

Report

of the audit on the enforcement of EU regulations on waste shipment

INTRODUCTION

Background

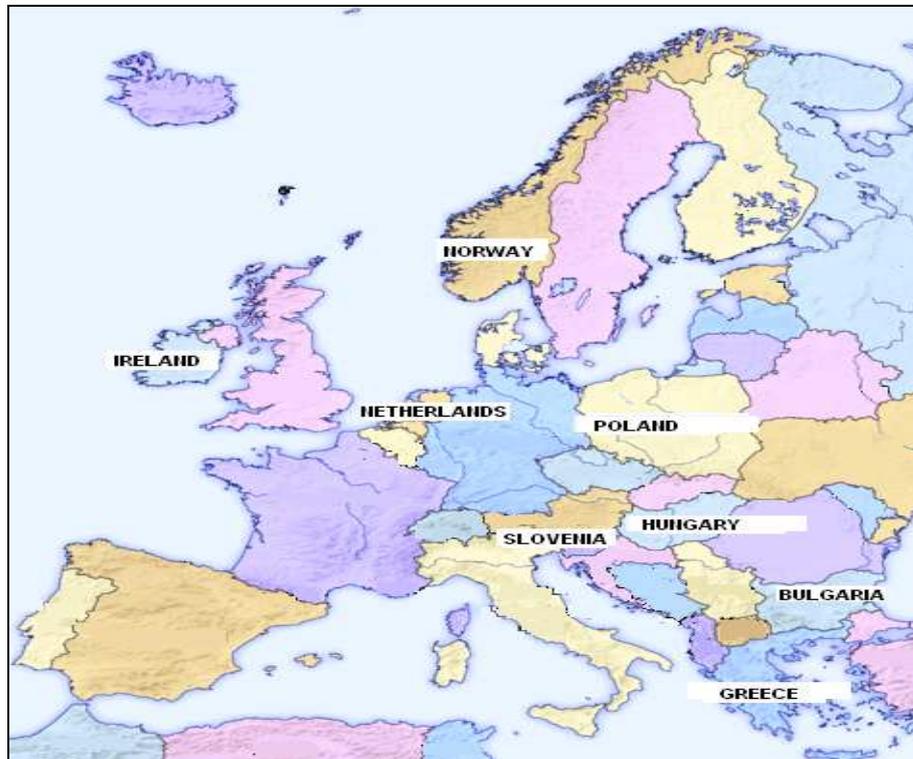
- 1 As to and based on the Basel Convention of 1989 on the control of transboundary movements of hazardous wastes and their disposal, the European Council issued a Council Regulation (in force from 9 February 1993) on the supervision and control of shipments of waste, within, into and out of the European Union. That regulation has been amended on several occasions, then the European Parliament and the Council issued new rules strengthening supervision and control of waste shipments which entered in force as of 15 July 2006. The current audit concerned the conformity of the implementation of the new regulation, the EU Waste Shipment Regulation.
- 2 The members of the European economic area (EEA) also joined the notification and approval system applied by EU member countries. Thus, both the EU Member States and the EEA States are responsible for the implementation of the EU Waste Shipment Regulation.
- 3 The EU Waste Shipment Regulation is aiming to manage waste in an environmentally manner during the transport and the recovery in the country of destination. The legislation covers the system of notification and authorisation procedures, the obligation of the presentation of the whole process of waste recovery, the obligation of the control of waste shipments, the forms to be applied, the deposit required for shipments subject to permission and the cooperation with the neighbouring countries.
- 4 In Hungary, besides the direct implementation of the EU Waste Shipment Regulation – and in harmony with that – the national legislation on transboundary waste shipment has been also amended (the templates to be used, etc).

Mandate

- 5 In October 2010, the EU Contact Committee approved an audit on the implementation of the EU Waste Shipment Regulation, with the cooperation of several audit institutions. The audit is coordinated by the SAI of the Netherlands and it is carried out by a total of eight audit institutions (the Netherlands, Bulgaria, Hungary, Norway, Poland, Greece, Ireland and Slovenia) during 2011-2012. (Figure No. 1)
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1. Figure No. 1

The eight countries participating in the international, coordinated audit



- 6 The Mission of the international coordinated audit was driven by the fact that more recent surveys dealt with the implementation of the EU Waste Shipment Regulation. One of them, the Study of the European Commission published in 2009 revealed serious deficiencies¹. It was found that due to the lack of supervision and controls, there is a high number of illegal waste shipments equalling nearly one-fifth of all shipments of waste. It was also pointed out that the cooperation between the Member States is poor and there is no uniform definition of waste in these countries. Based on the above, the survey stressed the importance of setting-up an agency responsible for the implementation of the legislation related to waste management.
- 7 In Hungary, the legal basis for the audit are Section 5 (1) of the Act LXVI of 2011 on the State Audit Office of Hungary, and Section 120/A. (1) of the Act XXXVIII of 1992 on Public Finances.

