

**Strategy to Prevent and Combat
Waste-Related Crime
for the Years 2021 – 2023**

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1 Introduction: Illicit Waste Disposal

In 2019, the Czech Republic detected increased activity of organised groups in connection with illicit disposal of waste, i.e. trafficking of waste to the Czech Republic. There is a real threat that the Czech Republic might become, or is actually becoming, one of the target countries where organised crime groups import waste for dumping or further disposal, as evidenced by the first case of illicit hazardous waste import from Poland as well as by the outcomes of the first inspection carried out in November 2019. This situation reflects the radical decision of China to ban the waste imports from Europe; Europe has been left without a waste export option while having only limited waste disposal capacities itself.

In the countries of origin, treatment of such waste is more expensive than in the Czech Republic, and what is more, the countries implemented laws and regulations restricting waste dumping, or the capacity of their incineration plants have reached its limits. Therefore, waste producers (namely Germany and Italy) are looking for any possibility to dispose the waste in other European countries, probably also to be able to report compliance with their recycling targets. To this end, exporters make improper use of the so-called “green-list” of waste, which, however, is only to be used for recyclable waste (i.e. waste for recycling and as an energy source, as it saves fossil fuels in cement factories). Ultimately, illicit non-recyclable plastics warehouses are set up (7 locations in the Czech Republic in 2019), or the waste is directly dumped or taken to incineration plants in the Czech Republic violating the waste management legislation. Such activities seem to be well organised and generate interesting profit for receiving the waste. They often constitute a crime that is hard to detect, as the non-recyclable waste that is to be disposed is brought to the country without being declared and is not reported to the relevant authorities. The Customs Administration of the Czech Republic, Czech Environmental Inspectorate, Ministry of the Environment and the Police of the Czech Republic detected 28 cases of unauthorised transport of waste in the first half of 2020, about one half of these cases are being further investigated by the law enforcement agencies due to suspected crime of illicit waste disposal, namely illicit waste trafficking pursuant to section 298(1) of the Criminal Code.

While this Strategy to Prevent and Combat Waste-Related Crime for the Years 2021-2023 was being drawn up (hereinafter referred to as “the Strategy”), the Ministry of the Environment was finalising preparations of a new Waste Act. On 9th December 2019, the Government of the Czech Republic approved the draft of the new Waste Act containing numerous additional measures to the amended Waste Act no. 223/2015 Coll., and Decree no. 83/2016 Coll., that had been instrumental in reducing the number of crimes associated with metal theft by 72 %. The newly planned measures include, for example, CCTV systems at the locations where scrap metal is collected and bought, definition of violations of the Waste Act that would enable relevant authorities to remove a license to operate scrap metal collection points, obligation to train collection point personnel, putting restrictions on mobile collection points to buy scrap metal or extend sanction powers of regional authorities. These measures aim to help reduce scrap metal related crime. The new Act should come into effect at the beginning of 2021.

The 8th Round of Mutual Evaluations of the EU member states evaluating the practical implementation and operation of European policies on preventing and combating environmental crime, namely illicit management of waste and hazardous substances was closed on the European Union level in 2019. The 8th round of the Mutual Evaluations was devoted to practical implementation and functioning of the European policies in the field of prevention and combating environmental crime focusing on two specific areas in particular – illicit trade in waste and illicit production or management of hazardous substances.

The Czech Republic was evaluated in May 2018, the Evaluation Report of the Czech Republic (hereinafter as “the Evaluation Report”) was approved at the joint meeting of the Working Party on Cooperation in Criminal Matters and Law Enforcement Working Party on 13th December 2018. In terms of combating illicit waste disposal, the Czech Republic is evaluated very well by the evaluation team, nevertheless, the report contains eleven recommendations for improvement and points out minor shortcomings. A summary of the Evaluation Report including the recommendations is enclosed to this Strategy.

Analysis of Criminal Cases Investigated by Public Prosecutor’s Offices between 2012 to Present concerning the waste-related issues is enclosed to this Strategy as Annex no. 2. The analysis was prepared by the Public Prosecutor’s Office.

2 Objectives of the Strategy

This Strategy is submitted following the Government resolution no. 41 of 13th January 2020. By its resolution, the Government noted the Evaluation Report of the Czech Republic of the 8th round of Mutual Evaluations, and charged the Minister of the Interior in cooperation with the Minister of the Environment, Minister of Finance and Minister of Justice with a task of submitting a strategic material aimed at preventing and combating waste-related crime.

The Strategy aims to improve conditions for the law enforcement authorities enforcing the environmental law to ensure prevention and combating of the waste-related crime. Four specific objectives have been identified:

1. To improve mutual cooperation among the environmental law enforcement agencies;
2. To strengthen specialisation and qualification of the environmental law enforcement agencies;
3. To improve regulatory environment regulating waste-related matters in the Czech Republic;
4. To build public awareness of the waste-related matters.

The submitted strategy defines measures to prevent and combat waste-related crime; the measures build on the conclusions and recommendations of the Evaluation Report and take into consideration identified needs of stakeholders, in particular of the environmental law enforcement agencies (the Customs Administration of the Czech Republic, Czech Environmental Inspectorate, and the Police of the Czech Republic).

