



# Enforcement of European Waste Shipment Regulation





## **Enforcement of European Waste Shipment Regulation**

**Original title**

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# 1 About this audit

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## 1.1 Introduction

The Netherlands Court of Audit has audited the Dutch government's enforcement of the European Waste Shipment Regulation (EWSR). The EWSR regulates the shipment of waste within, to and from the European Union (EU) with a view to protecting the environment both within the EU and internationally. The EU wants to prevent businesses and institutions exporting waste to be processed at facilities that do not adequately respect the environment. The EWSR distinguishes between three options in case of an international waste shipment: prohibition, notification with permit, and shipment with accompanying documentation only. Which procedure is applicable depends on the shipment's destination, the type of waste and the way in which the waste will be processed after shipment.

### *Need for the EWSR*

Waste Shipment Regulation was introduced on the initiative of the international community. Waste management has become increasingly international in recent years. Italian waste, for example, was recently incinerated in the Netherlands. Furthermore, the growing scarcity of raw materials is making recycling more attractive (I&M, 2011b). The extent to which waste can be re-used as a raw material differs from one country to another. Furthermore, each country has its own processing capacity, costs and rules. These differences make waste a valuable commodity, particularly in the illegal market (KLPD, 2008; VROM Inspectorate, 2009). The EWSR aims to curtail the illegal market.

### *Less developed countries bear environmental risks*

Hundreds of illegal waste shipments destined for countries outside the EU are stopped every year in Europe (IMPEL, 2011). A serious risk with such shipments is that the waste will be dumped illegally or processed harmfully. Many broken computers and televisions, for instance, are shipped from Europe to African countries where they are incinerated in the open air after the precious metals have been removed. These countries then have to deal with the human and environmental consequences.



### *International coordinated audit*

Our audit is part of an international coordinated audit on the enforcement of the EWSR carried out in eight countries: Bulgaria, Greece, Hungary, Ireland, the Netherlands, Norway,<sup>1</sup> Poland and Slovenia. The supreme audit institutions of these countries are auditing and reporting on the situation in their home countries. An overarching report will be issued in early 2013.

The audit approach has been coordinated so that comparisons can be made between the respective countries. The main elements of the audit approach are interviews with enforcement authorities and policy officers, and analyses of internal documents and data. In the Netherlands, three enforcement operations were also attended. The audit covered the period from 2009 to the end of 2011.

### *Structure of this report*

This report consists of an introduction and four chapters. Chapter 2 looks at the implementation and enforcement of the EWSR. The report then considers the impact of enforcement (chapter 3). Chapter 4 explains who is responsible for dealing with offences. Finally, chapter 5 presents the response of the Ministry of Infrastructure and the Environment (I&M), the Ministry of Finance and the Ministry of Security and Justice (V&J).

Below, we first discuss the main international waste flows, the applicable regulations and who is responsible for what. We then consider the audit objective and audit questions and present our main conclusions and recommendations.

## **1.2 International waste flows**

The worlds' population produces a huge amount of hazardous<sup>2</sup> and non-hazardous waste every year, from domestic waste and electrical equipment to industrial waste, batteries and scrap cars. The EU member states define 'waste' as any substance or object that the holder discards, intends to discard or is required to discard. Whether businesses or institutions export their waste or not usually depends on the processing

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<sup>1</sup> Norway is not a member of the EU but it is a member of the European Economic Area and has adopted the EWSR.

<sup>2</sup> Hazardous waste is waste that represents a risk to health and safety because it is, for example, flammable or toxic. The EWSR takes its definitions of 'waste' and 'hazardous waste' from the Waste Framework Directive.

