and of the Regulation, as well as for the prevention and mitigation of the effects of any such violations.¹⁶

The Agency is structured in Central Customs Directorate and in Customs Offices Sofia, Bourgas, Varna, Lom, Plovdiv, Svilengrad, Svishtov, Stolichna, Ruse and Southwest. The Agency is structured in Regional Customs Directorate and customs offices and/or border points. The Regional Customs Directorate organizes, manages, controls and reports about the activities of the included in the customs structure customs offices and border points and together with them performs customs supervision and control.

Within the Central Customs Directorate of the Customs Agency the units responsible for the implementation of the legislation in the field of transboundary shipment of waste are the Tariff Policy Directorate /Non-tariff and Common Agricultural Policy (CAP) Measures Department, the Customs Intelligence and Investigations Directorate/ Administrative Penalty and Enforcement Proceedings Department and the Customs Intelligence and Investigation and IPR protection Department.

The Non-tariff and CAP Measures Department carries out methodological guidance to the customs offices, elaborates, participates in the elaboration and gives statements on drafts of legislative acts, related to non-tariff measures of the trade policy for carrying out of the control functions for the application of the measures, including those related to the transboundary shipment of waste. The Department initiates and coordinates the interaction with the Ministry of Environment and Water.

The responsibilities related to the transboundary shipment of waste are not explicitly mentioned in the department's functional characteristics but are implemented by the department as they constitute a non-tariff measure.¹⁷ The non-tariff measures are trade policy measures, established with a normative act and applied in the frame of the Common Trade Policy of the EU during the importation and exportation of goods such as permission regime, protection measures, quantitative restrictions, import and export prohibitions. The role of the customs authorities is to support the MOEW in carrying

¹⁵ Audit evidence № 3

¹⁶ article 98a from the WMA

¹⁷ Audit evidence № 4

out the control relevant to the prohibitions and restrictions, regulated in the Community and the national legislation.

The Customs Intelligence and Investigation and IPR protection Department carries out the intelligence and investigation activities, registers the cases of fraud and irregularities in relation to the application of the EU non-tariff measures, including the implementation of the Regulation and the national legislation on the transboundary waste shipment.

The Administrative Penalty and Enforcement Proceedings Department carries out methodological guidance, coordinates, initiates and implements control, examination, analysis and systematization of the correct lawful application of the administrative penalty provisions of the customs, monetary, excise law and other, and of the Waste management act.

1.2.3. Ministry of Interior (MoI)

In the system of the MoI the directorates that perform control functions in relation to the shipment at a Community border and within the Community are respectively the Chief Directorate Border Police and the Chief Directorate Security Police.¹⁸ The authorities of Chief Directorate Border Police and of Chief Directorate Security Police exercise control over cross-border shipments according to the WMA, the Ministry of Interior Act and the statutory instruments of secondary legislation on the application thereof and may take the relevant steps to determine administrative violations and to apply coercive administrative measures.¹⁹ The responsibilities concerning the stopping of vehicles and checking of documents are determined in the Road Traffic Act.

1.2.4. Ministry of Transport, Information Technology and Communications

The authorities of the Road Transport Administration Executive Agency (EA RTA), Railway Administration Executive Agency (EA RA) and Maritime Administration Executive Agency (EA MA) exercise control over cross-border shipments of waste in accordance with the WMA, the relevant international legal acts, ratified with an act by the Republic of Bulgaria, the Carriage by Road Act, the Road Traffic Act, the Railway Transport Act, the Act on the maritime spaces, inland waterways and ports of the Republic of Bulgaria and the statutory instruments of secondary legislation on the application thereof and may take the relevant steps to determine administrative violations and to apply coercive administrative measures.

Within the EA RTA the district departments Inspection Activities-State Automobile Inspectorate (IA-SAI) with the Inspection Activities-State Automobile Inspectorate Chief Directorate are responsible for the implementation of the Regulation and the WMA. IA-SAI Departments control the observance of the requirements of the normative acts during the shipment of goods with motor vehicles with Bulgarian and foreign registration in the country, as well as all documents relevant to this shipment. Within the Agency the experts working in the departments perform the operations related to the administrative penalty measures. The experts that have powers to apply the coercive administrative measures stated in article 102a, paragraph 1, points 1 and 2 of the WMA with a reasoned order are designated in order of the Executive Director of the Agency.

¹⁸ Audit Evidence № 5

¹⁹ article 98b from the WMA and article 118a from the WMA

The Railway Regulations Directorate within the Railway Administration Executive Agency is the unit responsible for implementation of the Regulation and of the national legislation. The Agency performs its functions of a regulatory body in the rail transport through the Railway Regulations Directorate.

The respective regional Maritime Administration Directorates within the Maritime Administration Executive Agency are the units responsible for the implementation of the Regulation and of the national legislation. Through the Directorates – Maritime Administration – Varna, Maritime Administration – Burgas, Maritime Administration – Ruse, Maritime Administration – Lom the Agency performs its territorial jurisdiction in the field of the ports, the safety of shipping and the environmental protection from pollution. In the frame of their territorial jurisdiction the directorates perform checks on the ships and ship owners and issue the respective documents, exercise control on all persons, performing operations in the field of shipping.²⁰

Within the MOEW and RIEW are established structural units with clearly defined functions in relation to the issuing of shipment permits in accordance with the provisions of the Regulation and in relation to the exercising of control on the transboundary shipment of waste through the territory of the country. Conditions are created to delimit the subordination levels and the reporting lines, and to exercise control.

The responsible units within the other authorities that execute checks on the shipment of waste at the Community borders and/or during the shipment within the Community are designated within the powers vested therein.

1.3. Management of the Human Resources, Financial Security, Provision of Information and Material and Technical Foundation

1.3.1. During the audited period the employees at the MOEW responsible for the implementation of the provisions of the Regulation are director of directorate, head of department and one expert.

To determine the compliance between the educational and qualification degree, professional experience and other qualifications of the appointed employees the staff table of the Waste Management and Soil Protection Directorate and the dossiers of the director of the directorate, the head of the Management of Production and Hazardous Wastes Department, junior and senior expert at the directorate, including the dossiers of the left employees who were performing duties related to the transboundary shipment of waste, were analysed.

During the audited period the position of director of the Waste Management and Soil Protection Directorate was occupied by two officials. The official occupying the position of director in the period March – September 2009 was acting²¹ as director of directorate. Following a competitive procedure the official is reappointed to the position of a director as of 15.10.2009.²²

During the audited period the position of head of Management of Production and Hazardous Waste Department at the WMSP Directorate is occupied by two officials. The official occupying the position head of department is appointed at the Directorate

²⁰ Audit evidence № 6

²¹ On the grounds of article 84 from the State servant Act

²² Audit evidence №7

as junior expert, promoted to senior and chief expert. Following a competitive procedure the official is reappointed as a head of department as of 12.11.2009.²³

The expert responsible for carrying out the state policy in the field of exercising control over the induction, taking out and transit of wastes to, from and through the territory of the Republic of Bulgaria is appointed on grounds of article 15, paragraph 1 of the State Servants Act at a fixed term position of junior expert without a competitive procedure in 2007. In view of coping with the assigned tasks the expert is reappointed at permanent position. The expert is reappointed following a competitive procedure at senior expert position responsible for management of production and hazardous wastes as of 05.01.2011.

In 2011 in connection with a temporarily vacant position at the MPH Department (leave related to pregnancy and childbirth) and in view of the considerable workload of the Department the responsible deputy minister proposes to appoint an employee as a substitute at junior expert position. In 2011 the expert is reappointed at a vacant position as a junior expert.

1.3.2. Job descriptions are elaborated for the positions director of directorate, head of MPH Department and junior expert. All job descriptions are updated in 2009, before the adoption of the new Rules of Procedure.

During the audited period full compliance is ensured between the requirements in the staffing schedule and the job descriptions for the relevant positions and the status of the appointed persons. Clear division of functions and responsibilities is ensured, the place and the objective of the positions, field of action and direct duties are clearly defined. The minimum requirements concerning the knowledge, experience, skills and competencies are indicated. There is no duplication of functions and duties. The employees are responsive to the requirements for educational degree, professional sphere and experience, as well as for additional qualification and specific skills. The job description of the head of the department does not specifically state that the head is responsible for carrying out of the state policy in the field of the control of import, export and transit of waste to, from and through the territory of the Republic of Bulgaria.²⁴ The dossier of the senior expert does not contain updated job description following his reappointment.²⁵

1.3.3. The individual performance of the employees during the regular certification was evaluated with mark “2” – performance above the requirements, defined in the job description and the working plan.

During the audited period the activities connected with the transboundary shipment of waste are assigned to one expert at the MOEW. The tasks performed by the expert are endorsed by the head of department and the director of directorate. The omission to update the functional characteristic and the job descriptions, the lack of interrelation (in relation to some of the activities) between the job descriptions, functional characteristic and the Rules of Procedure is a precondition for ineffective planning, execution, control and reporting of the activities related to the implementation of the Regulation.

²³ Audit evidence №8

²⁴ Audit evidence №9

²⁵ Audit evidence №10

1.3.4. In view of strengthening the administrative capacity in the audited field the Directorate was beneficiary under two Twinning projects financed under the Transition Facility.