The defined measures are to eliminate or mitigate the shortcomings identified by the Evaluation Report and by the stakeholders. The measures are defined as action tasks, they are assigned to individual agencies that are in charge of them, and a deadline for completing the individual tasks is set. Individual agencies specified in the Evaluation Report took an active part in the evaluation and are aware of the shortcomings described in the Evaluation Report. Representatives of individual authorities were also consulted during preparation of this material taking an active part in defining the measures.

The Strategy is intended for the environmental law enforcement agencies, in particular those in charge of waste-related crime: the Customs Administration of the Czech Republic, Czech Environmental Inspectorate, and the Police of the Czech Republic, Public Prosecutor's Office, Ministry of the Environment, Ministry of Justice and Ministry of the Interior.

3 Drafting of the Strategy

The stakeholders met on 25th July 2019 in order to discuss implementation of the recommendations defined in the Evaluation Report for the Czech Republic. The meeting was attended by representatives of individual agencies in charge of implementation of the individual recommendations given to the Czech Republic. Every recommendation for the Czech Republic was discussed individually. The present stakeholders agreed that the Evaluation Report is a good opportunity to declare the environment-related matters a political priority and an opportunity to reevaluate the current practice in order to facilitate investigation.

In the follow-up discussions, the stakeholders agreed that the best approach would be to develop strategic material and an action plan aimed at preventing and combating environmental crime as specified in the recommendations no. 1 and 2 of the Evaluation Report.

The Government of the Czech Republic noted the Evaluation Report in the Government resolution no. 41 of 13th January 2020. The task of submitting the strategic material aimed at preventing and combating waste-related crime for approval by the Government was also assigned in the resolution.

A questionnaire was prepared in order to identify other possible issues and needs of the stakeholders and was distributed to the stakeholders in December 2019. Received answers served as another source of data in order to identify the needs. Respondents were invited to comment on the conclusions of the Evaluation Report, to identify other issues they face in their work, and to identify the best practice.

The Strategy was also consulted with scientists specialising in waste management.

4 Analytical Part – Identified Issues

First and foremost, the returned questionnaires indicated that the Evaluation Report is quite exhaustive in terms of identified problems. Some questionnaires pointed out to more specific problems. Many identified problems referred in particular to the existing legislation.

In reference to the recommendations defined in the Evaluation Report, the representatives of the environmental law enforcement agencies agreed most with the recommendation to develop an environmental police unit (recommendation no. 6), to promote more structured information exchange between the competent environmental administrations (recommendation no. 9) and to re-assess the balance between the administrative and the criminal approach to environmental crime (recommendation no. 11). Possible amendments to certain sections of the Criminal Code concerning the environment were mentioned in relation with the recommendation. Another important recommendation pointed out by the respondents was the enhancement of the training activities on tackling environmental crime (recommendation no. 7) and the recommendation to appoint a special prosecutor supported by a specialised structure focused exclusively on environmental crime (recommendation no. 8).

The issues identified by the Evaluation Report as well as by the representatives of stakeholders are described below, they are divided into four specific areas. Four specific objectives were defined based on these areas.

4.1 Mutual cooperation of environmental law enforcement agencies in respect to waste-related matters

The first area of interest is the mutual cooperation between environmental law enforcement agencies in respect to waste-related matters. The Evaluation Report in particular recommends more structured exchange of information between the competent environmental administrators (recommendation no. 9) and formalising of cooperation and communication among the national authorities competent to tackle environmental crime (recommendation no. 10). Related to these is the recommendation no. 4 suggesting developing of links between waste information/data collection systems of the different institutions involved and improving of shared channels. The summary of the Evaluation Report concerning cooperation (chapter 6.5) suggests that the Czech Republic might establish a contact point at each of the involved agencies to facilitate timely exchange of information.

Currently, the information is exchanged informally based on personal links; more structured and formal way of exchanging information might be, for example, defined in a methodology and supported by setting up a formal functional inter-agency team, or by entering into formal agreements on cooperation. Some contracts already exist; however, they need to be reviewed. The review should be followed by the establishment of a functional inter-agency team. In terms of information systems collecting waste-related data, a more detailed specification is needed to determine what information is required by individual agencies (the

Police, Czech Environmental Inspectorate, Customs Administration, Ministry of the Environment) and to specify the needs in bilateral agreements regulating inspecting of the databases, or to review the existing agreements.

The Police of the Czech Republic points out the need for establishing links between information systems of the Ministry of the Environment and the Police of the Czech Republic to facilitate analysis of cases involving suspected illicit waste disposal by the Police. A possible solution is to provide the Police with access to the waste management information systems of the Ministry of the Environment (Waste Management Information System – ISOH, Integrated System to Report Compliance – ISOP or Hazardous Waste Transit System – SEPNO) based on an agreement between the Police and the Ministry of the Environment (CENIA).