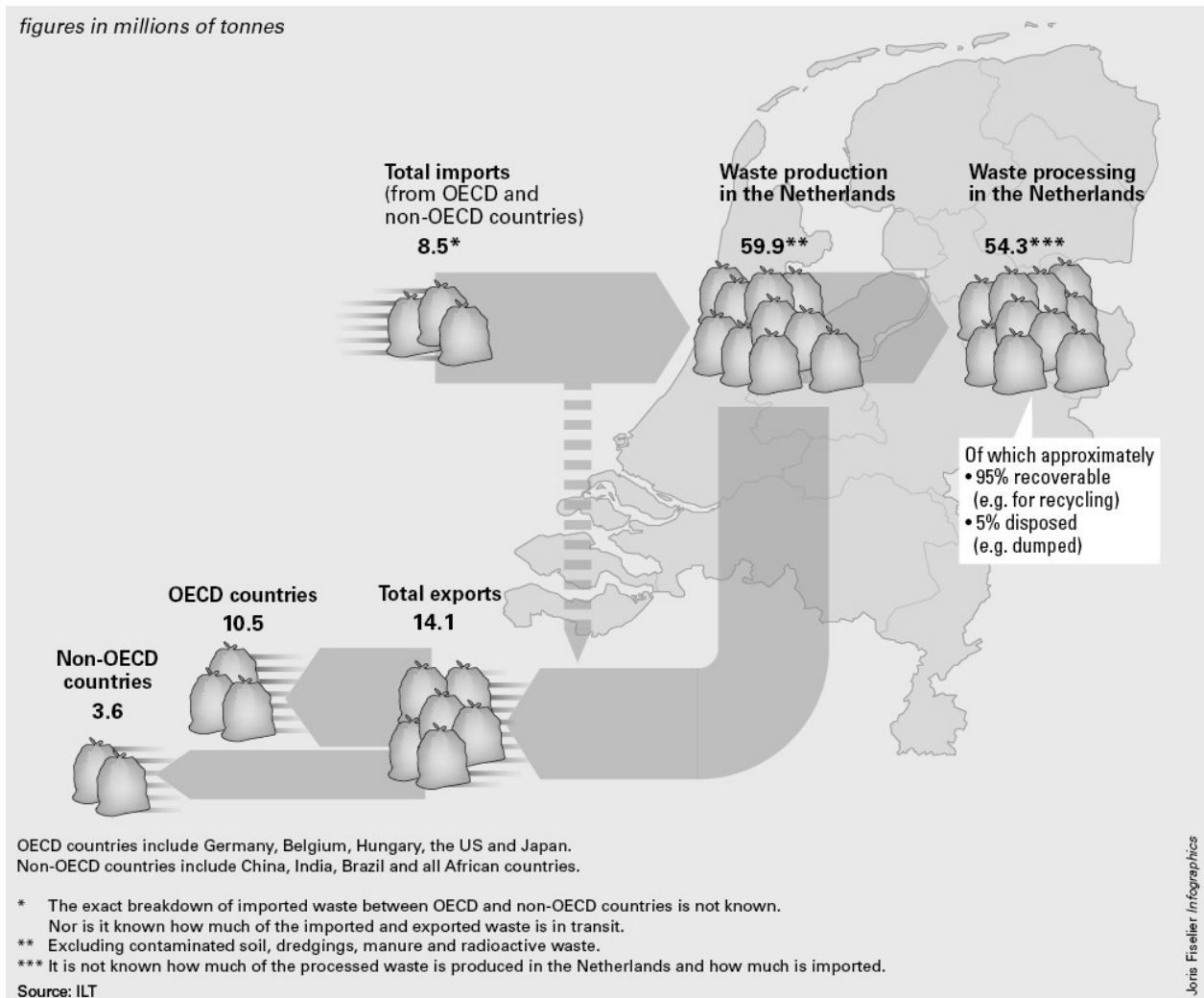


opportunities and costs. If it is more favourable to export the waste and process it elsewhere (legally or otherwise) there is less incentive to process it in the home country. This results in substantial international waste flows. The main recipients of global waste are Asia and Africa, whereas Europe, Japan and North America are the main shippers.

**1.2.1 Key waste data and waste flows in the Netherlands**

Figure 1 shows how much waste is produced and processed in the Netherlands and how much is imported and exported.

**Figure 1 Waste data and waste flows in the Netherlands in 2010**





In 2010 10.5 million tonnes of waste were exported to OECD countries<sup>3</sup> and 3.6 million tonnes to non-OECD countries.<sup>4</sup> The total volume of waste imported and exported is known but the process (in transit or processing) for waste in the Netherlands that does not require a permit is uncertain. For this reason the presented figures do not necessarily add-up.<sup>5</sup> Nor can we break the figures down by mode of transport (ocean shipping, inland shipping, road, and rail). It is known, however, that ocean shipping is the most important mode to export waste from the EU and that a considerable proportion of the waste leaving the EU from the Netherlands comes from other countries (chiefly Germany). For the purposes of the EWSR, Germany has primary responsibility for the EWSR and its enforcement and the Netherlands serves as a transit country for waste leaving the EU.

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The figure does not show how much waste is imported and exported illegally or what proportion of the known flows is illegal. By definition, these flows are hidden from view (see section 3.2).

*The Netherlands cannot process all types of waste*

The Netherlands does not have capacity to process all types of waste. It does not have the centrifuges necessary, for example, to process certain hazardous substances, nor can it process lead batteries (VROM Inspectorate, 2009). Dutch businesses and institutions must therefore export such waste for processing.

### **1.2.2 From international conventions to national implementation**

The path to the EWSR and its implementation in the Netherlands was paved by a series of international conventions, treaties and guidelines. The main international precedents are the global Basel Convention (1989) and related treaty, the European Waste Framework Directive (1975, most recently amended in 2008) and an OECD Decision<sup>6</sup> (1992, revised in 2001).

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<sup>3</sup> Members of the Organization for Economic Cooperation and Development.

<sup>4</sup> Source: ILT, based on Eurostat and Terra.

<sup>5</sup> There is no reliable information on the amount of imported waste that is exported immediately (transit). Furthermore the different waste flows are not fully comparable. The figure on waste production does not include contaminated soil, dredgings, manure and radioactive waste. The total export add-up to import and production, only by accident.

<sup>6</sup> The OECD Decision relates to the shipment of recyclable waste that crosses the borders of OECD member countries.





### *Agreements laid down in the EWSR*

The EU consolidated these international and European agreements and principles in the EWSR in 1993. The EWSR lays down how EU member states must regulate waste shipments within the EU and to and from countries outside the EU. The EWSR has also been introduced by members of the European Economic Area, such as Norway and Switzerland. The EWSR applies directly to EU member states but gives them some latitude in certain areas, for example on how they supervise its enforcement.

### *Assessment of waste shipments*

Whether a waste shipment is permitted under the EWSR, and subject to what conditions, depends on the following four factors:

- transboundary movement: the EWSR applies only to waste that crosses a country border;
- processing method: will the waste be disposed after shipment (e.g. dumped) or will it be recovered (e.g. metal for recycling)? The EWSR includes stricter requirements for shipments that are dumped than for shipments that are recovered. Waste may not be shipped to non-EU countries, for example, if it is to be dumped;
- type of waste: the EWSR recognises several types of waste and sets stricter requirements on some than on others depending on the environmental risk. Waste paper, for example, is considered less dangerous than sewage sludge. The EWSR classifies waste as 'green' (less hazardous) or 'amber' (more hazardous);
- country of destination: the EWSR makes a distinction between two types of countries: countries subject to the OECD Decision and countries that are not subject to the OECD Decision (see also figure 1). The EWSR sets stricter requirements on shipments to non-OECD countries. Furthermore, non-OECD countries may state whether they are willing to accept green-listed waste for recovery and, if so, subject to what conditions.<sup>7</sup>

We consider the EWSR procedures in more detail in chapter 2.

### *Compulsory control and imposition of penalties*

The EWSR requires the member states to control waste shipments. If a business or institution fails to comply with the Regulation, the member states must impose an appropriate penalty. The member states themselves decide how they implement this requirement and how they cooperate with other countries.

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<sup>7</sup> Non-OECD countries' preferences are stated in the 'country list', EU Regulation 1418/2005, last amended in July 2011.



### *Dutch legislation on waste flows*

The EWSR has been transposed into Dutch law chiefly in the Environmental Management Act, the EWSR regulation and the Economic Offences Act. These national sources include rules on, for example, financial guarantees, enforcement and penalties. Key terms in the EWSR and the Environmental Management Act such as 'waste' and 'recovery' are defined in the European Waste Framework Directive. Waste policy is laid down in the National Waste Management Plan (VROM, 2009).

## **1.3 Political responsibility for waste flows**

The following actors have political responsibility for waste flows in the Netherlands:

- the Minister of I&M (inspection);
- the State Secretary for I&M (environment);
- the State Secretary for Finance (Tax and Customs Administration);
- the Minister of V&J (Public Prosecution Service and police).

## **1.4 Audit objective and audit questions**

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

To achieve this objective, our audit asked the following questions:

- To what extent do the relevant authorities comply with the requirements arising from the EWSR?
- What are the results and impact of enforcing the EWSR?

More information on the audit questions is provided in the appendix on audit questions and audit approach on our website, [www.rekenkamer.nl](http://www.rekenkamer.nl).

Our supervision and enforcement standards are considered in appendix 3. The main elements are knowledge of the field, a coherent enforcement policy, specification of the required level of compliance and insight into the impact of enforcement.