The Twinning project BG 07/IB/EN/02 “Strengthening of the administrative capacity with the aim to ensure the efficient enforcement of the EU waste management acquis communautaire” between the MOEW and the Umweltbundesamt of Austria was executed in the period January 2009 – October 2010. In the frame of the project a draft of Act for alteration and amendments of the WMA as regards the shipment of waste is elaborated aiming at bringing the institutional and procedural requirements in line the Regulation. Elaborated are a model for calculation of the financial guarantee for transboundary shipment of waste and a model of electronic database for the existing notifications in order to be accessible by the control authorities. The model represents an MS Excel table and is not accessible by the other control authorities. Amended and expanded is the Waste classification for transboundary shipment Manual in accordance with the present normative basis and developments within the EU and the specific needs in Bulgaria. Waste Control Manual is developed with a specific chapter related to the transboundary movement of waste and a specific chapter related to the on the spot checks. Both Manuals are not endorsed by the minister of environment and water.

Trainings on issues related to the enforcement of the Regulation, the procedure for prior written notification and consent according to the Regulation and the execution of checks with the participation of experts from the directorate, the Customs Agency, Chief Directorate Border Police, employees from EA RTA, EA RA, EA MA, inspectors from the RIEW were carried out. The maximum number of employees that took part was up to 3 per RIEW.

Joint checks with the participation of representatives from MOEW, RIEW, Customs Agency and Chief Directorate Border Police were carried out. The other competent authorities did not take part in such checks.²⁶

Both Manuals are submitted to the RIEW except RIEW-Stara Zagora. Copies of the documents are submitted to the customs offices in the country, the electronic version of the documents is uploaded on the Intranet site of the Customs Agency. The Chief Directorate Border Police did not submit the manuals to the Regional Directorates Border Police – Dragoman, Kyustendil, Smolyan, Elhovo, Burgas and Ruse. Copies of the manuals are submitted to the EA RTA and are given to the district departments „IASAI”.²⁷

The Twinning project BG07/IB/EN/05 “Strengthening of the administrative capacity for practical implementation of the legislation in the field of electrical and electronic equipment, batteries and accumulators at national and regional level in the Republic of Bulgaria” between the MOEW and the Umweltbundesamt of Austria, the Ministry of Environment, Energy and Climate Change of Greece and the German Federal Ministry of Environment, nature preservation and nuclear safety was implemented in the period January 2009 – October 2010.

The results achieved include review of the existing system in Bulgaria for management of waste electrical and electronic equipment and waste batteries and accumulators aiming at elaboration of proposals for further harmonization of the legal acts and their application; elaboration and application of a methodology and practical tools for the

²⁶ Audit evidence №11

²⁷ Audit evidences № 12 и № 5

calculation of all expenses, related to the management of waste electrical and electronic equipment and waste batteries and accumulators; elaboration and introducing into practice of guidelines for management of waste streams due to treatment of waste electrical and electronic equipment and waste batteries and accumulators, together with a package of measures for improving the existing systems; elaboration of technical standards for treatment of waste electrical and electronic equipment and waste batteries and accumulators in compliance with the EU legislation and the best practices; elaboration and introducing into practice of a methodology for usage of effective economical instruments; elaboration and proposal for information system and register of the producers/importers of electrical and electronic equipment and batteries/accumulators; organizing and carrying out of seminars for the central and regional authorities and other participating in the process stakeholders (producers/importers, undertakings, municipal authorities, non-governmental institutions).²⁸

The planning and implementation of the specialized trainings and working meetings with the participation of employees from the 16 RIEW is carried out and organized by the MOEW. During the audited period no educational needs assessment is performed and no training plan elaborated. The employees at the RIEWs are trained only under the Twinning project in 2009 and 2010. Representatives from RIEW –Varna, Vratza, Montana, Haskovo, Stara Zagora, Pleven participated in training „Waste shipment”, organized by TAIEX in 2007. In 2007 training on “Presenting the European practice in applying the legislation in sectors “chemicals”, “prevention of big industrial pollution”, “general prevention of industrial prevention” and “transboundary shipment of waste” was implemented with the participation of employees from RIEW-Ruse, Smolian, Pleven.²⁹

Employees from the Central Customs Directorate, the Regional Customs Directorates and the Customs Offices participated in seminars for sharing the experience in the field of transboundary shipment of waste with other European countries, on transboundary shipment and checks in the facilities for waste generation, collection and treatment. A Program for 7-month basic training course of customs inspectors is elaborated at the Customs Agency and under the program a training on transboundary shipment of waste according to the provisions of the Regulation and the WMA is carried out. In the period 2006 – 2011 the customs inspectors participated in the basic course.³⁰

Except the Twinning projects no other specialized trainings with the participation of representatives of the competent and control authorities were carried out. The administrative capacity related to the knowledge of the provisions and problems in applying the Regulation and the national regulations is concentrated within the structures of the MOEW and is limited. The lack of sufficient knowledge and expertise does not ensure the effective implementation of the provisions of the Regulation and the implementation of the obligation to ensure control.

²⁸ Audit evidence № 11

²⁹ Audit evidence № 12

³⁰ Audit evidence № 13

1.3.5. To finance the activities related to the application of the Regulation financial resources from the following sources are used:

- The budgets of the MOEW, the Customs Agency, the MTITC and the MoI;
- The Transition Facility.

Funds from the budgets of the administrations are used to finance the remuneration of the personnel engaged with the execution of the activities related to the application of the Regulation.

To implement both Twinning projects financed under the Transition Facility BGN 3 064 785 are spent, including BGN 156 466 co-financing.³¹

At RIEW there is sound material and technical foundation in terms of computers and transportation means to implement the duties related to the application of the Regulation and the national legislation concerning the transboundary shipment of waste. The control authorities have no specialized means to check the containers transporting waste and equipment to perform load handling operations available during the execution of checks at the border crossing points, especially at the border crossing point Dunav most.³²

2. Analysis and Assessment of the Implementation of the Activities related to the Enforcement of the Regulation

2.1. Shipment of Wastes for which a Notification is required

Shipment of all wastes destined for disposal and of wastes destined for recovery, listed in the relevant Annexes of the Regulation are subject to a procedure of prior written notification and consent. The minister of environment and water or an official empowered thereby upon approval of the conditions of the shipment signifies a written consent to the effecting of the said shipment by signing, stamping and dating the notification. The minister or an official empowered thereby issues reasoned order upon authorization of a shipment with certain conditions, upon raising an objection³³ or upon withdrawal of a consent.³⁴ With issuing of order³⁵ the minister of environment and water empowers the responsible deputy minister of environment and water as a competent authority for the Republic of Bulgaria for the application of the Regulation in the meaning of article 53 of the Regulation. There was no official correspondence to the European Commission concerning the nomination of a competent authority available.³⁶ Article 75 of the WMA introduces the prohibition of shipments of waste to the Republic of Bulgaria destined for disposal.

The wastes destined for recovery for which no prior written consent is required are accompanied by a document called Information accompanying shipments of waste as referred to in Article 3 (2) and (4). In accordance with article 63, paragraph 4 of the Regulation all shipments to Bulgaria of waste destined for recovery that are listed in Annex III “Green” listed waste are subject to the procedure of prior written notification and consent.

³¹ Audit evidence № 11

³² Audit evidence № 12

³³ article 74, paragraphs. 1 and 2 from the WMA, respectively article 78 version before the amendment of the WMA from June 2011

³⁴ article 76, paragraph 4 from the WMA, respectively article 77, paragraph 1 version before the amendment of the WMA from June 2011

³⁵ Audit evidence № 14

³⁶ article 56,(1),(a) from Regulation (EC) № 1013/2006

Shipments of waste to Bulgaria destined for recovery are prohibited if the operator of the facility where the recovery is to be carried out has recovered a smaller quantity of waste of Bulgarian origin.³⁷ For each shipment of waste to Bulgaria the competent authority transmits by fax or by another technical means an enquiry about the capacity of the waste disposal installation to the Director of the Regional Inspectorate of Environment and Water covering the territory wherein the waste treatment installation is located. Within three days after receipt of the enquiry the Director of the Regional Inspectorate of Environment and Water covering the territory wherein the waste treatment location is located conducts a check and transmits the opinion thereof by fax or by another technical means.³⁸

The procedure of prior written notification and consent is initiated by the exporter – notifier in the country of dispatch of the waste.

The exporter – notifier submits the necessary documents to the competent authority of dispatch. The documents are submitted in as many copies as many the concerned from the shipment countries are. For issuing of notification for export of waste from Bulgaria to other country the necessary documents are submitted to the Ministry of Environment and Water. Fee is paid for the issuing of a notification.³⁹

Consent in writing is given within 30 days following the date of submission of the documents, following the receipt of the notice from the competent authority of the other country and/or following the removal of the irregularities and/or the submission of additionally requested information.

Upon shipment of waste between the Republic of Bulgaria and countries that are not members of the European Union the competent authority dispatches a copy of the notification and a copy of the order issued according to the procedure established by Article 74 (2) or (3) to the Director of the Customs Agency and to the Director of the relevant RIEW.⁴⁰

Upon leaving the customs territory of the Republic of Bulgaria the customs authorities send to the MOEW a copy of the movement documents.⁴¹

The documents concerning the issuing of notifications for shipment from, to and through the Republic of Bulgaria are kept within the MOEW for a term of three years in compliance with article 20, paragraph 1 of the Regulation.