There is no general procedure defined for informing law enforcement agencies about violation of law that may give rise to a suspicion that a crime has been committed, although state agencies are obliged, pursuant to section 8, paragraph 1 of the Criminal Code, to immediately inform a public prosecutor or the Police of material elements of a criminal offence. In most cases, it is the Czech Environmental Inspectorate that is first informed about violation of the waste management regulations, the Czech Environmental Inspectorate follow their own procedures in line with their responsibilities, in some cases they report suspected crime to law enforcement agencies. Neither law enforcement bodies – other than the law enforcement agencies – nor the law enforcement agencies have access to all information of a case needed to decide, right from the start, whether a crime or an offence have been committed. When material elements of a criminal offence (e.g. pursuant to section 293 or 298 of the Criminal Code) are being described, it is also usually noted that a suspect has violated or is violating another law. Such violation/breach usually also fulfils characteristics of an administrative offence. Material elements of a criminal offence of illicit disposal of waste pursuant to section 298, paragraph 1 of the Criminal Code, therefore, do not represent another qualitative or quantitative criterion (e.g. import of one lorry as well as only one palette of waste in violation of the law may constitute a crime). In some cases material elements of a criminal offence (e.g. section 293, 298 paragraph 2 of the Criminal Code) specify additional criteria that have to be met for an act to constitute a crime (e.g. larger area affected, threat or damage to the environment the remedying of which would require considerable costs), however, although these additional criteria may be met, an act may still not be evaluated as a crime, or as an administrative offence; e.g. see the clause on the subsidiarity of criminal repression specified in section 12, paragraph 2 of the Criminal Code. At the same time, the first evaluation of a case may not always clearly indicate the scope of damage caused, or threat to the environment (a qualified expert evaluation is needed). Since the cases are transferred to be dealt with by administrative authorities, there is no case law that would help distinguish between administrative offences and criminal offences based on their gravity in specific cases, therefore there is no distinguishing criteria for initial evaluation when a case is reported to the Police and public prosecutors, and later to judges in judicial proceedings. The fact that such relevant unifying case law is missing is illustrated by a mere inspection of the ASPI or Beck-online databases. Neither the Police, nor the Public

Prosecutor's Office is equipped with a centralised system that would evaluate reported cases; they are always evaluated by a relevant authority (this is related to the fact that there is no specialised police unit and specialised prosecutor that could determine the type and severity of the law violation and that a criminal offence was committed in a particular case). There is no system in place to evaluate acts, no evaluation criteria, and no rules for cooperation among individual authorities. Sanctions are mostly imposed through administrative procedure. Acts that are evaluated as criminal offences in certain cases are only sanctioned as administrative offences in other cases. Sometimes, the law enforcement agencies learn about suspected crime with a delay. Cases that had been under investigation are returned to an administrative authority to handle them as administrative offences. Acts that were brought before court are transferred by the court back to an administrative authority to handle them as administrative offences. This process is neither efficient nor economical, the sanctions are not effective, and delays occur.

In this respect, the Czech Environmental Inspectorate highlights the issue of mutual exchange of information obtained through investigations carried out in parallel by the Czech Environmental Inspectorate and the Police or providing information to individual relevant authorities. If a case is being investigated by default by the Czech Environmental Inspectorate, all information obtained through the investigation is provided to other authorities on an ongoing basis according to their needs. However, there are/may be certain restrictions

on information provided by the Police of the Czech Republic due to different procedures. This is due to the fact that the Police follows different rules for providing information on investigation than the ČIŽP. These rules should be clarified in order to prevent delays or restrictions on access to information required by administrative authorities to carry out their responsibilities according to the applicable law and in line with their powers. Currently, there may be delays in addressing consequences of illegal activities (e.g. corrective measures etc.) when offenders need to be identified, and the identification has only be done by the Police; as a result discussions on repatriation of waste illegally transported across the border may be delayed increasing the risk of an environmental incident etc., remedying of which would require public funding.

There is a critical lack of structured and regular exchange of information and there is no permanent inter-agency team established. This complicates exchange of information on specific cases, causes clashes between administrative and criminal sanctions, and affects the duty to act and the duty to maintain confidentiality of administrative authorities and law enforcement agencies. Handling of the waste-related matters is fragmented, as there are numerous agencies in charge of these matters (Czech Environmental Inspectorate, Customs Administration, Ministry of the Environment, regional authorities, municipalities with extended powers, the Police, Public Prosecutor's Offices). There is really no willingness to establish efficient cooperation, information exchange is challenging, and information sharing is obstructed by legal impediments, there is no legal platform for exchanging operative information concerning specific cases. This results in a poor exchange of information

on specific cases and information is provided with delay. There is a lack of information about activities of other stakeholders and actions and measures; know-how of individual authorities could be better used also by other authorities; a suitable platform to exchange information on how illegal acts are committed, on the latest developments, on outcomes of individual cases and evaluation of efficiency of activities carried out by individual authorities is missing. Units of the Czech Environmental Inspectorate and the Police should establish contacts on the local level, and information and feedback sharing between these units during investigation should be set up (communication during the entire the course of investigation, not only when investigation of a case is opened – also when a criminal complaint is filed, coordination of sanctioning proceedings in progress that could be an obstacle to imposing a sentence pursuant to the Criminal Code etc.).