## 1.5 Conclusions and recommendations

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Our audit found that the Dutch government pays specific and systematic attention to enforcement of the EWSR. There is room for improvement, however, in a number of areas. Better information management, for example, would enhance insight into the impact of enforcement activities. Furthermore, the high percentage of decisions not to prosecute is a matter of concern and we would draw attention to the need to analyse and assess the functioning of the EWSR system as a whole.

### *Requirements arising from the EWSR*

In the main, the Netherlands complies with the requirements arising from the EWSR. Necessary amendments have been made to national legislation<sup>8</sup> and the Netherlands specifically complies with the requirement that member states must control waste shipments and impose appropriate penalties in response to offences. It also complies with the requirement to cooperate internationally to prevent and detect illegal shipments. It does not comply as fully, however, with the reporting requirements; the Netherlands has difficulty issuing reports on a timely basis.

### *Results and impact of enforcement*

The enforcers have a coherent enforcement policy and a broad understanding of the waste market. The Human Environment and Transport Inspectorate (ILT), Customs and the police service inspect several thousand waste shipments every year for compliance with the EWSR. On-site inspections are also carried out at businesses, and the Public Prosecution Service is responsible for the detection and prosecution of offences. The ILT, Customs and the police service also investigate specific waste flows so that they can intervene at an earlier stage. Many of the elements necessary for appropriate enforcement are therefore present. There is still room for improvement though.

Our audit found that there was only limited insight into the impact of enforcement activities and the functioning of the EWSR system as a whole. Insight into the system is necessary to determine whether the objective of the EWSR is being achieved. The lack of insight means an opinion cannot be properly formed on the effectiveness of EWSR enforcement in the Netherlands. Firstly, this is because it is difficult to investigate illegal flows. Secondly, there are weaknesses in the registration systems. We can say more about the impact of enforcement only in respect of individual cases, electronic waste and plastic waste. We

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<sup>8</sup> Rules on financial guarantees, enforcement and penalties, for example, have been amended.



consider our findings further in chapter 3. Another area open to improvement relates to the large number of decisions not to prosecute EWSR offences, see chapter 4.

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#### *Recommendations*

On the basis of these findings, we make the following recommendations:

- We recommend that the three actors with political responsibility together improve information management so that it is more appropriate for the EWSR. Information management must provide an insight into the impact of individual enforcement instruments and the impact of all enforcement activities as a whole. The state secretaries and minister should also further refine their risk assessments by using sources of information other than Customs' data. We consider this further in chapter 3.
- We further recommend that the Minister of I&M improve insight into the functioning of the EWSR system as a whole. The ILT can analyse this by studying the procedures in place at NL Agency (evaluation of applications from businesses and of processing notifications; highlighting risks) on the one hand and by sampling the plausibility of receipt and processing notifications on the other. More information is presented in section 3.2.
- Finally, we recommend that the Minister of V&J analyse the cause of the high percentage of decisions not to prosecute and seek ways to reduce it. Customs and the Dutch Police Services Agency (KLPD) should also be better informed of the outcome of cases. The analysis would help the minister make improvements in both areas. This is considered further in chapter 4.

## **1.6 Response of the state secretaries and the minister**

Both the State Secretary for I&M and the State Secretary for Finance responded to our draft report on 30 August; the Minister of V&J responded on 19 September 2012.

The State Secretary for I&M wrote that he was pleased with our general conclusion, which was to the credit of all concerned. He referred to the involvement of the Strategic Environment Centre (SMK), which also responded to the report in an appendix to the state secretary's response. The state secretary observed that steps were already being taken to



improve enforcement and strengthen insight into enforcement activities: 9

- ICT measures, including the introduction of the Inspectieview system;
- transfer of tasks from NL Agency to the ILT;
- post-export control procedures by Customs;
- investigations by the SMK and Public Prosecution Service.

The State Secretary for Finance endorsed our recommendation to work together to improve information management and refine risk assessments. Customs is also working on solutions to eliminate the weaknesses we identified in the system.

The Minister of V&J is pleased with our general conclusion. Like the State Secretary for I&M, he also appended the SMK's response to his response. The minister shares our concern about the high percentage of decisions not to prosecute EWSR cases and refers to a current investigation by the Public Prosecution Service (OM) into the causes. The findings will be used to improve the enforcement under criminal law. The OM's feedback on the outcome of cases to the ILT, KLPD and Customs will also be improved. The minister also noted that cooperation within the enforcement network centred on the Inspectieview system and two trial projects to combat national and international environmental crime.

We note that the minister and both secretaries of state accept our main audit findings and have already taken steps to improve enforcement of the EWSR. It is unfortunate that the State Secretary for I&M will not follow up our recommendation to analyse the functioning of the EWSR system as a whole. There is a risk that the activities named by the state secretary will not produce a coherent picture and that insufficient attention will be paid to transfer points in the system. We are pleased that the causes of the high percentage of decisions not to prosecute are being investigated. We consider it important that measures taken to improve this situation are based on a thorough analysis of the problems and will follow the improvements based on this analysis with special interest.

Further to the transfer of tasks from NL Agency to the ILT we would note in closing that there must be a clear segregation of the ILT's permit issuing and supervisory duties.

We consider the response of the state secretaries and the minister in more detail in chapter 5. The full responses have been posted on [www.rekenkamer.nl](http://www.rekenkamer.nl).



## Conclusions, recommendations and response

Section in report	Conclusions	Recommendation	Response of the State Secretaries for I&M and for Finance and of the Minister of V&J	Afterword
2.6	<p>The Netherlands pays specific and systematic attention to enforcement of the EWSR. There is room for improvement, however, in a number of areas.</p>	See below	<p>The State Secretaries for I&amp;M and Finance and the Minister of VenJ are pleased with the conclusion; it is a credit to all concerned, including the SMK.</p>	
3.1, 3.3 & 3.4	<p>The Minister of I&amp;M has only limited insight into the impact of enforcement activities. In the case of most waste flows, it is uncertain how enforcement encourages compliance with the EWSR and thus deters illegal waste flows. This is due in part to weaknesses in Customs' ICT system.</p> <p>Electronic data interchange within the enforcement network is limited. Partly for this reason the authorities make their own risk analyses based on their own data.</p>	<p>To I&amp;M, V&amp;J and Finance: together improve information management to provide an insight into the impact of enforcement instruments and into the impact of the enforcement activities as a whole</p> <p>Refine the risk assessments by using data from a variety of sources.</p>	<p>Both state secretaries endorse the findings. The Inspectieview system and system modifications at Customs will improve insight into enforcement. The Minister of VenJ also refers to the cooperation with regard to Inspectieview.</p> <p>Both state secretaries refer to ICT improvements to eliminate weaknesses in data interchange.</p>	