¹ Study on the feasibility of the establishment of a Waste Implementation Agency, 7. December 2009

The objective of the audit

- 8 The overall aim of the international coordinated audit is to promote the uniform implementation of the EU Waste Shipment Regulation by providing insight into the enforcement strategies and performance (in terms of results and the achievement of intended effects) among EU Member States and Member States of the European Economic Area.
- 9 The key question of the international audit was: how the obligations, arising from the EWSR – regulating and supervising the waste shipment within, into and out of the European Community – are met and whether the purpose of the regulation had been reached. It was also the objective of the audit to reveal, what kind of differences are there between the audited countries.

The audit of the topic covered the aspects of the following, nine main areas:

1. key data and characteristics of management and shipment of waste,
 2. legal background,
 3. sanctions,
 4. institutional background,
 5. cooperation agreements,
 6. capacities of the organisations,
 7. enforcement activities of the organisations concerning EWSR,
 8. contacts, information and exchange of at international level,
 9. introduction of factors contributing to the effectiveness of enforcement of EWSR and hampering the implementation thereof.
- 10 In Hungary– based on the common, international criteria – the objective of the audit was to evaluate whether the institutional and legal frameworks established for the supervision and control of transboundary waste shipments and their operation are in harmony with the requirements of the EU Waste Shipment Regulation.

The type, approach and scope of the audit

- 11 The type of the audit is a compliance audit.
 - 12 Procedures, methods applied during the audit: a comparative analysis of EU and national legislation, review of documents and other papers, detailed check of files, questionnaire survey, interview, observation, focus group meeting, analysis of databases and statistics, re-query of the data of the annual report.
 - 13 In Hungary, the audit covered the activity of the institution authorized to implement the EWSR (Ministry of Rural Development), the tasks of the competent authority (National Inspectorate for Environment, Nature and Water) in relation to granting permissions, controlling and imposing sanctions, as well as to the work of the tax authority (it the audited period it was the Hungarian Customs and Finance Guard), with special regard to the entry and exit of waste shipments at EU customs borders.
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- 14 The audited entities were national organisations designated on the basis of the EU Waste Shipment Regulation:
- the competent authority (National Inspectorate for Environment, Nature and Water);
 - the Ministry of Rural Development, as the ministry in charge of environmental protection, supervisory body of the competent authority and the correspondent organisation;
 - two customs offices out of those designated for the obligatory tasks of entry and exit of waste shipments on EU customs borders: the roadside inspection post Croatia-Letenye and the rail inspection post Serbia-Kelebia, both lines with heavy traffic.
- 15 The audited period covered the years 2008-2010.
- 16 The on-site audit took place between 12 September and 28 October 2011.

Important remarks

- 17 The present Hungarian working document contains the common, international questions, as well as the answers given thereto. The summary findings include the answers given to the main question and question group 9, while the detailed findings include the answers given to question groups 1-8 (59 questions). The analyses prepared about the data of answers given the question group 1 can be found in annexes 1-4.
- 18 As of the reliability of information, we used the unequivocal international designation in case of the certain questions, as follows
- Reliability of the information */**/**: The mark * means that the data or information can be questioned;
 - Reliability of the information */**/**: The mark ** means that the reliability of the data or information is moderate;
 - Reliability of the information */**/**: The mark *** means that the reliability of the data or information is of good-quality.
- The qualification of the information was indicated per questions as a remark. For example, the reliability of the information was considered good-quality if it was based on legislation and it was considered moderately reliable if – for lack of actual data – estimated data were given.
- 19 In the audited period, waste could be imported to Hungary only for the purpose of utilisation. In case the draft legislation on waste is adopted, it will be possible to import waste to Hungary for the purposes of utilisation and waste disposal, too.
- 20 During SAO's reporting period, the harmonisation of national legislation with the (new) EU directive on waste was in progress. Once the new act on waste is approved, it can be expected that the implementation rules of waste shipment (including those of cross-border waste shipment) will be amended as well.
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I. SUMMARY FINDINGS, CONCLUSIONS, RECOMMENDATIONS

- 21 In order to comply with the EU Waste Shipment Regulation, the supervisory and monitoring systems of cross-border waste shipment have been set up and operated in Hungary.
- 22 The supervision and the monitoring of waste shipment have not yet been implemented in full compliance with the EU Waste Shipment Regulation and the objective thereof. A discrepancy could be observed as regards the cooperation of authorities, the exchange of data and information, as well as the detailed regulation of monitoring processes and the harmonisation of rules applicable to commodities and waste. This practice did not contribute to the prevention of illegal shipments, the emphasis was put on the detection of illegal shipments.
- 23 It was forward-looking that following the audited period (in 2011) the harmonisation of the utilisation of legal regulations concerning customs, police, and environmental protection – amongst them those related to waste shipment and financial management –; as well as the preparation and the updating of detailed procedural rules started. The number of audits, specialised trainings and educational activities increased.