Best practices:

- close cooperation between the Czech Environmental Inspectorate and the Police of the Czech Republic needs to be formalised;
- ongoing development of the cooperation, formal and informal meetings;
- joint inspections focusing on illicit cross-border transit of waste, this process, however, needs to be specified in more detail (regular ongoing inspections focusing on particular areas – e.g. regular inspections of waste disposal facilities – dumps etc.; nationwide initiatives focusing on inspecting waste in transit (operation “PLAST” carried out by the Surveillance Unit of the Customs Administration of the Czech Republic), ad hoc inspections targeted at a particular area including data analysis – in the past these inspections focused for example on scrap metal collection points, the entire lifecycle of disposal of certain types of waste from its originator to final processing);
- international cooperation within Europol;
- a system for online registering of hazardous waste transits and waste management information systems:
 - ISOH – Waste Management Information System (a nationwide complex waste management information system) containing a registry of facilities licensed to dispose of waste, and a registry of documents with exhaustive data on the production and disposal of waste within the entire Czech Republic making it possible to make cross references between data submitted by waste originators and by agencies in charge. The ISOH database is used to monitor waste (offline and to a certain extent online) and provides information on waste recipients and waste originators and on the volumes of waste in transit;
 - ISPOP – Integrated System to Report Compliance;
 - SEPNO – Hazardous Waste Transit System (an independent module within ISPOP);
 - HNVO - System to Evaluate Hazardous Properties of Waste (an independent module within ISPOP that can only be accessed by registered users) providing online services to users who wish to eliminate the risks relating to hazardous properties of waste; the system enables online requests and certifications and provides information to entities managing waste;

The specific objective no. 1 *Improve mutual cooperation among the environmental law enforcement agencies* was identified based on the above analysis. This specific objective will be accomplished by accomplishing action points no. 1, 2 and 3.

4.2 Specialisation of environmental law enforcement agencies in waste-related matters

The second specific objective consists in increasing the degree of specialisation and qualification of the environmental law enforcement agencies in the waste-related matters. The Evaluation Report suggests in particular to consider setting up of a police environmental unit that could act both as a platform to support and promote a multidisciplinary approach to environmental crime and as an active partner at the international level (recommendation no. 6), and to consider measures to support higher degree of specialisation of public prosecutors and judges in the matters related to environmental crime; in particular, this should entail appointing a special prosecutor who would be supported by a specialised structure focusing exclusively on environmental crime (recommendation no. 8). Related to this is the Evaluation Report recommendation suggesting enhancing of the training activities focused on tackling environmental crime (recommendation no. 7). The Evaluation Report summary commenting on internal structures (chapter 4.6) suggests a suitable measure that would contribute to higher degree of specialisation – to consider setting up a know-how database that would be used by public prosecutors and judges working on environmental crime cases.

Environmental crime specialisation has been established at Public Prosecutor's Offices, at certain district Public Prosecutor's Offices it was established as an optional function, at regional prosecutor's offices this function is mandatory. In the first instance, the environmental crimes (Chapter VIII of the Criminal Code containing special provisions) fall within the substantive jurisdiction of district Public Prosecutor's Offices, there are 86 of them in the Czech Republic. Due to a low number of illicit waste disposal cases, it is impossible to identify environmental experts within the structure of the Public Prosecutor's Offices. Some of the Public Prosecutor's Offices lack this specialisation all together; the offices where this specialisation has been established do not really have any public prosecutors who would deal with environmental cases repeatedly and be able to learn from their experience, be motivated to educate themselves due to the number of cases they have to handle, consistently cooperate with other law enforcement agencies, or get information on the current trends. Although they are interested in the matter and related cases, their primary portfolio consists of other criminal cases taking up their time. The consequences this may lead to at the Public Prosecutor's Office may include for example mistakes in case supervision, lack of cooperation with other agencies, diverting cases that might be qualified as crimes to be dealt with in an administrative procedure, lengthy criminal proceedings, court returning a case to be further investigated pursuant to section 188, paragraph 1e) of the Code of Criminal Procedure, unsuccessful court proceedings. The consequences on the side of judges may include for example transferring a case of serious wrongdoing to an administrative authority to be dealt with

as an administrative offence, unjustified return of a case to a public prosecutor for further investigation, error of law. There is no specialisation in the courts at first instance.

The effort to ensure higher degree of specialisation of public prosecutors in the matters related to environmental crime – including establishing of a network of specialised public prosecutors – is supported by the Public Prosecutor's Office. Necessary measures for the specialised public prosecutors to be able to pay enough attention to the environmental crime will be adopted, the public prosecutors will also receive appropriate training.

There is no specialised police unit. Mandatory instruction no. 103/2013, article 4, section 1c) of the Police President determines jurisdiction of the territorial police units reporting to regional directorates and of the local and city directorates over crimes against the environment. There are 76 territorial units and district directorates / city directorates. The consequences of the non-existence of a specialised environmental police unit are similar to those described for the Public Prosecutor's Office. The number of police officers who have had a previous experience with waste-related crime is low, and those who have the experience cannot apply it to other cases, environmental cases are not always prioritized over other cases that the police officers have to deal with. It is difficult to identify the personnel who need to be trained, and training of such a large number of people is also challenging. Police officers who have never come across waste-related cases are naturally not very much interested in the training. However, such inexperience and lack of knowledge may lead to a rejection of a case and to irreparable mistakes in the initial investigation, in verification of facts and investigations, and to ungrounded returning of a case to be dealt by an administrative authority. As a result of such mistakes in the pre-trial investigations, a case may be returned to a public prosecutor for further investigation or completion or an offender may be acquitted.