<p>3.2 &amp; 3.4</p>	<p>The Minister of I&amp;M has no overall insight into the functioning of the EWSR system as a whole. The minister therefore does not have a good insight into the achievement of the EWSR's objectives.</p>	<p>To I&amp;M: Study the functioning of the EWSR system as a whole. The study should consider the procedures at NL Agency and the plausibility of receipt and processing notifications.</p>	<p>The State Secretary for I&amp;M does not accept the recommendation. He does refer, however, to a number of matters that influence the functioning of and insight into the EWSR system.</p> <p>The state secretary also refers to the transfer of operational tasks from NL Agency to the ILT.</p>	<p>It is unfortunate that the state secretary will not follow up the recommendation. There is a risk that the matters he refers to will not produce a coherent picture.</p> <p>The ILT must clearly segregate its permit issuing and supervisory duties.</p>
<p>4.3 &amp; 4.4</p>	<p>The Public Prosecution Service decides not to prosecute three out of ten cases. This percentage is far higher than its internal target.</p> <p>The Public Prosecution Service informs the ILT, KLPD and Customs in general terms about the outcome of official reports. This feedback is not specific enough to improve the quality of future official reports.</p>	<p>To V&amp;J: Analyse the causes of the high percentage of decisions not to prosecute and seek ways to reduce it.</p> <p>Ensure that Customs and the KLPD are better informed of the outcome of cases.</p>	<p>The minister shares our concern and states that the Public Prosecution Service has already started an investigation into the causes of the high percentage of decisions not to prosecute. Findings will be used to improve enforcement under criminal law.</p> <p>The minister will pay attention to this matter when taking actions in response to the mentioned investigation by the Public Prosecution Service.</p>	<p>We consider it important that measures taken are based on a thorough analysis of the problems and we will follow the improvements based on this analysis with special interest.</p>



## 2 Implementation of the EWSR

The subject of this audit is the enforcement of the EWSR. Enforcement is an essential aspect of the government's implementation of the Regulation and its detection and prosecution of offences. This chapter therefore considers not only enforcement but also the implementation of the EWSR, detection and prosecution and associated procedures and actors, as illustrated in figure 2.

In section 2.1 we first discuss the role of the Ministry of I&M. In section 2.2 we consider NL Agency's implementation of the EWSR. Section 2.3 looks at enforcement of the EWSR, including the enforcement model in place in the Netherlands, its implementation by the competent authorities and national and international cooperation to enforce the EWSR. Section 2.4 considers detection and prosecution and section 2.5 presents our conclusions.

### 2.1 Role of the Ministry of I&M

The Minister of I&M is responsible for legislation and supervision of the waste management system in the Netherlands. The system includes transboundary shipments of waste. The Minister of I&M is the competent authority for the EWSR in the Netherlands. Within the Ministry of I&M, the Directorate General for the Environment and International Affairs (DGMI) sets out the general policy lines, including the National Waste Management Plan. The Human Environment and Transport Inspectorate (ILT) is part of the Ministry of I&M and has been charged by the minister with enforcement of the EWSR. NL Agency carries out the EWSR tasks on behalf of the ministry.<sup>9</sup>

The accepted strategy at the former Ministry of VROM was to delegate operational and enforcement tasks to arm's lengths organisations. In the case of the EWSR, we concluded that lack of capacity and personnel changes usually prevents DGMI from steering NL Agency and the ILT. It therefore delegates EWSR policy development and evaluation to

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<sup>9</sup> The EWSR tasks of NL Agency will transferred to ILT as of January 1, 2013.





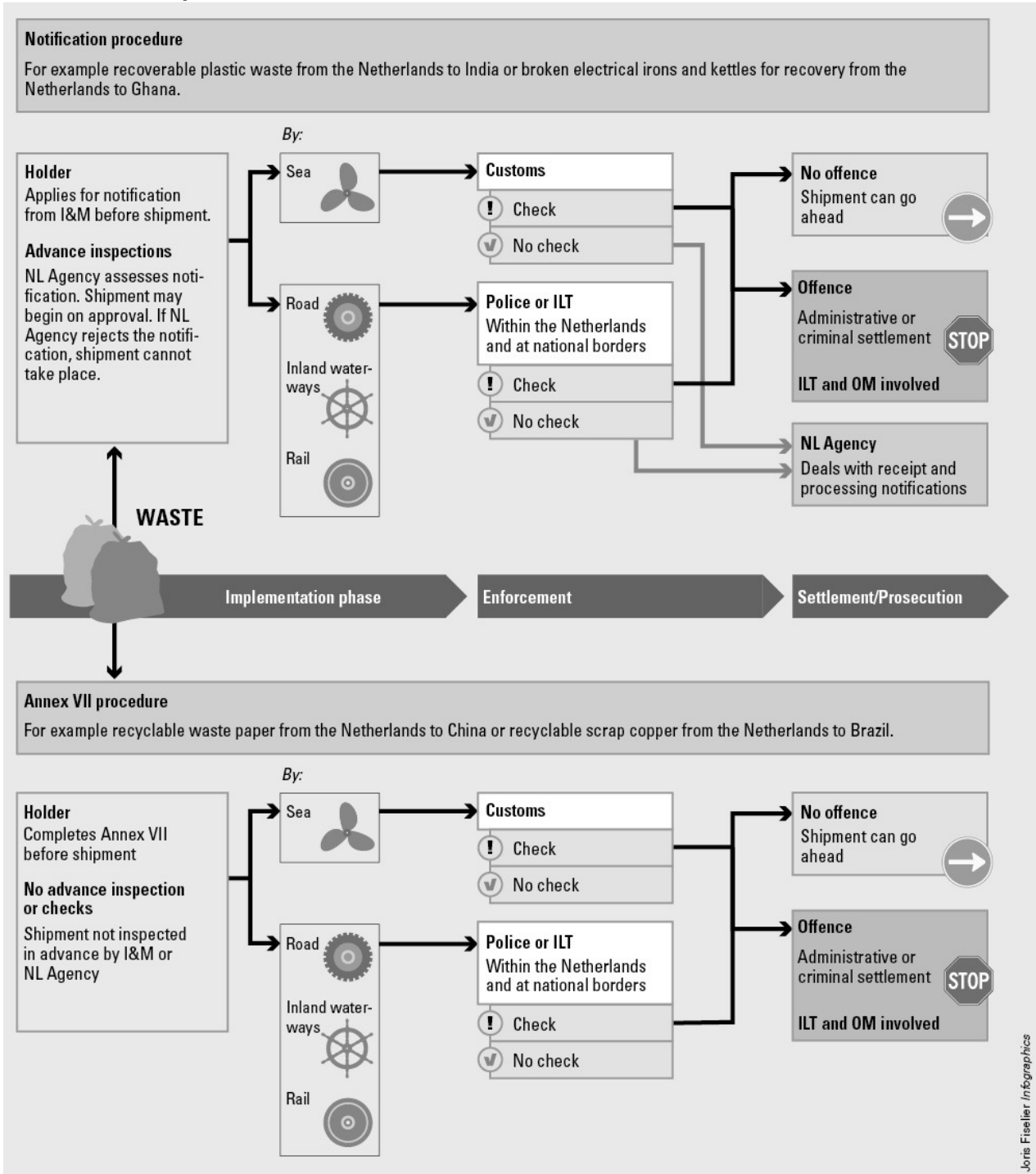
specialists at NL Agency and/or the ILT. In practice, the ILT prepares policy rules (for enforcement issues), not the DGMI, and the ILT largely sets the enforcement priorities.