For the audited period 465 notifications are issued of whom 18 in 2007, 104 in 2008, 178 in 2009 and 165 in 2010. The documentary examination to check the observance of the procedure for issuing of notifications of 50 per cent of the notifications revealed that:⁴²

³⁷ Article 75, paragraph 2 from the WMA, respectively article 73, point 5 version before the amendment of the WMA from June 2011

³⁸ Article 76, paragraphs 2 and 3 from the WMA

³⁹ Tariff for the fees collected within the system of the Ministry of Environment and Water, adopted CoM Decree № 253 from 20.09.2004 (promulgated SG issue .86 from 1.10.2004), repealed with the Tariff for the fees collected within the system of the Ministry of Environment and Water adopted with CoM decree No136 from 13.05.2011 (promulgated SG issue 39 from 20.05.2011)

⁴⁰ Article 77, paragraph 2 or paragraph 3 from the WMA

⁴¹ article 21, paragraph 4, and article 23, paragraph 3 from Ordinance for the arrangement and manner for import, export and transit of waste and the cases for which a bank guarantee or insurance is required, (repealed issue 53 from 10.06.2008) and article 35, § 3, letter „d”, article 38, § 3, letter „c” from the Regulation

⁴² Audit evidence № 15

a) the documentation relevant to the issuing of notifications is not ordered chronologically and there is no description of the documents that are part of the file.

b) the files do not contain documents attesting:

- the enquiry about information from RIEW regarding the capacity of the waste recovery installations and the permits of the operators as per article 76, paragraph 1 of the WMA;

- the executed control upon the observance of the requirement for prohibition of shipment of waste to the Republic of Bulgaria destined for recovery if the operator of the facility where the recovery is to be carried out has recovered a smaller quantity of waste of Bulgarian origin compared to the quality of waste shipped to the Republic of Bulgaria for recovery at the same facility

c) most of the files do not contain all the required documents for issuing of a notification:

- documents attesting the legal status of the notifier or the carrier - 39 cases;

- documents attesting the payment of the fee for issuing the notifications- 37 cases.

d) the three days period given in article 7, § 1 of the Regulation for transmission of the notification package with documents to the competent authority of destination and the competent authorities of transit is not kept.

e) the endorsement of the notification form and documents for issuing of permit for shipment of wastes is done with report without a number and date signed by the deputy minister of the environment and water. The report is written by a senior expert at the MWSP Directorate and is endorsed by the director of the MWSP Directorate.

f) in 2009 and in 2010 three notifications for execution of import of wastes from Kosovo were issued to one importer in breach of the requirements of article 43 of the Regulation.

g) during the audited period no orders of the minister of environment and water for denial to carry out shipment to the Republic of Bulgaria and to withdraw consent are issued.

h) the MOEW receives by e-mail and fax prior information by the notifiers – importers and exporters of the largest quantities of waste concerning the actual start of the shipment at least three days before the shipment starts in accordance with article 16 (b) of the Regulation, written confirmation by the facility that the waste is received in compliance with Article 16 (d) of the Regulation and documents by the facilities attesting the implemented recovery operations in compliance with article 5, § 3, § 4 and § 5, article 15, (e) and article 16 (e) of the Regulation. The documentation is kept separately from the one related to the issuing of the notification. This information is reflected in electronic files of the importers, exporters and the facilities.

i) upon shipment of waste between the Republic of Bulgaria and countries that are not members of the European Union the competent authority does not transmit copies of the issued notifications to the Director of the Customs Agency and the Director of the relevant Regional Inspection of Environment and Water⁴³.

⁴³ article 77, paragraph 2 from the WMA

j) no copies of the shipment documents are received at the MOEW from the Customs Agency (the exit customs points) upon exit and transit of waste from the Republic of Bulgaria.⁴⁴

Assigning the activity of issuing of notifications to only one expert and the large number of issued notifications impedes the observance of the terms defined in the Regulation and leads to making mistakes (import from Kosovo).

Arrangements to execute the procedure for issuing of notifications are created and executed in accordance with the normative requirements.

Omissions are done with respect to the observance of the Instructions for the documents turnover concerning the creation and keeping of the files.

The lack of control of the operator with respect to the recovered waste quantity from Bulgarian origin is a precondition for taking inadequate management decisions with relation to the import of waste to the Republic of Bulgaria.

2.2. Control of the Waste Shipment

2.2.1. Checks and Control Authorities

The control of the transboundary shipment of waste as part of the overall control on the management of wastes is regulated by the provisions of Chapter VI of the WMA. The control authorities⁴⁵ conduct examinations of documents and/or on the site inspections of the persons which activity generates waste and/or pursue waste-related operations. During the checks the control authorities draw up memorandums of ascertainment and/or written statements on ascertainment of administrative violations each according to the competence thereof. The control upon the import, export and transit of waste is assigned to the customs authorities on the grounds of article 98 of the WMA. The customs authorities take the relevant steps in accordance with the customs legislation and the Basel convention for control of the transboundary shipment of waste. The Director of RIEW covering the territory wherein a border checkpoint is situated renders assistance to the customs authorities in case of doubt as to the conformity of the waste with the accompanying documents or in case of lack of documentation in order to take the correct decision. The border cross points through which the transboundary shipment of waste is permitted are determined⁴⁶ and were 12 in number.

With the amendments in the WMA⁴⁷ a new article 94a is introduced. The provisions of paragraph 1 of article 94a increase the number of the bodies that control the transboundary shipment in accordance with the WMA and the Regulation, namely:

⁴⁴ article 21, paragraph 4, and article 23, paragraph 3 from the Ordinance for the arrangement and manner for import, export and transit of waste and the cases for which a bank guarantee or insurance is required, (repealed issue 53 from 10.06.2008) and article 35, § 3, letter „d”, article 38, § 3, letter „c” from the Regulation

⁴⁵ The mayor of the municipality, the director of the RIEW, the minister of environment and water, the director of Regional Inspection on Protection and Control of Public Health (article 97 from the WMA in version amended SG issue 41 from 2010)

⁴⁶ Anex № 6 concerning article 12 of the Ordinance for the arrangement and manner for import, export and transit of waste and the cases for which a bank guarantee or insurance is required, adopted with the Decree of the CoM № 298 from 2004, revoked with §1 of CoM Decree № 76 from 2011- promulgated SG, issue 29 from 8.04.2011)

⁴⁷Waste Management Act (promulgated SG, issue 86 from 2003,...amended and supplemented issue 41 from 2010, effective from 5 June 2010)

- The minister of environment and water,
- The minister of interior,
- The minister of transport, information technology and communications,
- The director of the Customs Agency or empowered thereby officials.

The amendments also broaden the scope of the executed control over the transboundary shipment of waste by referring directly to the Regulation. In this connection and on the grounds of article 94a, paragraph 2 of the WMA the control referred to in Article 50 § 3, „a”, „b” and „d” of the Regulation – inspections of the transboundary shipment of waste is executed as follows:

- By the Director of the Regional Inspectorate of Environment and Water covering the territory wherein the point of origin of the waste or the destination of the shipment is located, or by persons empowered by the director;

- by the customs authorities and the authorities of Chief Directorate Border Police – at the borders of the Community;

- by the officials of the Road Transport Administration Executive Agency, the Railway Administration Executive Agency, the Maritime Administration Executive Agency and the authorities of the Chief Directorate Border Police and Chief Directorate Security Police – during the shipment within the Community.

The Director of the RIEW renders immediate assistance upon request by the customs authorities and the authorities of Chief Directorate Border Police in case of doubt as to the conformity of the waste with the accompanying documents or regarding the type of the waste. On the other hand upon execution of the control activities the director of the RIEW may receive upon request immediate assistance by the authorities of the Ministry of the Interior. The way to render “immediate assistance” between the control authorities is not regulated as far as their main objectives, functions and powers are within different spheres of activity.

With the new text of article 98d of the WMA the mentioned authorities are entrusted to conduct checks and to have the right to access to the special register of the notifications kept by the minister of environment and water or empowered thereby official. The provisions of article 97 of the WMA that regulate the conduct of examinations of documents and/or on site inspections of the persons whose activity involves the formation of waste and/or who pursue waste-related operations at intervals of not more than one year continue to be active. The control over the transboundary shipment of waste is entrusted to the directors of the RIEW according to the amendments in the text of article 98 of the WMA in June 2010. According to the competences of the competent authorities and officials, they are empowered besides drawing up memorandums of ascertainment and/or written statements on ascertainment of administrative violations to apply coercive administrative measures as well.⁴⁸

The minister of the environment and water and the director of the Customs Agency with a joint order designate the customs offices through which the shipments of waste will be carried out, 22 in total.⁴⁹

2.2.2. Application of Coercive Administrative Measures (CAM)

The provisions of the WMA that govern CAM before and after the amendments in June 2010 belong to the preventive and suspending coercive measures. These are the stated

⁴⁸ article 98a, article 98b and article 98c from the WMA – version after the SG, issue 41 from 2010

⁴⁹ Order № 3AM-208, dated 5.04.2011 и № WD-273, dated 26.04.2011 (promulgated in SG, issue 42 from 2011)

in article 101 of the WMA coercive measures stopping operations related to treatment and transport of waste, the operation of waste treatment facilities and the issuing of prescriptions for elimination of the waste at the expense of the offender. CAM do not cover the violations of the requirements for import, export and transit of waste. The competent authorities are the minister of environment and water, the director of the RIEW or empowered thereby officials. The coercive measures are applied with a reasoned order defining the type of the measure and the way of its application. The order is served according to the procedure established by the Code of Civil Procedure and appealable according to the procedure established by the Administrative Procedure Code.