The need for a specialised environmental police unit supported by a specialised structure has been also pointed out by other law enforcement agencies in the Czech Republic. Since this is up to a decision of the top management of the Police of the Czech Republic, it is anticipated that this area of the police activities will be further developed based on the Czech Police Development Concept 2021+ that is being drafted now hand in hand with other related concept documents of the Police of the Czech Republic.

There is also the issue of the declared lack of human and material resources and of insufficient support of relevant inspection bodies and police units. This results in particular in a high latency of the environmental crime and in an insufficient capacity to detect this kind of crime and adopt adequately defensive approach in case of suspected illicit waste-disposal.

At the moment, there is no regular structured inter-agency education programme in place that would focus on illicit waste training of representatives of the environmental law enforcement agencies; joint trainings are rather an exception. There is no agreement on shared training programmes and sharing of the training costs. This makes organising of joint

trainings difficult, no joint training plans are being drawn up – events discussing similar topics are held on similar dates and overlap, there is no life-long learning, and there is no differentiation between basic training and specialised advanced training.

There is waste-related and environmental crime training organised for individual law enforcement agencies, however, often it is not systematic, it is held ad hoc, and participation may be limited.

One-day workshops focusing on illicit waste-related matters were organised by the Judicial Academy in 2008-2019. The same workshop has also been planned for 2020. As this is a useful workshop, it will be supported in the coming years as well. The training events (workshops, courses, conferences or round tables) prepared and organised or co-organised by the Judicial Academy in Kroměříž primarily in cooperation with courts and Public Prosecutor's Offices typically as classroom events are designed in particular for judges, public prosecutors and other target groups of judicial employees. The training is not mandatory and is designed primarily as a lifelong learning opportunity for the judicial employees to enhance their professional competence. Since the training at the Judicial Academy is voluntary, employees cannot be ordered to take part in it. However, participation of representatives of other agencies is also encouraged (depending on the capacity, as the training is primarily intended for judicial employees) in order to share knowledge, experience etc.

Another example of training is the training carried out in 2020 to share methodology and instructions organised by the Economic Crime Unit of the Criminal Police and Investigation Service. This training was primarily designed for representatives of the law enforcement agencies involved in investigating illicit waste disposal.

Best practice:

- Spain: the number of prosecuted cases increased as a result of higher degree specialisation of police officers and public prosecutors;
- regional cooperation among individual supervising authorities – establishing of close and proactive cooperation focused on a particular area that is being investigated in a particular region – information exchange, training, joint inspections; activities like these have been proved to have a major impact on achieving defined objectives in combatting environmental crime (e.g. joint inspections carried by the Customs Administration and the Czech Environmental Inspectorate in regions focusing on transit of waste that are supported by other law enforcement agencies);
- joint professional training activities of individual agencies.

The specific objective no. 2 *Strengthen specialisation and qualification of the environmental law enforcement agencies* was identified based on the above analysis. This specific objective will be accomplished by accomplishing action points no. 4, 5 and 6.

4.3 Waste management – regulatory environment in the Czech Republic

The third specific objective is to improve the regulatory environment regulating waste-related matters in the Czech Republic. The Evaluation Report suggests that the Czech Republic should re-assess the balance between the administrative and the criminal approach to environmental crime, so that criminal law could fully play its repressive and deterrent function in this area (recommendation no. 11), and consider analysing the links between environmental crime and other criminal activities (e.g. organised crime, forgery, use of false documents, fraud, corruption, money laundering.) in order to obtain a comprehensive overview of the phenomenon (recommendation no. 5).

The phenomenon of links being established between environmental crime and other criminal activities should receive more attention; the data should be obtained especially from criminal proceedings. However, most cases are handled in administrative procedure and the Police of the Czech Republic does not receive any overview of illicit waste disposal cases, therefore, it is impossible to perform such an analysis. If a methodology is drafted, the links between environmental crime and other crimes should be highlighted and they should be considered in investigation.

Majority of the approached representatives of the environmental law enforcement agencies agree with the recommendation no. 11. The reason for the unequivocal predominance of administrative sanctions over criminal sanctions is the setting of the legislative framework and the fact that most of the acts in question do not actually fulfil the characteristic of the material elements of the criminal offences in question. In many cases, administrative sanctions are believed to be efficient and the fact that they prevail over criminal sanctions may not be a wrong per se. It may actually be far more efficient to impose administrative sanctions in these cases, as it may be easier to find specialised administrative authorities focusing on a particular area. Law enforcement agencies can impose sanctions for numerous types of very serious violations of the law, however, due to the limited financial and human resources it would be hardly possible to establish designated units specialised in this one particular area. Therefore, it is necessary to assess whether and to what extent a deviation of the relationship between administrative and criminal sanctions in favour of more frequent imposition of criminal sanctions is desirable or necessary for practice. Subsequently, it will be necessary to evaluate in what ways this can be achieved. Based on the analysis, it will be necessary to consider whether a change in legislation is necessary in this context, or whether creation of a methodological material agreed on by all stakeholders would appear to be a more appropriate tool.