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DGMI notes that the necessary knowledge is present within the network and that the ILT is also part of the ministry. The ministry purposefully segregated policy and implementation several years ago. We would point out that in the current situation the policy directorate's reliance on the implementing body and the supervisor for knowledge compromises the segregation of policy and supervision, which is a logical and necessary condition for independent supervision.



**Figure 2 Main EWSR procedures: simplified representation of implementation, enforcement and settlement/prosecution**





## 2.2 Implementation of the EWSR

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If a business or organisation wants to export waste, there are three possibilities under the EWSR:

1. The shipment may not be made. This may be due to a general prohibition on the export of hazardous waste to non-OECD countries, to a prohibition on dumping waste in EU member states or to the national policy of the country of destination.
2. The shipment may go ahead if the waste holder satisfies a general requirement to provide information (the Annex VII procedure). It must correctly complete the form in Annex VII of the EWSR and ensure that the form physically accompanies the shipment.
3. The shipment may go ahead on condition that a permit is issued (the notification procedure). The waste holder must apply for a permit in advance from NL Agency. After checking the application, NL Agency informs the competent authorities in the countries concerned about the waste shipment from the Netherlands. The countries must give their authorisation before shipment can be made.

### Example of a permit to ship scrap metal

It can be difficult to decide whether a shipment may go ahead in accordance with the EWSR. The decision depends on the country of destination, the type of waste, the processing method, Dutch policy or a combination of these factors.

Scrap metal is a green-listed waste and therefore considered as 'less hazardous'. If the scrap is being exported from the Netherlands to France for recovery (e.g. recycling) the Annex VII form is sufficient. If the business wishes to discard the scrap, it must apply for a permit (notification). Scrap metal may not be exported to a non-OECD country for disposal. Less stringent rules are in place for recycling but whether the scrap metal can be imported can differ from one non-OECD country to another. Scrap metal may not be exported to Argentina, for example, Mali requires notification and Hong Kong has national procedures that must be satisfied in the Netherlands.

The Annex VII procedure is a mild procedure. Shipments subject to this procedure must satisfy less stringent requirements because there are fewer health and environmental risks. Shipments subject to this procedure are not checked in advance, unlike shipments subject to the notification procedure. In the notification procedure, the health and environmental risks are usually greater, hence the notification requirement. NL Agency receives about 3,000 notifications every year, of which 2,000 are export-related, 400 are import-related and 600 concern transit shipments.



A notifier must have a disposal notification for every shipment. Once the waste shipment has been completed, NL Agency receives a further two notifications from the foreign processing facility. The first is notification of receipt, the second notification of processing.

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#### *Nature of the checks*

NL Agency checks the completeness and contents of the documents accompanying the applications for notifications. This is a form of administrative control. According to NL Agency, checks at the notifier generate no added value for the assessment of the accompanying documents. NL Agency cannot check whether a Dutch discarder of, say, waste paper is actually shipping as much paper as it claims or whether the waste is actually paper as stated in the notification and not, for example, domestic waste. This is a responsibility of the enforcement authorities in the Netherlands, the ILT and its enforcement partners. They make targeted checks of high risk shipments and sample other shipments. We describe how the checks are carried out in the following section.

NL Agency does not check whether the receipt and processing notifications are substantively correct or not but only whether there is a processing statement for every disposal notification. It does not check, for example, whether the recycling facility in the country of destination is actually operational or whether the waste was actually processed there. It is up to the authorities in the country of destination to check these matters. Such checks are not part of NL Agency's mandate from the Ministry of I&M. We consider the consequences of this for the effectiveness of EWSR policy in section 3.3.

#### *Financial guarantees*

The party applying for a notification must provide all manner of information including a contract with the recipient and insurance policies. It must also provide a financial guarantee before a shipment is made.<sup>10</sup> NL Agency can use the guarantee to resolve any problems if the notifier defaults. NL Agency releases the financial guarantee once it has received the notifications of receipt and processing.

#### *Reports on the Netherlands' implementation of the EWSR*

The Netherlands reports on its implementation of the EWSR to the European Commission and to the secretariat of the Basel Convention. It has difficulty meeting the reporting requirements on a timely basis. The

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<sup>10</sup> The guarantee must be high enough to ship, store and process the waste. In the Netherlands, it has been set at € 450 per tonne of waste.



reports for 2009 and 2010, for example, were late. This was due to the many corrections necessary for the reports to be reliable. The corrections were in turn due to problems that arose on the introduction of a new system at NL Agency.

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## **2.3 Enforcement of the EWSR**

The Minister of I&M has charged the ILT with enforcement of the EWSR. To this end, the ILT works closely with Customs, the National Police Services Agency (KLPD), the regional police forces and the Public Prosecution Service (OM). The ILT has primary responsibility for enforcing the EWSR. Its enforcement partners, principally Customs and the police service, however, carry out the majority of the checks. The ILT concentrates on the more complex cases and their administrative settlement. It also coordinates the enforcement network with the exception of criminal enforcement, which is coordinated by the National Public Prosecutor's Office for Financial, Economic and Environmental Offences of the OM (see chapter 4). Implementation and enforcement of the EWSR is just one of the many tasks of all the actors concerned.

### **2.3.1 The Human Environment and Transport Inspectorate (ILT)**

The ILT has primary responsibility for enforcement and coordinates the enforcement network. It develops enforcement policy, analyses the waste market, sets priorities, formulates working instructions, supports the network partners in so far as possible (for example by means of manuals, instruction films, seminars and methodological development) and states how many checks it expects the partners to make. The ILT is also responsible for more complex enforcement activities, investigations, factory visits, administrative enforcement and international cooperation in the field of EWSR. It also takes over more complex EWSR cases from the enforcement partners.