Together with the operation of the prescribed administrative measures the amendments of the act of June 2010 introduce the new article 102a which provisions broaden the scope and number of the competent authorities from 2 to 7.⁵⁰ The administration of four new CAMs is entrusted to the competent authorities divided as follows:

- the first and second CAM – **provisional immobilization of the shipment and removal of the road vehicle together with the waste to a suitable location at the expense of the carrier**, are implemented by means of immobilization of the shipment and in the cases of carriage by road, also by means of withdrawal of the document certifying the registration of the vehicles. The measure applies until presentation of opinion by the Minister of Environment and Water or a person empowered thereby regarding the waste and the shipment. It is defined what directions the opinion should contain – the way of payment of the financial guarantee, the fine or the pecuniary penalty or that the administrative penalty proceeding is terminated, including what further measures regarding the shipment of waste must be taken. The mentioned CAM are applied by a reasoned order of the following four competent authorities - the minister of environment and water, the minister of interior, the minister of transport, information technology and communications and the director of the Customs Agency or empowered thereby officials. The amount of the financial guarantee is set by the order and on the grounds of article 102a, paragraph 6 of the WMA and it is limited by the amount of the fine/pecuniary penalty provided for the relevant administrative violation. A copy of the relevant order together with a copy of all documents available shall be dispatched immediately to the Minister of Environment and Water and the Director of the relevant Regional Inspectorate of Environment and Water;

- the third and fourth CAM - **return of the waste to the country of dispatch and environmentally sound treatment of the waste** are also applied by a reasoned order. The competent authority for the application of the CAM is only the minister of environment and water, without provisions for legal empowerment of other officials. A copy of the order shall be dispatched immediately to the relevant authority or person covered under Article 94a (2), who conducted the check⁵¹.

The coercive measures aim at prevention of administrative violations of the WMA and of the Regulation and at overcoming of the harmful effects of such violations. In addition to article 102a of the WMA powers to undertake the relevant actions on the application of CAM are vested to other control authorities in accordance with their

⁵⁰ The director of the RIEW, the customs authorities, the authorities of the CDBP and the CDSP, officials from EA RTA, EA MA and EA MA;

⁵¹ The director of the RIEW, the customs authorities, the authorities of the CDBP and the CDSP, officials from EA RTA, EA MA and EA RA

competencies as well. These are the customs authorities⁵², the authorities of the Chief Directorate Border Police and Chief Directorate Security Police⁵³, and the officials of the Road Transport Administration Executive Agency, the Railway Administration Executive Agency, the Maritime Administration Executive Agency⁵⁴. The provisions do not determine to which authority which CAM are entrusted which leads to the conclusion that each of these control authorities may undertake actions related to all four coercive administrative measures.

Upon illegal shipment of waste referred to in point 35 of article 2 of the Regulation the control authorities⁵⁵ or empowered thereby officials are obliged on the grounds of article 81 of the WMA to notify immediately in writing the Minister of Environment and Water and the Director of the relevant Regional Inspectorate of Environment and Water covering the territory wherein the location of the illegal shipment has been detected.

In principle the provisions of article 82 (1) of the WMA are similar to those of the described four CAMs of the WMA but chronologically the provision is in the section related to the transboundary shipment of waste. The field of its application is specific and restricted to: take back obligation upon export when the shipment can not be completed as intended (in the cases of point 2 of article 22 of the Regulation) and upon illegal shipment (in the cases of point 2 of article 24 of the Regulation). In both cases the notifier is obliged by an order of the Minister of Environment and Water or an official empowered thereby to treat the waste in an environmentally sound way. In such case, the said order accompanies the shipment of waste to the final destination thereof.

On the grounds of article 82 (2) of the WMA the responsibility of the consignee of illegal shipment of waste is analogical (in the cases in point 2 of article 24 of the Regulation), who is obliged to treat the waste in an environmentally sound way and the order accompanies the shipment of waste to the final destination thereof.

In accordance with article 82 (3) and (4) of the WMA both orders of the Minister of Environment and Water or of empowered thereby official are dispatched according to the procedure established by the Code of Civil Procedure and are appealable according to the procedure established by the Administrative Procedure Code.

The obligations to take back the waste and to treat it in an environmentally sound way referred to in article 82 (1) and (2) coincide with the third and fourth CAM determined in the provisions of article 102a (1) points 3 and 4 of the WMA including the manner of dispatch and appeal of the orders, by which the notifier or consignee of the illegal shipment are obliged. They differentiate from the CAMs in:

- the provisions of article 82 of the WMA are outside the section that governs the CAM of the act;
- the orders are issued by the Minister of Environment and Water or empowered thereby official⁵⁶, whereas the orders for implementation of the analogical in content third and fourth CAM according to article 102a (5) of the WMA are issued only by the Minister of Environment and Water due to lack of legal empowerment.

⁵² article 98a from the WMA;

⁵³ article 98b from the WMA;

⁵⁴ article 98c from the WMA;

⁵⁵ The director of the RIEW, the customs authorities, the authorities of the CDBP and the CDSP, officials from EA RTA, EA MA and EA RA;

⁵⁶ Audit evidence № 2

The legal analysis revealed that the procedures for implementation of coercive administrative measures for violations of the WMA and of the Regulation after June 2010 are complicated and contradictory as:

- the number of competent authorities and persons applying CAM increases thus impeding the speed of the applied state duress due to complicating of the coordination ;

- most of the competent authorities are external to the MOEW's system thus impeding the interaction, communication, application and control

- The external for the MEW's system bodies have main functions, objectives and priorities which are different and aside those assigned to them by the WMA;

-the application of the CAMs is regulated using different approaches: upon one of the approaches the competent authorities are practically split into two groups each of them with authority to apply two of the four CAMs. Upon the approach applied to another larger group of control bodies specifying as concerns the application of concrete CAMs is not done meaning that they apply all of the four CAMs;

- the objective of the compulsory regime for immediate transmission of the copies of the orders for applying CAM by the issuer to other bodies and persons as well as the requirement of article 81 of the WMA concerning the immediate notification in case of illegal shipment of waste remains unknown;

- in the hypothesis of illegal shipment of waste the competent authority is vested with ambiguous powers – issuing of order as per article 82 of WMA or issuing of reasoned order for application of CAM as per article 10a of the WMA as far as illegal shipment of waste represents infringement of the WMA and of the Regulation.

In 2010 40 illegal shipments in total are detected of which 35 upon import and 5 upon transit. In the same year the minister of environment and water issues three orders imposing two CAMs for taking back the waste in the country of dispatch and one coercive measure to ecologically treat the waste⁵⁷. In 2007,2008 and 2009 no coercive administrative measures were applied.⁵⁸

The analysis of the provided information for 2010 revealed that upon detected illegal shipment of waste⁵⁹, the competent control authorities apply different practices that are as follows:

- in 5 identified by RIEW-Blagoevgrad cases of illegal shipment through memorandums of ascertainment are given instructions⁶⁰ not to allow import of waste on the territory of the Republic of Bulgaria due to the lack of the required documentation – a notification as per article 74 of the WMA;

- in 2 cases of illegal shipment identified by RIEW-Burgas no information is available concerning other activities undertaken besides those related to drawing up of a written statement of ascertainment of administrative violations and issuing of penalty decree by the director;

- upon identified illegal shipment of waste by RIEW-Ruse, the director issues order,⁶¹ giving the consignee of the waste prescription to treat the waste or give it to

⁵⁷ Audit evidence № 16 и № 17

⁵⁸ Audit evidence № 18

⁵⁹ Audit evidence № 17

⁶⁰ On the grounds of article 148, para 3 and article 155 of the Environmental Protection Act;

⁶¹ Audit evidence № 19

treatment to a firm holding a permit to operate with waste without setting a deadline for implementation. Besides the compulsory prescription on the grounds of article 93 (4) of the WMA the other stated grounds do not relate to the given prescription. There is no deadline to implement the prescription and no control on the implementation is entrusted;

- upon identified 2 illegal shipments of waste (at cross border point Kapitan Petko Voivoda, Border Police Department – Novo selo), the director of RIEW – Haskovo issues two orders⁶², giving instructions to the offenders being holders of the waste to give the waste against payment to a firm holding a permit for carrying out waste-related operations. The orders oblige the offenders to pay a financial guarantee to account of the MOEW as well in order to have the vehicle released. As an element of the content of the opinion the financial guarantee is presented upon application of the first and second CAM - provisional immobilization of the shipment and removal of the road vehicle together with the waste to a suitable location at the expense of the carrier. There is no data that the competent authority⁶³ applied CAM as regards the waste and the shipment which can be released upon payment of a financial guarantee. No deadline is indicated for implementation of the directions and why the waste is given to a firm holding a permit for carrying out waste-related operations;

- upon identified illegal shipments at three customs points the Minister of Environment and Water issues three orders⁶⁴ ordering the offenders on the grounds of article 82 (2) of the WMA in relation to article 24, point 3 and article 2, point 35 (a) of the Regulation to carry out environmentally sound treatment of the waste within 30 days upon the date of delivering the order the waste should be transported and given away to a firm holding the necessary permit to perform waste-related operations. The control over the implementation of the orders is entrusted to the director of RIEW covering the territory wherein the offence is carried out without making provisions that the treatment in an ecologically sound way may be performed by an operator having a registered office within the territorial scope and powers of another RIEW;

- upon identified illegal transit through the territory of Bulgaria of waste from Greece to Rumania at the border cross point Ilinden (RIEW - Blagoevgrad), the deputy minister of environment and water informs in writing the competent authorities of Greece and Rumania about the identified illegal shipment of waste. With a further correspondence the director of Waste management directorate at the MIEW informs the Regional Directorate Border Police – Smolian that “the lorries and the load they carry” are prevented from entering the territory of the country and will be returned back to the country of dispatch - Greece⁶⁵. No other activities are undertaken by the competent authority such as applying of CAM as per article 102a, (1), point. 3 of the WMA – return of the waste to the country of dispatch.