Waste-related crime is usually committed for profit and can be, therefore, compared to economic crime to a certain extent, at the same time, however, there is a risk for the environment or harm caused to the environment usually requiring millions of CZK to remedy the damage. The terms of imprisonment specified in section 298 of the Criminal Code do not correspond to the severity of the organised criminal activities committed for profit (e.g. see the case of “waste mafia” in Poland and the Czech Republic). Organised crime is classified

as misdemeanour and the term of imprisonment is 6 months to 3 years. The same term of imprisonment shall apply when a substantial profit is gained (over CZK 500 000), and when an act is committed repeatedly. In case an extensive profit is gained (over CZK 5 million), the term of imprisonment will be 1 to 5 years, however, in case of crimes against property (theft, embezzlement, fraud), the term of imprisonment is 5 to 10 years. Therefore, the sanctions do not have the deterrent effect and administrative sanctions are preferred.

Neither criminal, nor administrative law have the corrective effect here. Powers (issuing of permits, inspections, imposing of corrective measures, administrative sanctions, criminal sanctions) are divided among too many individual authorities. In some cases, the authority in charge of deciding on remedying a situation is the authority that also have to pay for the remedy from their own budget (lack of willingness to order the remedy). Claiming damages in criminal proceedings is complicated (beneficiary, evidence of costs of the remedy, relevant authorities often do not act). The law does not define any entity that could act as the injured party in criminal proceedings in connection with environmental damage and hazards (public interest in protecting the environment is protected, this interest is represented by relevant authorities, however, they do not act as an injured party in criminal proceedings). This results in cases being transferred from one authority to another, waiting for decisions of another relevant authority, no information sharing about adopted measures and imposed sanctions, failure to act by administrative authorities when a breach of law leading to recurring violations is detected, prolonged violations of the law, re-issuing of a permit although violations of the law were found in a particular facility. Failure to comply with the „polluter pays“¹ principle in the criminal proceedings as a result of the difficulties relating to claiming damages in the criminal proceedings or failure to act by a relevant authority and the non-existence of the injured party especially in cases when future costs that have not even been incurred need to be discussed.

A disbalance between sanctions imposed in an infringement or administrative procedure and in criminal proceedings has also been identified, the sanctions imposed in the criminal proceedings are disproportionately low compared to the sanctions imposed in the infringement or administrative procedure, which makes them more acceptable for an offender; this lacks any logic in respect to the position and importance of the criminal proceedings within the Czech legal system.

The fact that the importance of the criminal proceedings is not well established within the system can be documented by identical text describing material elements of a criminal offence (section 298, paragraph 1 of the Criminal Code) and of administrative offence (the Waste Act), this causes problems – also due to the non-existence of relevant case law – in determining jurisdiction of the Police of the Czech Republic and of the Czech Environmental Inspectorate in cases of illicit cross-border transit of waste. As a result, cases that should be investigated in criminal proceedings are dealt with in an infringement

¹ Inability to enforce remedy or reimbursement of costs that the state incurred in order to remedy environmental damage.

procedure. An ambiguity in jurisdiction / field of action of the Customs Administration and the Police of the Czech Republic has also been identified. There is duplicity in case investigation, and activities to verify a criminal case are not coordinated.

Specific challenges that the authorities have to face include:

Special purpose or simulated transfer of waste ownership to a “straw man” in order to remove waste from one’s records. The waste, for which a commission is received, is disposed

in a concealed / non-transparent manner posing different kinds of risks (environmental or financial / tax). If the waste is found in an illegal location, it is owned by the person acting as a “straw man”. Disposal of such waste has to be paid by municipalities. This is caused by the lack of precise specifications in the law; waste licenses are issued to entities that received a trade license and permit to collect waste in accordance with the Waste Act, there is no review of economic stability of an entity or its history, no financial guarantees are provided or insurance obtained etc. In reality, it is impossible to find the waste that was transferred (in a simulated way) to a “straw man” in the books. Sanctioning of the actual offenders (those who hold the waste) who need to dispose of the waste in a concealed manner is very difficult – the waste has already been transferred to an authorised entity in accordance with the law, in most cases, it is impossible to produce any evidence about who really disposed of the waste and how. Financial sanctions imposed on the person receiving the waste have no effect whatsoever, as any debt is uncollectible due to non-existing assets of the company/executive.

Options for imposing administrative sanctions are sufficient. However, they only have a limited effect on these entities. There have been cases when a company collected large volumes of waste in their location over a relatively short period of time, collected the money for the waste which was immediately transferred to other companies while the waste was left on the site. If such a company is insolvent, it is dissolved, and no sanctions are paid to the state; large volumes waste that the state has to take care of remain. This is due to the limited effect of administrative sanctions, if a company has no or only small assets. Administrative sanctions have practically no effect on legal persons in cases like this. Implementation

of remedies at the expense of a legal person is also limited, if there are no assets/funds of adequate value that could be seized. To this end, criminal sanctions should be imposed on individual natural persons, and there should also be a tool enabling seizure of property of such natural persons. The criminal sanctions, however, do not have sufficient (adequate) deterring effect due to the short terms of imprisonment – offenders are usually sentenced to a suspended sentence of imprisonment and to a relatively low pecuniary penalty.

Currently there is no procedure for funding a solution in situations when there is waste on a site posing a risk for the environment that, however, cannot be classified as an emergency pursuant to the Water Act, and when an agency in charge is not known or it fails to adopt corrective measures for a certain reason. Typically, these may be illegal storage facilities containing hazardous waste and waste which may pose a fire risk – plastic waste, vulcanised rubber etc. There is no budget chapter in the budget of the Ministry of the Environment

or of the State Environmental Fund (SFŽP) that would allocate relevant funding. This result in a high risk for the environment and public health. The lack of financing in this area also has a secondary effect causing failure of evidence (the waste is not registered; risk is not evaluated etc.).