Within the ILT, the EWSR department, the ILT Notification and Information Centre (MIC) and the ILT Information and Investigation Service (IOD) are involved in enforcement.

#### *Target flows*

The ILT and its partners target the enforcement strategy at a number of specific waste flows. The ILT and its partners decide which flows to select by means of risk analysis and an analysis of the waste market made in 2009. The priorities in 2011 were plastic waste, electronic waste, waste



gypsum and bunker oil (fuel for ocean-going vessels). In 2012, priority was given to electronic waste, plastic waste, waste mercury and bunker oil (blending bunker oil with hazardous waste).

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#### *Focus on non-OECD countries*

The ILT's enforcement strategy also targets exports to certain non-OECD countries and new EU member states. Customs checks only shipments that cross the EU's external border. The ILT therefore has difficulty controlling waste shipments to other EU member states through Customs. Its strategy accordingly pays little attention to these shipments. This harbours a risk of the government not being able to combat cross-border avoidance adequately (export via a country that does not enforce the rules as strictly).

#### *Enforcement is information-driven*

To carry out their enforcement activities, the ILT and its partners first study the available information. They then select the shipments they will check. This information-driven approach increases the chance of detecting an offence because high risk shipments are checked more frequently.

#### *Enforcement standards for specific product groups*

The ILT drew up a number of policy rules in 2011 in an attempt to limit the room for interpretation allowed by the EWSR and earlier general rules on the 'contamination' caused by certain wastes. In consultation with industry organisations, the ILT set limits to replace earlier general rules. Before the EWSR is applied, it must be known whether the waste is homogenous or mixed. It is uncertain, however, whether the new standards will end the discussion of whether the EWSR is infringed or not. The Hague district court, furthermore, ruled on 8 March 2012 that the new standards may not be applied. The ILT successfully appealed against this ruling (see box).

**Enforcement of the EWSR in the Netherlands and contamination standards**

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Enforcement of the EWSR often leads to discussion of the classification of waste. When does waste paper, say, become so contaminated that it can no longer be classified as waste paper but must be treated as mixed domestic waste? The EWSR does not provide quantitative limits. The ILT has been considering this problem for many years. In 2008, for example, with the knowledge of the House of Representatives it introduced general EWSR rules to help inspectorates assess waste and contamination. In practice, the rules proved inadequate because they did not contain quantitative limits and thus still left too much room for interpretation.

In 2011 the ILT tried to set quantitative limits in the form of contamination standards for three common types of waste: scrap metal, plastic and paper. The ILT laid down in its standards that the percentage of foreign components by weight (such as foodstuffs in waste paper or textile in plastic waste) may not exceed 2% in the case of plastic waste, 10% in scrap metal and 2% in waste paper. It was also agreed that where an inspector found that a limit had been exceeded he would contact the waste shipper and allow it to inspect the shipment. The ILT has sampling and laboratory facilities to settle differences of opinion.

To prepare these standards, the ILT consulted several industry organisations and studied the standards used in other countries. The ILT announced that the new standards would be applied as from the date of their introduction until standards were agreed at EU level. In practice, however, the standards met with resistance by some businesses. The ILT even lost a court case on the waste paper standards. The court ruled that the ILT did not have the authority to set standards. The ILT appealed against the ruling and won the case. Application of the standards has been deferred, however, until they have been published.

*Checks by the ILT*

Most of the EWSR checks are carried out by Customs and the KLPD (see section 2.4.2 and appendix 2). In addition, the ILT carries out its own checks, such as factory inspections, thematic checks and 'back to the source' investigations, in which it investigates the source of intercepted waste. Since 2006, the ILT's strategy has been to incorporate EWSR checks of shipments into government-wide combined transport inspections (see section 2.4.3). These inspections are organised and performed by the network partners, with specialists from various government inspectorates, including the ILT, providing necessary support. Recently the ILT recognised the need to carry out its own targeted checks in addition to combined transport inspections as they strengthen major combined inspection operations at a fixed location (for example on an avoidance route).

*Thematic checks: Africa Action*

Under the title Africa Action, the ILT checked three container loading sites in Amsterdam and Haarlem. Several containers were opened and vehicles were physically inspected at the site. No record was kept of how many containers and vehicles were checked. The ILT carried out the checks with the police and Customs. In total, they found 42 EWSR offences, chiefly concerning the illegal export of electronic waste to African countries.

*International cooperation*

The ILT has bilateral cooperation agreements and conducts joint operations with Belgium, Germany (a number of states), China, Ghana and the United Kingdom. The cooperation with China is particularly important for the enforcement of the EWSR because a lot of waste is exported to it. Ghana is a destination country for a lot of electronic waste and used electrical devices but cooperation with it came to a virtual standstill in 2011.

*International: leading member of IMPEL*

The ILT has long been a leading member of IMPEL, the EU Network for the Implementation and Enforcement of Environmental Law. Enforcement of the EWSR is one of IMPEL's key tasks. European countries participate in TFS (*Transfrontier shipment of waste*) enforcement operations by carrying out physical inspections and sharing their experiences (IMPEL, 2011). The most recent operation was TFS Enforcement Actions II (October 2008 to March 2011). Twenty-five European countries<sup>11</sup> took part in this operation. A total of 10,481 checks were made of shipments and businesses (some risk-based, some random). Anomalies were detected in 376 cases (19% of the waste shipments).

*Personnel capacity*

According to the ILT, it has sufficient capacity to carry out the tasks required for its present strategy. There is an interplay between the strategy and the available capacity. In many cases the strategy is tailored to the available personnel, resources and time. In the Netherlands, priority is accordingly given to non-OECD countries and new EU member states; however, less control is exercised of the notifications issued by NL Agency (for OECD and non-OECD countries).

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<sup>11</sup> The Netherlands, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Malta, Norway, Poland, Portugal, Romania, Serbia, Slovenia, Sweden, Switzerland and the United Kingdom.





### *Budget*

The programme funding available to enforce the EWSR in 2011 amounted to € 400,000. The ILT used the budget to set the strategy, make evaluations, sample shipments and engage external legal and other advisers. Personnel costs and the cost of the state advocate and of the National Institute for Public Health and the Environment (RIVM) for assistance in sampling were not covered by the programme budget.

### *Evaluation of EWSR enforcement*

The former VROM Inspectorate (VI) evaluated the enforcement of the EWSR in the period 2007-2010 (VROM Inspectorate & MWH, 2011). It concluded from interviews and document analysis that 'the enforcement partners think the enforcement system as such functions'. Improvement could be made regarding the impact of the letter setting priorities, the performance of ILT's ICT system, cooperation and exchange of information, the learning circle and communication with industry organisations. Businesses that regularly exported waste appear to feel sufficient enforcement pressure. Apart from this latter estimate made by the interviewees, the evaluation did not contain any information on the effectiveness of enforcement.