Concerning the audited period the Customs Agency provided information about one identified case of illegal shipment with a suspicion for offence representing a crime⁶⁶ at the border cross point Kapitan Petko Voivoda. The waste is retained. The District

⁶² Audit evidence № 20

⁶³ The minister of environment and water, the minister of interior, the minister of transport, information technologies and communications, the director of the Customs Agency or empowered thereby officials (article 94a, para 1 from the WMA)

⁶⁴ Audit evidence № 21

⁶⁵ Audit evidence № 22 and № 17

⁶⁶ Audit evidence №13

Public Prosecutor's Office – Svilengrad is informed about the presence of data indicating crime as per article 353b of the Crime Code. The goods are retained, a pre-litigation procedure is initiated ceased by decree dated 14.03.2011 of the District Public Prosecutor's Office – Svilengrad. The correspondence about the pre-litigation procedure and the decree for the ceasing are submitted to the Director of RIEW in order to enforce the administrative penalty liability of the three persons who did the offence. By the decree the Prosecutor' office also expresses opinion about the confiscated material evidences (used accumulators) to be given to the RIEW – Haskovo. With another decree dated 11.05.2011 the District Public Prosecutor's Office – Svilengrad enacts the confiscated material evidences to be given to the RIEW-Haskovo to undertake the relevant procedure under the WMA and the Regulation. The Director of the RIEW informs in writing⁶⁷ the minister of environment and water about the abandoned pre-litigation procedure and the decree of the District Public Prosecutor's Office – Svilengrad, dated 11.05.2011 and sends the correspondence for reasons of competence in order the necessary measures as per article 102a, para 5 from the WMA to be undertaken.

No information was provided about activities undertaken by the minister of environment and water such as issuing of order for imposition of CAM – return of the waste to the country of dispatch or environmentally sound treatment of the waste.

In 2010 CAM were not applied by the Customs Agency, Chief Directorates Border Police and Security Police, the Executive Agencies Road Transport Administration, Railway Administration and Maritime Administration.^{68, 69, 70}

One of the reasons for the limited application of CAM by the minister of environment and water and not applying them by the other control authorities is due to the complicated and ambiguous regulation of the WMA, as well as the assignment of these powers to many and external to the system of the MOEW control bodies. Another reason is the alternative choice of the provision of article 82 of the WMA which appears more applicable in view of the possibility the minister of environment and water to empower an official. The final effect is one and the same and in practice coincides with the third and fourth CAM - return of the waste to the country of dispatch and environmentally sound treatment of the waste that are applied only with a reasoned order of the minister of environment and water.

The six manners of undertaken actions by the control authorities upon identified illegal shipment of waste indicate about a problem either in the enforcement of the WMA as concerns this particular part of the act, or in the regulation of the act.

2.2.3. Ascertainment of Administrative Violations and Imposition of Sanctions

The provisions of the WMA related to the administrative violations and sanctions were amended in June 2010 without repealing the existing provisions. The existing procedures concerning the violations⁷¹, including those as per article 106, para 3, point 4 of the act apply to imposition of a pecuniary penalty on a sole trader or legal person that breaches the requirements for import, export and transit of wastes.

⁶⁷ Audit evidence №23

⁶⁸ Audit evidence №13

⁶⁹ Audit evidence №5

⁷⁰ Audit evidence №6

⁷¹ article 118, para1 from the WMA

The amendments from June 2010 concern in general breaching the requirements for transboundary shipment of waste according to the Regulation and the act⁷², if the violation does not constitute a criminal offence. The amount of the pecuniary penalty imposed on a sole trader or legal person was increase. Before and after the amendments these violations and sanctions do not apply to natural persons. The ascertainment of the mentioned violations shall be done by a written statement of the Director of the Regional Inspectorate of Environment and Water or by an official designated thereby, as well by the mayor of the municipality or by an official designated thereby. The penalty decrees under Paragraph (1) shall be issued by the. The authority⁷³, imposing the penalty decrees remains the same – the Minister of Environment and Water or an official empowered thereby or, respectively, by the municipality mayor or an official empowered thereby.

With the amendments of the WMA from June 2010 a new article 108a is created that extends the range of the acts declared/pronounced for administrative violations through referring to particular texts from the Regulation. For carrying out any shipments of waste defined as illegal according to item 35 of Article 2 of the Regulation or breaching any prohibitions covered under Article 75 of the WMA is applicable to a fine applicable to natural persons, or by a pecuniary penalty , applicable to legal persons and sole traders.

Same penalty is foreseen for the declared as a separate type of violation not applying the coercive administrative measures as per article 102 and article 102 a of the WMA. The violations are ascertained by a written statement of the director of the RIEW, the customs authorities, the authorities of Chief directorate Border Police and Chief Directorate Security Police and official from EA RA, EA RTA, EA MA, and penalty decrees are issued by the Minister of Environment and Water or by officials empowered thereby according to article 118a, paragraph 1 of the WMA.

The legal analysis of the provisions that regulate the administrative violations revealed that after the amendments of the WMA made in June 2010 the following administrative coercive procedures remain in force:

- the existing one – in accordance with article 118 of the WMA. The written statements are issued by the director of the RIEW and the mayor of the municipality or empowered thereby official. The minister of the environment and water and the mayor or empowered thereby officials act in their powers authorities imposing penalties and issue the penalty decrees. The penalties are imposed for violations of the transboundary shipment of waste according to the Regulation and the section about the transboundary shipment of waste in the WMA. Outside the range of these administrative violations and sanctions are the natural persons.

- the new one – in accordance with article 118a of the WMA. The written statements are issued by the seven competent authorities – the director of RIEW, the customs authorities, the authorities of Chief directorate Border Police and Chief Directorate Security Police and official from EA RA, EA RTA, EA MA, and penalty decrees are issued by the Minister of Environment and Water. The authority that issues the penalty decrees is the minister of environment and water. The range of the deeds

⁷² Chapter Five „Waste related operations authorization and control”, section V „Transboundary shipment of waste” from the WMA

⁷³ article 118, para 2 from the WMA

declared for administrative violations according to article 108a of the act is broadened through referring to concrete texts in the Regulation such as execution of illegal shipment of wastes, prohibition for mixture of wastes during shipment, take back obligation upon illegal shipment and others.

Declared for a violation under the WMA and the Regulation, the illegal shipment of waste is a subject of application of coercive administrative measures and it constitutes administrative violation as well, for which a legal penalty is envisaged, and it is a subject of an order as per article 82 of the act.

During the audited period no written statements on ascertainment of administrative violations were drawn up and no penalty decrees were issued by the competent authorities through the established administrative arrangements by the provisions of article 118, paragraphs 1 and 2 concerning violations under article 106 of the WMA.⁷⁴

No written statements on ascertainment of administrative violations through the established administrative arrangements by the provisions of the new article 118a concerning violations under article 108a of the WMA were drawn up by officials from EA RTA, EA RA, EA⁷⁵, and from the Chief Directorate Security Police⁷⁶. From 40 illegal shipments of waste through the territory of Republic of Bulgaria identified in 2010 for 9 of them were not applied the envisaged administrative penalty and coercive administrative measures⁷⁷. 31 written statements on ascertainment of administrative violations in total were drawn up and 31 penalty decrees were issued, 9 of them in 2011. The written statements on ascertainment of administrative violations are respectively drawn up by: four RIEW - 9; three customs points – 5 and border police - 17. The penalty decrees are issued by the minister of environment and water (6 decrees) and by directors of RIEW (25 decrees). Most of the penalty decrees are being appealed⁷⁸.

Within the MOEW there are no administrative arrangements established and no internal rules adopted concerning movement of the administrative penalty correspondence, including the correspondence concerning detected violations upon transboundary shipment of waste.⁷⁹ Considering the fact that the drawing up of written statements on ascertainment of administrative violations is assigned to bodies, external to the system of the MOEW, and the authority imposing the penalties is the minister of environment and water or empowered thereby officials, establishing administrative arrangements and the interaction between them concerning the exchange of administrative penalty correspondences is a matter of good practice. Being elaborators of written statements, the customs authorities detect the violations at the borders of the Community, for which they draw up written statements on ascertainment of administrative violations. The elaboration of written statements on ascertainment of administrative violations at the Customs Agency is administered in specially created for this purpose module in the Bulgarian Integrated Customs Information System running since 07.06.2010 at all customs in the country. The module generates a serial number of the written statement and after its elaboration, the administrative penalty correspondence is sent according to the sphere of competence/for reasons of competence to the MOEW for issuing of

⁷⁴ Audit evidence № 18

⁷⁵ Audit evidence № 6

⁷⁶ Audit evidence № 5

⁷⁷ Audit evidence № 17

⁷⁸ Audit evidence № 18

⁷⁹ Audit evidence № 18

penalty decree. Within the module it is recorded that the written statement together with the relative evidences is sent to the competent authority issuing administrative penalties.⁸⁰

According to the established practice upon the transnational shipment of waste the administrative penalties are imposed in accordance with the new provisions of article 118a of the WMA for violations under article 108a, and not in accordance with the existing article 118 of the act concerning violations of article 108 of the same act.⁸¹

As far as there are a few legal proceedings with final ruling (at court of the first instance and court of cassation) it cannot be concluded about the outcome, the effect from the fines and penalty payments and their enforcement.