When it is impossible to find a location where the illicit waste was dumped, it is impossible to prove that material elements of a criminal offence were fulfilled, as there is no way to quantify the environmental damage (anticipated result). As a result, cases that indicate discrepancies between income and waste management reported to the Waste Management Information System are just filed.

Illegal storage of waste – when large volumes of mostly hazardous waste are brought to a warehouse and stored in a non-standard way violating the law, and when the person who brought and dumped the waste cannot be found as a rule – also needs to be addressed. This issue is also related to the management of stored waste as described in the previous paragraph. It is likely for the illegal waste dumps to occur when a person commits to dispose of hazardous waste and chemicals for profit, but improper disposal or deliberate failure to dispose the hazardous waste bring higher profit.

Illegal management of construction and demolition waste also represents a problem. In particular this applies to using the construction or demolition waste for landscaping in areas where no such waste should be recycled. Long-term storage of construction and demolition waste at sites that are not meant for the purpose also needs to be take into consideration.

Over the past few years, the Czech Environmental Inspectorate found that the economic instruments specified in the Waste Act are being systematically circumvented – landfill taxes, especially those applicable to hazardous waste, are not paid. Different methods of circumventing the law by the landfill operators have been identified (e.g. referring to “structural elements of a landfill”, re-registration of waste as “products used for structural support of a landfill”); this leads to a situation when no charges are collected from waste originators, and therefore no “tax” is returned to municipal budgets and to the State Environmental Fund. This approach violating the law is dealt with on a case by case basis by administrative courts and will also be regulated by the new waste act that is being drafted.

Best practice:

- restrictions on buying scrap metal (no payments in cash, operator obliged to check identity of scrap metal sellers or collectors, identification of purchased or collected scrap metal and keeping a record of these activities), led to a major decrease (50%) of metal theft in the country;
- the Regulation on Shipments of Waste and the Waste Act making it possible for the relevant authority (Ministry of the Environment) not to permit cross-border

transit of waste they have been notified about, if the notifying or receiving party was finally convicted for a waste-related crime, or an administrative sanction was imposed on the notifying or receiving party for violating the waste legislation in previous five years.

The specific objective no. 3 *Improve the regulatory environment regulating the waste-related matters in the Czech Republic* was defined based on the above. This specific objective will be accomplished by implementation of measure no. 7.

4.4 Public awareness of the waste-related matters

Public awareness of the waste-related matters represents the fourth area of interest. The Evaluation Report recommends ongoing support of awareness-raising campaigns and communicating success stories about combating waste-related crime. Campaigns like this represent suitable means to engage citizens and encourage them to report violations of regulations to the relevant authorities (chapter 3.6).

Best practice:

- media coverage of cases, especially if there have been major impacts on the environment and preferably, if there has been a risk or damage to human health.

The specific objective no. 4 *Raise public awareness of the waste related matters* was defined based on the above. This specific objective will be accomplished by implementation of measures no. 8 and 9.

5 Implementation – Proposed Measures

The Specific Objective 1 Improve mutual cooperation among the environmental law enforcement agencies

Number and type of measure	1. Establish a functional inter-agency team
Method of implementation	To establish a functional inter-agency team with all the law enforcement agencies represented. The inter-agency team will also be in charge of other measures presented in the Strategy.
Progress indicators	Approval of the Statutes and Rules of Procedure / Agreement on the Functioning of the Team, nominations of team members, regular cooperation rules, joint meetings and outcomes of the meetings.
Method of financing	Costs of the measures will be covered from the existing budgets.
Agency in charge	Ministry of the Interior
Cooperating agencies	Police of the Czech Republic, Czech Environmental Inspectorate, Customs Administration, Ministry of the Environment, Ministry of Justice, Public Prosecutor's Office
Deadline	12/2020

Number and type of measure	2. Draft a proposal to review cooperation agreements
Method of implementation	Drafting of a proposal based on an analysis of the current status of cooperation agreements including bilateral agreements regulating obtaining information from databases of domestic environmental law enforcement agencies (the Police and Czech Environmental Inspectorate, Customs Administration, Ministry of the Environment) and their revisions.
Progress indicators	Submitting the proposal for the review of cooperation agreements.
Method of financing	Costs of the measures will be covered from the existing budgets.
Agency in charge	Ministry of the Interior
Cooperating agencies	Police of the Czech Republic, Czech Environmental Inspectorate, Customs Administration, Ministry of the Environment, Public Prosecutor's Office
Deadline	12/2021

Number and type of	3. Establish formal cooperation between individual
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measure	environmental law enforcement agencies and develop relevant methodological recommendations
Method of implementation	Establish formal cooperation based on a clearly defined set of rules between individual environmental law enforcement agencies by developing methodological recommendations for coordination of tasks relating to environmental protection and mutual cooperation
Progress indicators	Cooperation agreements between individual environmental law enforcement agencies and methodological measures
Method of financing	Costs of the measures will be covered from the existing budgets.
Agency in charge	Ministry of the Interior in coordination with the Police of the Czech Republic, Customs Administration, Public Prosecutor's Office, Czech Environmental Inspectorate, Ministry of the Environment
Cooperating agencies	
Deadline	12/2022