The ILT had a separate evaluation carried out of the various interventions in the waste system for electrical and electronic devices (VROM Inspectorate, 2011b). It found that there had been an improvement in the various actors' compliance. The European collection target, for example, had been comfortably exceeded and a large number of retailers had changed their return policies so that fewer return goods entered the illegal system.

## **2.3.2 Customs**

Apart from its fiscal responsibilities, Customs has a variety of tasks and powers relating to health, safety, the economy and the environment. To carry out these 'VGEM' tasks, it conducts a large number of checks, investigations and detection work for the ministries. It also carries out EWSR checks for the Ministry of I&M (represented by the ILT).

### *Generic controls*

Customs' activities are based on the principle of generic (or integral) controls. It checks compliance with all relevant legislation, including the EWSR, in every check.



*Customs involved in EWSR owing to shipments through ports*

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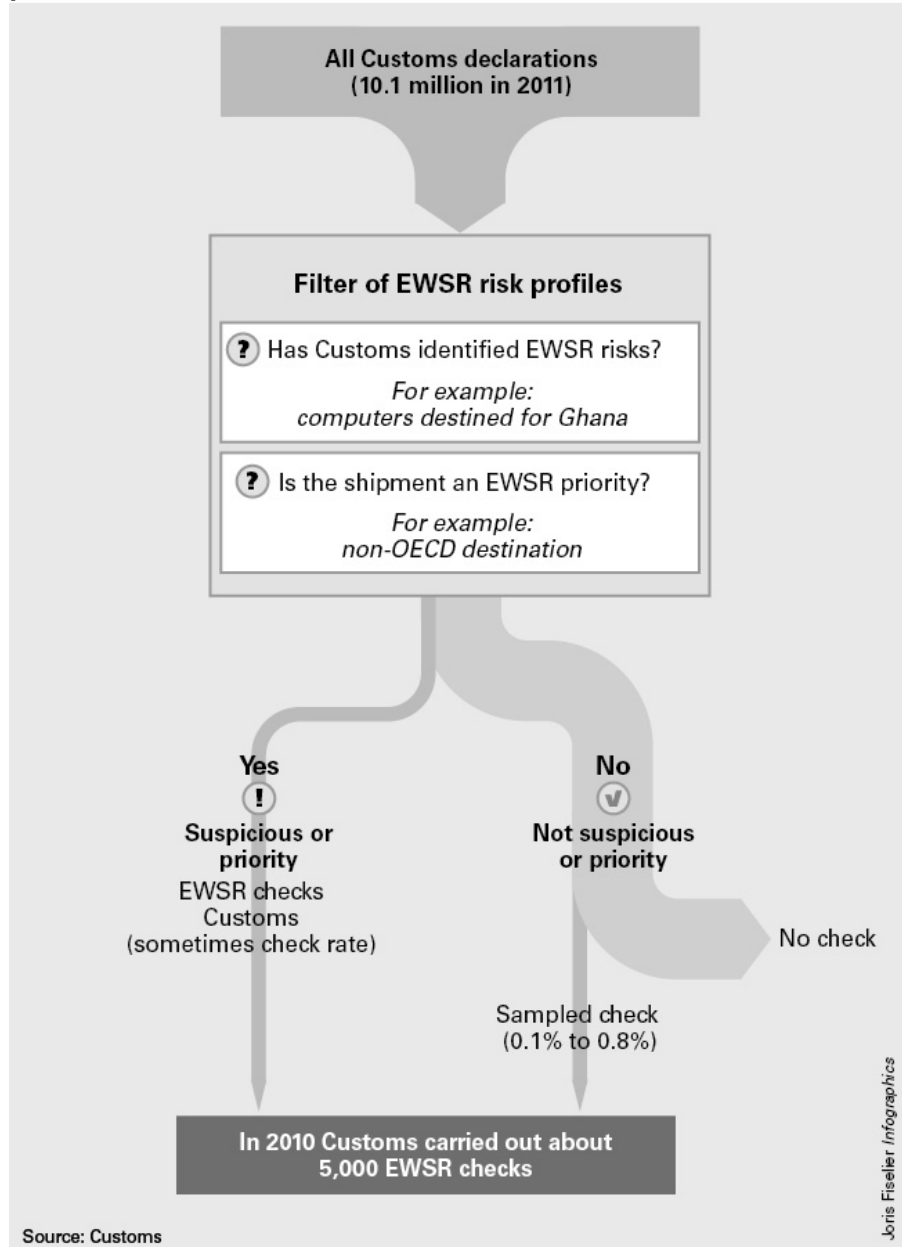
Customs carries out more EWSR checks than any other enforcement partner. This is because a large number of shipments of Dutch and European waste (including high risk shipments) leave the EU in ocean going vessels from the ports of Rotterdam and Amsterdam. The Port of Rotterdam is the largest waste shipment port in the Netherlands. Customs hands the more complex cases over to the ILT.

*Risk-based enforcement*

Customs cannot check all passing waste shipments. It has therefore adopted a risk-based strategy to enforce the EWSR as efficiently and as effectively as possible. Customs assesses in advance which shipments are most likely to infringe the EWSR. It determines the risk by means of filters that select shipments by the nature of the waste, its destination and specific risk factors (see figure 3).



**Figure 3 Checks of waste shipments by Customs based on risk profiles**



If the filter identifies a shipment as high risk or a priority, it might still not be checked. In some cases (such as plastic waste shipped to China), Customs checks a percentage of shipments so that the number of checks is in balance with the available manpower. Alternatively, a shipment can be checked even if it does not represent a risk or is not a priority. Customs carries out several thousand random checks every year.<sup>12</sup>

<sup>12</sup> According to Customs, imports were sampled 7,241 times and exports 5,402 times between 1 January 2011 and 30 September 2011. The sampling rate varied from 0.1% to 0.8% depending on the type of shipment, declaration point and presence of AEO certification.



*Two legal frameworks: Customs legislation and the EWSR*

Customs' enforcement activities are subject to the General Customs Act. This statutory framework differs on two important points from the EWSR. The EWSR requires the waste holder to disclose the *final* destination on the documents, whereas the General Customs Act requires the *next* country in transit to be disclosed on the customs declaration underlying the checks. In the latter case, the final destination is not always stated. This difference complicates enforcement of the EWSR.

The second difference between the two frameworks is that the international system of goods codes used by Customs differs from the waste codes used within the EWSR. As a result, some non-priority flows were not covered by Customs' risk profiles until 2011. In 2011, Customs improved the cover and linked its goods codes by tariff heading to the Basel codes, the OECD codes and to destination countries. Since the EU goods codes and the country information are constantly changing, the table has to be updated regularly.