2.3. Executing Cooperation between the Competent Authorities

Upon the exercising of control over the transboundary shipment of waste arises the need for interaction between the competent authorities.

Upon executing interaction between the competent authorities the Waste Control Manual is used in particular its part related to executing inspections on the transboundary shipments of waste. In cases of shipment of hazardous waste in sea and inland waters Decree No16 of 20 June 2006 for processing/handling and shipment of hazardous waste in sea and inland waters applies regulating the conditions and order for handling and shipment of hazardous waste in sea and inland water roads.

No written agreements or guidelines have been elaborated and signed for interaction between the MOEW and the control authorities.⁸² till the completion of the audit

In 2005 the Customs Agency elaborates draft agreement for cooperation between the MOEW and the Customs Agency. The aim is to arrange the interaction and exchange of information between both institutions by clearly defining the functions and responsibilities aiming at more effective enforcement of the act and prevention of the illegal import and/or export to/from the country.

In 2008 the Customs Agency elaborates draft Guidelines for interaction between the agency and MOEW. The Guidelines envisage mechanism for coordination and collaboration between both institutions aiming at prevention of the illegal shipment of waste. A procedure for interaction is elaborated in connection with the transboundary shipment of waste in accordance with the Regulation,⁸³ but it is not endorsed.

Upon identified illegal shipment and upon doubt about incompliance of the load/waste with the accompanying documents the custom authorities contact for assistance the relevant RIEW usually by phone or by fax. A good practice of interaction is established/introduced between RIEW-Varna and the Customs – Varna where upon doubt about the kind of waste (load) or the legality of the shipment of waste a template of written notification/notice is used.⁸⁴

Upon identified illegal shipment by the authorities of Chief Directorate Border Police (through a cross border point without customs) the relevant RIEW is notified in writing. During the audited period the Chief Directorate Border Police requested cooperation for

⁸⁰ Audit evidence № 13

⁸¹ Audit evidence № 18

⁸² Audit evidence № 30

⁸³ Audit evidence № 13

⁸⁴ Audit evidence № 24 and № 25

8 cases. The Chief Directorate Security Police did not perform the imposed upon it with the WMA duties as the directorate does not have regional structures. In accordance with the Ministry of Interior Act the directorate performs control and methodological functions in regard to the regional structures of the Ministry.⁸⁵

In the EA Road Transport Administration the heads of district department Inspection Activities – State Automobile Inspectorate have the telephone numbers of RIEW to look after assistance if needed. In EA Railway Administration up till now there was no need to interact with other competent authorities as per article 94a of the WMA and no rules and procedures for such interaction are elaborated. EA MA communicates and interacts with the other competent authorities under article 94a of the WMA in accordance with the provisions of the Decree for entry border, customs, health, veterinary medical and phyto-sanitary control, as well as control of the transport vehicles at the ports of the Republic of Bulgaria, handling ships carrying out international travel⁸⁶ and Decree № 7 from 23 may 2001 concerning the arrangements for visits, manoeuvres and stay of the ships in the ports and the roadsteads, for loading and unloading, for boarding the ship and the crew, the passengers and other persons leaving the ship, as well as for the connection of the ship to the shore⁸⁷.

During the audited period the three agencies to the MTITC did not request assistance from the RIEW.⁸⁸

The RIEW assists the competent authorities under article 94a, paragraph 2, point 3 and 4 of the WMA upon determining the load (whether it is waste or goods), the accompanying documents and upon check of the validity of the issued by the MIEW notification about the import/export/transit of waste. A check on the spot is done in the presence of a representative of the respective competent authority and the consignee (or empowered thereby person) at the location of the shipment and a memorandum of ascertainment is drawn up, upon which the relevant coercive administrative measure as defined in the WMA might be undertaken. As a good practice it may be pointed out the nomination of contact person and the submission of his/hers contact details (telephone, e-mail) to the competent authorities under article 94a, paragraph 2, points 3 and 4 of the WMA (RIEW-Vraza, RIEW-Varna). Upon impossibility at the time of the check to conclude whether the shipment is legal or illegal due to missing documents or information after their submission the RIEW provides written position to the relevant authority. RIEW – Vraza, Montana, Pazardjik, Plovdiv and Stara Zagora were not informed about a necessity of assistance by the competent authorities under article 94a, paragraphs 2 and 3, points 3 and 4 of the WMA.⁸⁹

The working regime of the customs authorities and the authorities of the Chief Directorate Border Police that is in shifts in order to ensure continuous, 24-hours working regime is different and does not coincide with the working time of the employees of RIEW neither in working nor in days off⁹⁰, that is a problem upon the execution of the interaction.

⁸⁵ Audit evidence № 5

⁸⁶ promulgated SG, issue 5 from 2006

⁸⁷ promulgated SG, issue 55 from 2001

⁸⁸ Audit evidence № 6

⁸⁹ Audit evidence № 12

⁹⁰ Audit evidence № 5

Sound arrangements of interaction between the bodies of RIEW and the Customs Agency, and between the RIEW and the Chief Directorate Border Police are established. In practice, the other competent authorities do not carry out the functions assigned to them and there was no need to do such interaction.

The lack of statutory rules and procedures for interaction between the competent authorities responsible for the transboundary shipment of waste is a precondition for the ineffective enforcement of the Regulation.

2.4. Keeping and Exchange of Information related to Waste Shipment

2.4.1. Competent Authorities implementing the Collection, Processing, Keeping and Exchange of Information related to the Shipment of Waste

The collection, processing, keeping and exchange of information concerning the wastes, including the shipment of waste is done in accordance with the requirements of the Regulation, the WMA and Ordinance No 9 / 2004 for the arrangements and samples for submission of data for waste management, as well as the arrangements to keep the public register of the permits issued, the registration documents and closed projects and operations⁹¹. The activities are performed by the MOEW, EEA, the Customs Agency, the National Revenue Agency (NRA) and the NSI at national level, and by the RIEWs at regional level.

The EEA is the responsible institution for collection of information in accordance with Ordinance No 9 from 2004. The information about the produced, recovered, disposed at national level wastes and about the exported wastes is collected quarterly and annually by means of quarterly information and annual reports, prepared by the persons whose activity involves the formation and/or treatment, or transportation of waste. The annual reports are submitted to the RIEW and after check and verification the data is submitted electronically through specialised software to the EEA. RIEW and EEA are the responsible authorities at regional and national level respectively to summarise and analyse the data about the formed and treated waste, to store the data and to keep data bases with the information about waste, to prepare specialized inquiries about management of the waste and to keep registers of the persons whose activity involves formation and/or treatment of waste and registers of waste treatment installations and facilities.

EEA submits to the NSI data about the formed and/or treated wastes at national level. In case that persons whose activity involves the formation and/or treatment executed transnational shipment of waste as well, this information is also submitted. The data of EEA is supplemented by data from surveys on waste carried out by the NSI. The statistical surveys are annual and are made on a sample basis combined with comprehensive survey for some economic sectors and branches. The final statistical data result from statistical evaluation. The information on national level is obtained by combining the data from EEA and the statistical data received from the NSI surveys.⁹²

With a new provision in the WMA from 2008⁹³ a requirement is introduced the state bodies, including the National Statistical Institute, the Customs Agency, the National Revenue Agency, the traffic police authorities, the Road Transport Administration

⁹¹ Promulgated SG, issue 95 from 2004

⁹² Audit evidence № 29

⁹³ article 27, paragraph 4 (new - SG, issue 105 from 2008) from the WMA

Executive Agency, the State Agency for Metrological and Technical Surveillance and the Commission on Consumer Protection to provide information to the Executive Environment Agency according to the requirements and within the time limits established by Ordinance No 9 from 2004. After the amendments in the WMA, the Ordinance No 9 from 2004 was not updated, there are no arrangements and no obligations imposed on the mentioned authorities to submit information concerning the wastes.

The Customs Agency and the NRA provide, when requested to do so in writing, the EEA with information on the quantities of products, stating specific codes of the Combined Nomenclature current for the respective year and a list of the persons handling the said products.

The Customs Agency and the NRA submit to the EEA annually information for the current year about the quantities imported and exported from the country packaging waste by materials; information about the quantities of imported and exported from the country batteries and accumulators; information about the quantities of imported and exported from the country vehicles; the quantities of the imported and exported electrical and electronic equipment; the quantities of imported and exported from the country oils.

At the Customs Agency information is collected and kept about the import, export and transit of goods between the Republic of Bulgaria and countries, that are not members of the European Union. The information is collected and processed for customs purposes using the codes of goods established on the basis of the Combined Nomenclature (Council Regulation (EEC) № 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff).

At the NRA information is kept about the quantity of the quantities of the outgoing and incoming goods from and to the Republic of Bulgaria for EU member states using the codes of goods established on the basis of the Combined Nomenclature.

At the MOEW information is kept about the shipments (import, export and transit) for which a prior notification procedure and consent in accordance with the Regulation is required.