Which are the most important factors that contributed to the effectiveness of the implementation?

- 24 The experience gained in the previous years (the application of the (old) EU Waste Shipment Regulation) facilitated the implementation of the EU Waste Shipment Regulation – applicable as of 2007 – in Hungary.
- 25 In the audited period, the framework conditions for the implementation of the effective EU Waste Shipment Regulation were regulated on the national level in time and in an appropriate manner. The institutions to be set up compulsorily (competent authority, correspondent) were designated and their tasks were specified.
- 26 In Hungary the waste not being subject to permission – the so called green listed waste – must be provided with an accompanying document that contributes to the better follow-up of waste shipments. This is important, because the rate of the so called green listed waste has increased significantly.²
- 27 The obligatory entry and exit of waste shipments (in compliance with the possibility stipulated in EU regulations) is only possible in the designated

² In 2010 the amount of the so called green listed waste import was approximately fourfold, compared to the corresponding data in 2008 (from 114.5 thousand tons it increased to 475.1 thousand tons.) Nevertheless, the number of requests roughly tripled (from 6341 to 19,365).

customs offices (Figure No. 2), which also contributes to the better follow-up of waste shipments.

Figure No. 2

Customs offices performing the obligatory entry and exit of waste shipments



- 28 The Hungarian competent authority (National Inspectorate for Environment, Nature and Water)³ and the correspondent in charge of information and communication participated in the international relations, the exchange of information and experience. Via the electronic Risk Information Forms (RIF) the customs offices received information from the foreign partner authorities on suspicious shipments (including waste shipments).
- 29 The coordinated, international-level operations of customs bodies and government bodies concerned could highly contribute to the prevention of illegal waste shipment.

According to the information provided by the tax authority, following the SAO audit the operation supported by the World Customs Organization and INTERPOL (DEMETER II) was of great importance in February-March 2012. The practical cooperation between the customs authority and the environmental bodies and the police authority improved at national and international level, too. The theoretical and practical knowledge of the customs authority increased in terms of the filtering of illegal waste shipments. The experience gained contributes to the preparation of detailed national rules of procedure and also drew the attention of those concerned to the waste shipment regulations and provisions. During the time of the operation taking place in Hungary (10 days) 258 waste shipments were examined on the roadside and also on the external

³ The Hungarian competent authority is a member of the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), as well as the Cluster Transfrontier Shipments of Waste (IMPEL-TSF).

borders of the Community that – in 8 cases – resulted in waste management fines amounting to HUF 88 million.

What are the most important factors that hinder the enforcement?

- 30 The principle of the responsibility of the waste producer (holder) has not been validated in the EWSR and – accordingly – in the national waste shipment regulation either. That is: in all cases of illegal waste shipments, as well as in case of dispute the fundamental responsibility must be of the producer (holder) of waste. However, as to the new EU directive on waste, the responsibility of the producer is essential in course of certification and proper placement of waste. The resolution of disputes, reconciliation (the return of the waste shipped illegally to the country of departure).

In case of a disagreement between two or more States, the lack of the standard makes difficult the application of the fundamental principle of responsibility for the competent authorities.

- 31 It was difficult to distinguish the goods and waste as the definition of waste is laid down in a broad sense. It means that waste is any object or material, which the holder discards or intends or is required to discard.⁴

Legal practice of the European Court of Justice has been helpful in course of the identification of waste. The European Commission issued in its communiqué the same criteria, developed by the above mentioned legal practice. At the same time, the international waste control experience of the customs authorities and the government bodies concerned have not been summarized yet, despite the fact that they took part in exchange on a regular basis.

2007, there was an example aiming to resolve the difficulties of the authorities while monitoring and to clarify responsibility of the shipping companies. A member of the National Assembly's Environmental Commission initiated to the High Commissioner for Environment of the European Commission, that *“a large, apparent ID have to be placed compulsory on each vehicle shipping waste of any kind”*.