Specific objective 2 Strengthen specialisation and qualification of the environmental law enforcement agencies

Number and type of measure	4. Review of the existing training system for employees of environmental law enforcement agencies focused on waste-related matters and proposal of additional measures
Method of implementation	Analysis of the existing training system for employees of environmental law enforcement agencies, proposing of additional measures and their implementation
Progress indicators	A proposal for modification, preparation and organisation of basic and specialised training for selected target groups within the Police, Customs Administration and judicial
Method of financing	Costs of the measures will be covered from the existing budgets.
Agency in charge	Ministry of the Interior
Cooperating agencies	Police of the Czech Republic, Czech Environmental Inspectorate, Customs Administration, Judicial Academy, Public Prosecutor's Office (Ministry of Justice), Ministry of the Environment
Deadline	Analysis until 12/2021 Implementation of the system until 12/2023

Number and type of measure	5. Educate public prosecutors about environmental crime and establish a network of specialised public prosecutors
Method of implementation	Establishing a network of specialised public prosecutors

Progress indicators	Existence of the network of specialised public prosecutors specialising in environmental crime
Method of financing	Costs of the measures will be covered from the existing budgets.
Agency in charge	Public Prosecutor's Office
Cooperating agencies	
Deadline	12/2021

Number and type of measure	6. Stabilisation and further development a network of environmental police experts
Method of implementation	Supporting an establishment of a centrally managed network of environmental crime police experts as part of The Czech Police Development Concept 2021+.
Progress indicators	The task being recorded in the action plan of The Czech Police Development Concept 2021+.
Method of financing	Costs of the measures will be covered from the existing budgets.
Agency in charge	Ministry of the Interior
Cooperating agencies	
Deadline	12/2022

Specific objective 3 Improve the regulatory environment regulating the waste-related matters in the Czech Republic

Number and type of measure	7. Prepare an analysis evaluating the adequacy of the use of administrative or criminal sanctions for environmental crime with a focus on the illicit waste disposal.
Method of implementation	Analysis evaluating the adequacy of the use of administrative or criminal penalties for environmental crime with a focus on the illicit waste disposal.
Progress indicators	Submission of an analysis suggesting next steps.
Method of financing	Costs of the measures will be covered from the existing budgets.
Agency in charge	Ministry of Justice, Ministry of the Environment
Cooperating agencies	Ministry of the Interior, Police of the Czech Republic, Czech Environmental Inspectorate, Customs Administration, Public Prosecutor's Office
Deadline	12/2021

Specific objective 4 Raise public awareness of the waste-related matters

Number and type of measure	8. Regularly publish press releases informing about successful cases of combating waste-related crime.
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Method of implementation	Regular publishing of press releases informing about successful cases of combating waste-related crime.
Progress indicators	Number of published press releases.
Method of financing	Costs of the measures will be covered from the existing budgets.
Agency in charge	Police of the Czech Republic, Czech Environmental Inspectorate, Customs Administration
Cooperating agencies	
Deadline	ongoing

Number and type of measure	9. Launch a campaign to raise public awareness of waste management activities.
Method of implementation	Launching of a campaign to raise public awareness of waste management activities.
Progress indicators	Implementation of the campaign.
Method of financing	Costs of the measures will be covered from the existing budgets.
Agency in charge	Ministry of the Environment
Cooperating agencies	Police of the Czech Republic, Czech Environmental Inspectorate, Customs Administration
Deadline	12/2022

Related documents

- Evaluation Report of the Czech Republic – 8th Round of Mutual Evaluations
- Waste Management Plan of the Czech Republic for the Period of 2015 – 2024,
- Waste Prevention Plan of the Czech Republic,
- Act no. 185/2001 Coll., the Waste Act amending certain other acts,
- The Czech Police Development Concept 2021+ (being drafted),
- Analysis of Criminal Cases Investigated by Public Prosecutor’s Offices between 2012 to Present.

Abbreviations

CENIA	Czech Environmental Information Agency (Česká informační agentura životního prostředí)
CS ČR	Customs Administration of the Czech Republic (Celní správa České republiky)
ČIŽP	Czech Environmental Inspectorate (Česká inspekce životního prostředí)
ČR	Czech Republic (Česká republika)
EU	European Union
HNVO	System to Evaluate Hazardous Properties of Waste (Systém hodnocení nebezpečných vlastností odpadů); an independent module of the ISPOP system
ISOH	Waste Management Information System (Informační systém odpadového hospodářství); national comprehensive waste management system
ISPOP	Integrated System to Report Compliance (Integrovaný systém plnění ohlašovacích povinností)
MSp	Ministry of Justice
MV	Ministry of the Interior
MŽP	Ministry of the Environment (Ministerstvo životního prostředí)
OČTŘ	Law enforcement agencies
PČR	Police of the Czech Republic
SEPNO	Hazardous Waste Transit System (Systém evidence přepravy nebezpečných odpadů); an independent module of the ISPOP system
SFŽP ČR	State Environmental Fund of the Czech Republic (Státní fond životního prostředí České republiky)
SZ	Public Prosecutor’s Office