Regarding the shipments to Bulgaria that do not require prior written notification and consent by the MOEW information is submitted in accordance with article 83 of the WMA⁹⁴ by the persons executing transboundary shipment of waste with annual statement-declarations. At the MOEW such information is available only for 2007 and it is not processed and systemized. For 2008, 2009 and 2010 such information was not requested and it is not submitted by the responsible persons.⁹⁵

At national level there is no summarized information about the actual amount of the quantity of waste that is being imported and exported in and out of the country on an annual basis. Information about the quantities of imported, exported and transited waste on an annual basis to countries from the EU, EFTA and to third countries is not collected, processed and kept in neither of the mentioned institutions. The main reason is that the data in the customs declarations (submitted to the Customs Agency) and in the Intrastat declarations (submitted to the NRA) is given using the codes of the goods

⁹⁴Respectively article 88 from the WMA (before the amendments SG, issue 41 from 2010)

⁹⁵ Audit evidence № 26

established on the basis of the Combined Nomenclature and there is no concurrence between the codes of the Combined Nomenclature and the waste codes of the Regulation and the Basel convention.⁹⁶

2.4.2. Information about the Import and Export of Waste – main Transportation Modes, Countries of Origin and Destination, Quantity and Type of Waste

For the purposes of the audit check information about the quantities of imported, exported and transited waste through the territory of Republic of Bulgaria, as well as about the national waste production was requested by the MOEW, the Customs Agency, the NRA and the EEA.

The information provided by the Customs Agency is derived on the basis of data provided territorial customs offices obtained from the customs declarations and the customs information system. The codes of goods established on the basis of the Combined Nomenclature, used by the Customs Agency are used as well by the NRA for obtaining the information from the INTRASTAT declarations of the operators executing exchange of goods with the Community Member states that are not subject to the Single administrative document (customs declaration).

Total quantity of imported and exported waste for the period 2007 – 2010

Export (tons)				Import (tons)			
MOEW	CA	NRA	ExAE	MOEW	CA	NRA	EEA
1 641 576	2 232 862	3 781 107	108 799	3 033 348	605 892	5 306 071	Data is not collected

Data about the total quantity of transited waste for the period 2007 – 2010

Transited waste (tons)			
MOEW	CA	NRA	HAOC
76 504	475 801	Data is not collected	Data is not collected

Upon the analysis of the provided data the main transportation modes, the most common countries of destination and origin of the waste (hazardous and non-hazardous) in terms of quantity of waste and number of shipments to and out of the EU countries, the European Economic Area (EEA), countries outside the Community and non-European countries were determined.

a) Main Transportation Modes of Waste

According to the issued notifications the main way of transportation of wastes into the Republic of Bulgaria is the road transport.

During the audited period the minister of environment and water issued 97 notifications for export of 1 641 576 tons of wastes. The highest percentage – 83 per cent (1 370 850 tons non-dangerous wastes) belongs to the export to other European countries (non

⁹⁶ Ratified with the Law for ratification of the Convention for control of the transboundary shipment of hazardous waste and its disposal (ratified SG, issue 8 from 1996)

EU/EEA) – mainly Macedonia and Albania. For the period 2007 - 2010 the Minister of Environment and Water did not issue notifications for export of wastes to non-European countries.

During the audited period 325 notifications for import of waste amounting to 3 033 348 tons were issued. The highest percentage – 60 per cent (1 815 668 tons) belongs to the import from European countries (non EU/EEA) – mainly Macedonia and Serbia.

In accordance with the data provided by the MOEW the road transport is the main mode of transportation of waste into the Republic of Bulgaria. From the total quantity of imported waste that is 3 033 348 tons for the period 2007 - 2010, 97 per cent, or 2 974 328 tons of waste were transported by road, 62 020 tons or 2 per cent are transported by water or land transport and 24 000 tons, or 0,7 per cent by land or railway transport. The total export of waste representing 1 641 576 tons is executed by land transport. For the period 2007 - 2008 the MOEW does not possess information about the transit of waste through the territory of the Republic of Bulgaria. In 2009 and 2010 67 per cent of the transit of waste is executed by land transport.

In accordance with the data provided by the Customs Agency the land and railway transport is the main mode of transportation of waste into the Republic of Bulgaria. 86 per cent of the total import of waste for the audited period was executed by land and railway transport. The smallest is the quantity of waste imported by air transport - 0,18 tons for the audited period. The land and water (sea) transport is the main mode of transport upon export of waste in 2007, 2009 and 2010, and in 2008 – the land and railway transport. The railway transport is the main mode of transportation upon transit of waste in 2007 and 2008, in 2007 were transported 99 per cent of the waste, and in 2008 – 97 per cent of the waste. In 2008 the total transit was executed by land transport, and in 2010 – 95 per cent.

b) Main Countries of Origin and Destination of Waste, Quantity and Type of shipped Waste

Information provided by the MOEW

During the audited period the minister of environment and water issued 97 notifications for export of 1 641 576 tons of wastes.⁹⁷ For the period 2007.- 2010 did not issue notifications for export of waste to non-European countries.

The analysis revealed that during the years the number of the issued notifications increases, as well as the quantity of the exported waste. The highest percentage – 83 per cent (1 370 850 tons non-dangerous wastes) belongs to the export to other European countries (non EU/EEA) – mainly Macedonia and Albania. The export of hazardous waste amounts to 11 660 tons and represents 0,7 per cent from the total export of wastes. The total export of hazardous wastes is done to EU/EEA countries (Germany, Rumania and France).

During the audited period 325 notifications for import of waste amounting to 3 033 348 tons were issued. The analysis revealed that the issued notifications for import of waste and the notified quantity therein exceeds about three times the export of waste.

The notified import of hazardous waste amounts to 54 220 tons and represents 2 per cent from the total import of waste. The highest quantity waste is imported from Rumania, Hungary, the Netherlands and Macedonia.

⁹⁷ Audit evidence №27

Among the total import of waste the highest percentage – 60 per cent or 1 815 668 tons were imported from European countries (non EU/EEA) – mainly Macedonia and Serbia. The total quantity of imported waste from non-European countries is 87 432 tons (non-hazardous) waste, the highest percentage imported from UAE and Dubai (64 per cent).

Information provided by the Customs Agency

According to data from the Customs Agency⁹⁸ for the period 2007 – 2010 the total export of wastes amounts to 2 232 862 tons, representing 1551 shipments through the customs points of the country. The highest quantity of waste is exported to European countries - non EU and EEA members - 1 783 204 tons or 80 per cent from the total export. The export of waste to Macedonia and Turkey represents the largest percentage in terms of quantity and frequency of the shipments of waste.

For the same period the total import of waste amounts to 605 892 tons, representing 1084 shipments through the customs points of country. The quantity of the imported waste from non-European countries (third countries) and European countries – non EU/EEA members amounts to 492 610 tons or 81 per cent from the total import. The import of waste from Serbia and Macedonia represents the largest percentage/portion in terms of quantity and frequency of the shipments of waste.

Information provided by the NRA

For the period 2007 – 2010 the export of waste from the Republic of Bulgaria to the 26 EU Member states amounts to 3 781 107 tons. In 2007 the total export of waste amounts to 1 185 081 tons and represents the largest percentage from the export per years for the audited period. The exported waste to Greece – 35 per cent, Italy – 17 per cent, Slovenia - 13 per cent and Rumania - 9 per cent represent the largest percentage from the total export of waste for the period. .

The total import of waste for the same period of time from the EU Member states amounts to 5 306 071 tons. The import of wastes exceeds the total export of waste for the audited period by 1 524 964 tons. The imported waste from Rumania – 56 per cent, Greece – 21 per cent, Germany and Austria – 6 per cent represent the largest percentage form the total import of waste for the period.⁹⁹

Information provided by the EEA

- information about generated, recovered, disposed and exported waste

During the audited period 48 961 336 tons in total were generated on the territory of the country¹⁰⁰ among which 2 338 057 tons hazardous and 46 623 270 tons non-hazardous waste. From the total quantity of the generated waste after delivery for/or disposal and recovery on the site where it is produced 108 799 tons were exported outside the country.

The data provided by the EEA for the period 2007 – 2009 shows that the quantity of the generated, treated and exported waste decreases. The most considerable is the decrease in the quantity of the exported hazardous waste with decrease of 48 per cent in the last year compared to 2007. For the same period of time the quantity of the generated, recovered and disposed waste decreases by 11 per cent.

⁹⁸ Audit evidence №13

⁹⁹ Audit evidence № 28

¹⁰⁰ The quantities of the generated household waste and the waste resulting from prospecting, extraction, physical and chemical treatment of subsurface resources are excluded from the total quantity of the waste generated.

- information about the capacity of the waste disposal / recovery facilities

The information about the number and the capacity of the waste treatment installations is derived on the basis of the documents for performing of waste related operations issued in accordance with the WMA and the Environmental Protection Act, available at the EEA.

The data from the EEA for the period 2008 – 2009 for the waste disposal and recovery facilities indicates that the country's capacity for treatment of the national waste production is insufficient.

The quantity of the generated waste in 2008 on the territory of the country amounts to 16 524 990 tons, and the capacity of the waste disposal and recovery facilities amounts to 11 392 103 tons, or the total national waste generation exceeds by 31 per cent the capacity of the waste treatment installations.

In 2009 the generated waste exceeds the capacity of the waste treatment installations by 22 per cent - 15 343 626 tons of wastes were generated, and the capacity of the installation is 12 027 213 tons.

In 2010 the capacity of the installations is 12 325 029 tons. It is not possible to compare between the data for the capacity of the installations and the generated waste as the information about the generated waste is not processed.