- 32 The classification of waste and goods, as well as their identification on basis of identification code (metal goods or scrap) was difficult. Indeed, in cases where the shipment document contained the product designation code only (the annex containing the waste code was missing), it was not to determine with certainty whether the shipment was actually good or waste. For customs purposes the waste was determined as goods, although both the national and the EU regulation approached it from environmental and waste treatment point of view. No translation table exists between the product designation code system and the identification code system for waste.
- 33 It caused administrative difficulties that two code systems, the European Waste Catalogue (Resolution 2000/532/EC) identifying the waste during shipment and the code system used for establishing the rate of recycling, recovery and

⁴ new EU directive on waste

- retrieval of electrical and electronic equipment (2002/96/EU Directive) are not harmonized and can not be synchronized either.
- 34 The implementation of EWSR was difficult because the concept of a waste shipment has been defined neither by the EWSR nor by the national Waste Shipment Regulation. Likewise, the procedure to be followed when withholding illegal shipments has not been elaborated (retention time, time limits for action, information of the driver and so on).
- 35 Deficiency was detected in the cooperation between the national control authorities (competent authority, regional environmental and nature bodies, tax authority, traffic and law enforcement bodies and disaster agency), the scope of their cooperation. No common and harmonized task- and resources plan was elaborated and the common experience was not evaluated – for example in order to explore risks – either, despite the cooperation agreements concluded in order to enhance the effectiveness of task performance.
- 36 The task performance of the tax authority (i.e. in the audited period the Hungarian Customs and Finance Guard) requiring special expertise was hampered by the fact that the cooperation between the tax authority and the competent authority was ad-hoc, but contacts were not kept adequately for the continuous (of 24 hours per day) task performance of the tax authority. In other environmental protection fields, relevant regulations are in place. Following the audit, in 2012 the solution of this question was in progress.
- 37 There was a national detailed regulation for the control of waste shipments concerning dangerous goods (including hazardous waste),⁵ but it did not cover other types of waste. The lack of such regulation became visible mainly in the course of the task performance of customs offices at EU customs frontiers, i.e. tasks related to entry and exit, including the control of waste shipments. There was no standard control requirement, data management and information process. The applied IT systems were not adapted for the following of waste shipments (monitoring of the fulfilment of general licences). It created difficulties in the observance and accountability for the compliance with the provisions of the EWSR.
- 38 The record of the competent authority, related to waste shipments, did not ensure in the light of the data of waste shipment requests, permits and actual shipments, that data of the same content (e.g. the quantity of exported waste), retrieved at different times are the same. The possible reasons for the difference (e.g. modification of the request) were indicated, but the factors and exact reason of the differences were unknown.

⁵ In the period of the audit, there was a regulation in force on the control of road transport of dangerous goods, and legislation was drafted on the control of the rail and inland waterway transport of dangerous goods.

The findings and recommendations of the audit, requiring measures at international level are the following:⁶

1. The EWSR and the national Waste Shipment Regulation in compliance with EWSR did not apply the principle of the waste producers' (holder) responsibility. The settlement of disputes and the agreement (on transporting the illegally shipped waste back to the country of origin) were hampered by the lack of a provision on the application of the principle of the waste producers' (holder) ultimate responsibility in case of differences of opinion between the competent authorities of two or more countries.

Recommendation:

To provide for a stipulation of EWSR, in compliance with the (new) EU Directive 2008/98/EC on waste, on the ultimate responsibility of the waste producer in the qualification of waste and the adequate disposal thereof in order to ensure that in cases of dispute an agreement is reached.

2. The broad definition of waste hampered the distinction between commodities and waste. The comprehensive legal practice of the Court of Justice of EU helps the identification of waste, and the European Commission published a notice summarising the aspects developed by this legal practice. At the same time, the experience concerning waste control of customs administrations and the government agencies concerned are not summarised at international level.

Recommendation:

To collect the waste control experience of customs administrations and the government agencies concerned at international level and to publish it in a single document for the different countries.

3. It constituted an administrative difficulty that the code system according to the European Waste Catalogue (Commission Decision 2000/532/EC) identifying waste in the course of the shipment and the code system applied for determining the rate of return, recovery and recycling of waste of electrical and electronic equipment (Directive 2002/96/EC) differed and were not equivalent to each other.

Recommendation:

To provide for an equivalent code system for the identification of waste in the course of the shipment and the determination of the rate of return, recovery and recycling of waste of electrical and electronic equipment.

We have made recommendations concerning the audit findings requiring national measures, for which the audited organisations prepare an action plan according to the Act on the State Audit Office of Hungary.

⁶ Decision about the future and the addressee of the recommendations is taken by the working group carrying out the parallel audit, in the light of the working documents of the 8 countries involved.