The EEA did not provide data for 2007 related to the capacity of the waste disposal and recovery facilities.¹⁰¹

The information kept concerning the quantity of imported and exported through the territory of the country waste is large in quantity, kept for different purposes and incomparable. There is no authority at national level to collect and systemize the information concerning the shipment of waste. Therefore the actual amount of the quantity of waste being imported and exported to/from the Republic of Bulgaria annually cannot be determined. A comparison for the relation of the imported and exported waste to the national productions of waste, as well as for the relation of the imported and exported waste to the capacity of the waste treatments installations.

The lack of sufficient and reliable information about the quantity of waste imported and exported in/out of the country is a precondition for taking ineffective and inefficient management decisions as regards the transboundary shipment of waste.

2.4.3. Keeping of Registers

Waste Management and Soil Protection Directorate at the Ministry of Environment and Water is obliged to keep:

- register in accordance with article 72 (3) of the issued notifications (permit for shipment). The register is special and is not public.

The authorities and persons covered under Article 94 a (2) may conduct checks and have right to access the register of the issued notifications¹⁰², but they do not have granted access to the special register.¹⁰³

¹⁰¹ Audit evidence № 29

¹⁰² Article 98d from the WMA

¹⁰³ Audit evidence № 30

- Register in accordance with article 72 (3) of the WMA of the annual statement-declarations of the persons carrying out shipments of waste for which a notification under Regulation 1013/2006 is not required. The register is under elaboration.
- Register in accordance with article 26 (1) (4) of the WMA of the persons acting as a dealer under item 12 of Article 12 or as a broker under item 13 of Article 2 of the Regulation. The register is under elaboration as well.¹⁰⁴

The form and content of the kept registers are not defined, neither the technology for submission, input and updating of the data therein, because of that the quantity and quality of the stored therein data is not guaranteed.

2.4.4. International Activity and Exchange of Information

2.4.4.1. In relation to the international activity an annual plan and report on its implementation are prepared and endorsed by the minister of environment and water.

The international activity of the WMSP Directorate consists in implementation of engagements related to the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal, participation in projects, joint checks and working meetings in the frame of IMPEL and others. IMPEL is the European Union Network for the implementation and enforcement of environmental law. The network is informal and the environmental competent authorities of the EU member states, Croatia, Macedonia, Turkey, Island and Norway participate in it.

In 2007 experts from the WMSP Directorate participate in a working conference and joint inspections, organized in the framework of a IMPEL project for enforcement activities of the European legislations concerning the supervision and control over the shipment of waste in, for and out of the European Community.

From 23rd till 25th of April 2008 an annual conference of the national coordinators IMPEL - TFS is held in Sofia. The national coordinators as per the Regulation from all EU Member states, as well as representatives of Japan, China, Thailand, Nigeria, nongovernmental organizations, experts from the European Commission and from other European institutions having competencies in the field of waste shipment took part in the conference. During the conference the executed activities and work related to on-going IMPEL projects relevant to shipments of waste

In the international activity report for 2009 it is stated that the Directorate did not participate in an IMPEL project - comparative program for monitoring and checks of landfills, in joint inspections with other EU Member states in the framework of IMPEL projects for shipment of waste, waste electrical and electronic equipment, waste motor vehicles and in meeting of the open working group of the Basel convention due to restraints on the financial expenses at the MOEW. Representatives of the MWSP Directorate participated in the annual IMPEL/TFS conference in connection with the transboundary shipment of waste and the enforcement of the Regulation held in April 2009 in Ostersund, Sweden.

In the international activity report for 2010 it is stated that due to financial restrictions representatives of the WMSP Directorate did not participate in the working meetings organized by the Regional centre of the Basel Convention. The expert from the directorate responsible for the application of the Basel convention participated in the

¹⁰⁴ Audit evidence № 31

seventh session of the Open-ended working group of the Basel convention held to prepare the 10th meeting of Basel convention Conference of the parties in October 2011.

2.4.4.2. According to article 13 of the Basel Convention – Transmission of information the Parties, consistent with national laws and regulations, transmit, through the Secretariat, to the Conference of the Parties before the end of each calendar year, a report on the previous calendar year, containing a predetermined information.

According to article 52 of the Regulation before the end of each calendar year, each Member State sends the Commission a copy of the report for the previous calendar year which, in accordance with Article 13(3) of the Basel Convention, it has drawn up and submitted to the Secretariat of that Convention. Before the end of each calendar year, Member States also draw up a report for the previous year based on the additional reporting questionnaire in Annex IX, and send it to the Commission.

The MOEW elaborates hazardous waste annual report in pursuance of the commitments of the Republic of Bulgaria under the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal. The report is elaborated by the WMSP Directorate on the basis of information submitted by the ExAE that receives and processes the information about the wastes from all RIEW.

The annual report for 2007 in accordance with the Basel Convention is elaborated by the Director of Waste Management Directorate on 28.12.2007. The Additional reporting questionnaire according to article 51 (2) for 2007 is also elaborated (Annex IX of the Regulation).

The annual report for 2008 is elaborated by WMSP Directorate on 21.05.2010. The Additional reporting questionnaire according to article 51 (2) for 2008 is also elaborated.

The annual report for 2009 in accordance with the Basel Convention is elaborated on 30.06.2011, including the additional reporting questionnaire according to article 51 (2) for 2009.

The report in accordance with the Basel Convention and additional reporting questionnaire according to the Regulation for 2008 and 2009 were not elaborated in time.¹⁰⁵

Till the end of November 2011 the annual report for 2010 in accordance the Basel Convention is under implementation as the deadline for its submission is the end of 2011.

A good practice for cooperation and exchange of information between the environmental competent authorities is established through the participation of experts from the MOEW in international conferences, working meetings, joint checks and projects in relation to the enforcement of the European legislation concerning the supervision and control over the shipment of waste in, to and out of the European Community.

¹⁰⁵ Audit evidence № 32

PART FOUR

Conclusion

The necessary normative preconditions for the execution of the activities related to the enforcement of the Regulation are created.

Within the Ministry of Environment and Water (MOEW) and the Regional Inspectorates of Environment and Water (RIEW) there are established structural units with clearly defined functions as regards the issuing of consent for shipment in accordance with the Regulation and the execution of control of the transboundary shipment of waste through the territory of the country. The responsible units within the other authorities that execute checks on the shipment of waste at the Community borders and/or during the shipment within the Community are designated in accordance with their powers.

Risk for the effective enforcement of the Regulation and the legislation is the lack of sufficient knowledge and expertise outside the structure of the MOEW.

Issuing of notifications is done in accordance with the normative requirements. The lack of control of the facilities as regards the quantity of waste recovered is a precondition for taking inappropriate management decisions as regards the import of waste into the Republic of Bulgaria.

The six manners of the activities undertaken in the application of coercive administrative measures by the control authorities when illegal waste shipment is found out indicate a problem either in the application of the Waste Management Law regulating these matters, or in the regulation itself.

As there are a few legal proceedings with final ruling (at court of the first instance and court of cassation) it cannot be concluded about the effects, the effect from the fines and penalty payments and their enforcement.

The interaction between the competent control authorities responsible for the transboundary shipment of waste done without statutory rules and procedures creates a precondition for ineffective enforcement of the Regulation.

The information about the quantity of waste notified, imported, exported and transit through the territory of the country is not sufficient and reliable thus creating a precondition for taking ineffective and inefficient management decisions as regards the transboundary shipment of waste.

The format and content of the registers kept is not regulated, as well as the process of submission, entry and update of data thus the quantity and quality of the information therein is not guaranteed.

The conditions for the implementation of the activities for the enforcement of the Regulation are created. Activities for execution of supervision and control of the transboundary shipment of waste are undertaken. Not ensuring sufficient expertise outside the MOEW and the necessary quantity and quality of the collected information does not ensure effective enforcement of the Regulation.

Part Five RECOMMENDATIONS

Predicated upon the findings and conclusions of the audit following recommendation are presented to the minister of environment and water:

1. The functional characteristics of Waste Management and Soil Protection Directorate and the job descriptions of the experts responsible for the transboundary shipment of waste should be updated in accordance with the adopted in 2009 Rules of Procedure of the MOEW.

2. The necessity of training of all bodies and persons exercising transboundary control should be explored and the relevant trainings should be executed.

3. The dossiers of the issued notifications should be organized and kept in accordance with the Instruction for keeping the records of the MOEW.

4. The model and content of the registers as well as the technology for submission, input and updating of the data therein should be.

5. The established differing practice concerning the application/non application of CAM should be analysed in order to standardize the activities of the control authorities upon identified illegal shipment of waste.

6. A procedure for regulation of the interrelations between the competent/control authorities upon the enforcement of the provisions of the Regulation and the WMA.

7. Rules and procedures should be elaborated concerning the kind, quantity and quality of the collected information from the different authorities regarding the transboundary shipment of waste.

On the grounds of article 48 (2) of the National Audit Act in 6 months after receiving the present report the minister of environment and water should undertake measures to implement the recommendations and to inform the President of the National Audit Office.

The present audit report is issued on the grounds of article 46 (1) of the National Audit Act and is approved with Order № 027 from 23.02.2012.

In support of the conclusions of the audit report 32 audit evidences are collected and together with the working papers reflecting the separate stages of the audit process are available in the building of the National Audit Office, Sofia city, 37, Ekzarh Yosif Street.