*Post-export control procedures*

Most of Customs' EWSR checks are physical in nature, often involving scans of the contents of a container. Customs can also determine the accuracy and completeness of Customs declarations by means of post-export control procedures. A post-export control procedure can determine, for example, whether a container reached its declared destination and whether the company concerned paid the invoices. At the request of the ILT, Customs carried out its first EWSR post-export control procedure in 2011. Customs had not previously carried out such checks. Post-export control procedures are important because sampling has found that the parties concerned do not always disclose the actual destination (VROM Inspectorate, 2011a).

**AEO certification**

In general, Customs prefers to base its supervision and enforcement on trust rather than mistrust and to reduce the supervisory burden for businesses. It does so by means of horizontal supervision. In horizontal supervision, the quality of the procedures within a business or institution determines how many checks are carried out. To this end, Customs supports the introduction of European regulations for the certification of Authorised Economic Operators (AEO).

Individual goods shipments made by AEOs do not need to be checked as often. AEO certification includes assurances on the security of goods



shipments throughout the logistics chain. AEO certification is based on the standards of the World Customs Organization. The ILT and its network partners do not need to check certified AEOs (such as container storage companies) as frequently. One concern is that fewer checks might not be desirable if the party filing a customs declaration (Customs' contact point) is certified but the exporter is not.

In early 2012, Customs was still evaluating the applications made for corporate certification. In the coming period it must determine how it will monitor and re-evaluate the certified businesses and when it will withdraw the certificates.

We drew attention to the evaluation of this new approach in our report on alcohol and tobacco duty fraud (Netherlands Court of Audit, 2011a).

#### *Customs international*

The World Customs Organization is targeting illegal waste shipments by means of its Demeter operation (WCO, 2009). Its objective is to have organisations in a variety of countries work together in order to map out international illegal waste flows and destinations. The first Demeter operation was held in 2009 (March-May). The participants included customs organisations and their network partners from 65 countries (many European countries but also China, New Zealand, Malaysia, Ivory Coast, Ghana, Egypt, India and Indonesia). The operation included more than 2,000 physical checks of waste shipments in more than 300 ports. The customs authorities also worked with the other national inspectorates and services. The World Customs Organization carried out a second Demeter operation in early 2012.

#### *Budget*

The total costs Customs incurs to enforce the EWSR are not known. Rough estimates have been made of the personnel costs of the EWSR specialists and analysts concerned (approximately € 1,250,000 in 2011). The total cost of the scanning equipment is known but it is not possible to break it down by regulation enforced.

### **2.3.3 Police service**

The Dutch police service currently consists of 25 regional forces and the KLPD.<sup>13</sup> The Transport Police and the Water Police, both part of the KLPD, carry out most of the EWSR checks. Under a covenant between the KLPD

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<sup>13</sup> The regional forces and the KLPD are expected to merge to form a National Police Service in 2013.



and the Ministry of I&M, the KLPD performs first-line supervision and the  
ILT carries out back-up operations.

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#### *EWSR-related activities*

The Transport Police check road transport on the main roads; the Water Police supervise commercial shipping and check vessel cargoes, documents and crews (Shipping Times Act). It also considers compliance with the EWSR. The regional police forces are involved in the EWSR in their regular work if they take part in EWSR enforcement activities (or initiate them), in their investigations and in combined transport inspections organised by the forces. The regional Rotterdam Rijnmond force also has a special unit for the port: the Seaport Police. This unit carries out patrols, investigates offences and controls the national border in the Port of Rotterdam.

#### *Personnel capacity*

Only a rough estimate can be given of the number of people the KLPD uses for the EWSR. Firstly because, the 30 or so environmental specialists at the KLPD work in a broader field than just the EWSR and secondly task holders and non-specialised staff play an important part in EWSR checks.

#### *Combined transport inspections*

Within the road transport sector, the police service enforces the EWSR by means of combined transport inspections (CTIs). The former VROM Inspectorate helped design this approach. In a CTI, the police, usually the Transport Police in collaboration with a number of state inspectorates, check compliance with a wide range of laws and rules, including the EWSR, by means of a set protocol that takes 20 to 30 minutes to complete. In some cases, the police ask for assistance from Customs, which has mobile scanning equipment that can see the contents of a container without having to open it. The police can put queries or questions about the EWSR to the ILT. The ILT usually takes over more complex cases from the police.

The Transport Police record the findings of all transport checks in a central database, which also includes the findings of the transport inspections carried out by the Water Police, the Railway Police, Customs and a variety of state inspectorates.<sup>14</sup>

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<sup>14</sup> The database does not include a complete record of the inspections made by Customs and the state inspectorates.



### *National CTI cover not complete*

Both the KLPD and some of the regional police forces carry out CTIs (13 regional forces did so in 2010). Since not all regional forces organise CTIs, the national cover for EWSR checks is incomplete. Between 2008 and 2010, two forces, for example, did not carry out any EWSR checks of road transport and one force made only limited checks of waste shipments heading south. The ILT attempts to make up for this by carrying out border controls in cooperation with the Royal Military, the Border Police and the Belgian authorities.<sup>15</sup> The forces concerned intend to organise CTIs in 2012.

### *Information-based enforcement*

As noted above, the ILT prefers information-based enforcement wherever possible. Similarly, the Transport Police use Automatic Number Plate Recognition (ANPR) in CTIs in addition to the usual selection of vehicles by motorcycle riders. ANPR, however, is not yet faultless and there are still many 'false hits' in practice.

The Water Police also select vessels by means of risk assessment, based in part on the destination, route and previous experience with the business concerned. The Water Police noted during the audit that it would also like to select ships using information from Rijkswaterstaat's IVS90 Shipping Information and Tracking System (with the aid of network partner, ILT).<sup>16</sup> For privacy reasons, however, this is not yet possible.

### *International police operations*

The Dutch police service was a participant in the Augias project (October 2009 - April 2011). The participants in this project, Hungary, France, the Netherlands and Belgium, carried out checks of rail and road transport, inland shipping and ports. The objective was to exchange information and to develop instruments to improve the efficiency of transport checks.

## **2.3.4 Number of EWSR checks carried out in the Netherlands**

In this section we present figures on the EWSR checks carried out by Customs, the police service and the ILT in 2010. We would first note that the figures might not be completely accurate because Customs and the police service carry out combined checks to enforce a wide range of regulations. Given the nature of a shipment, Customs or the police

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<sup>15</sup> Between 2009 and 2011 there were about 15 days of checks every year, equal to about 75 vehicle checks.

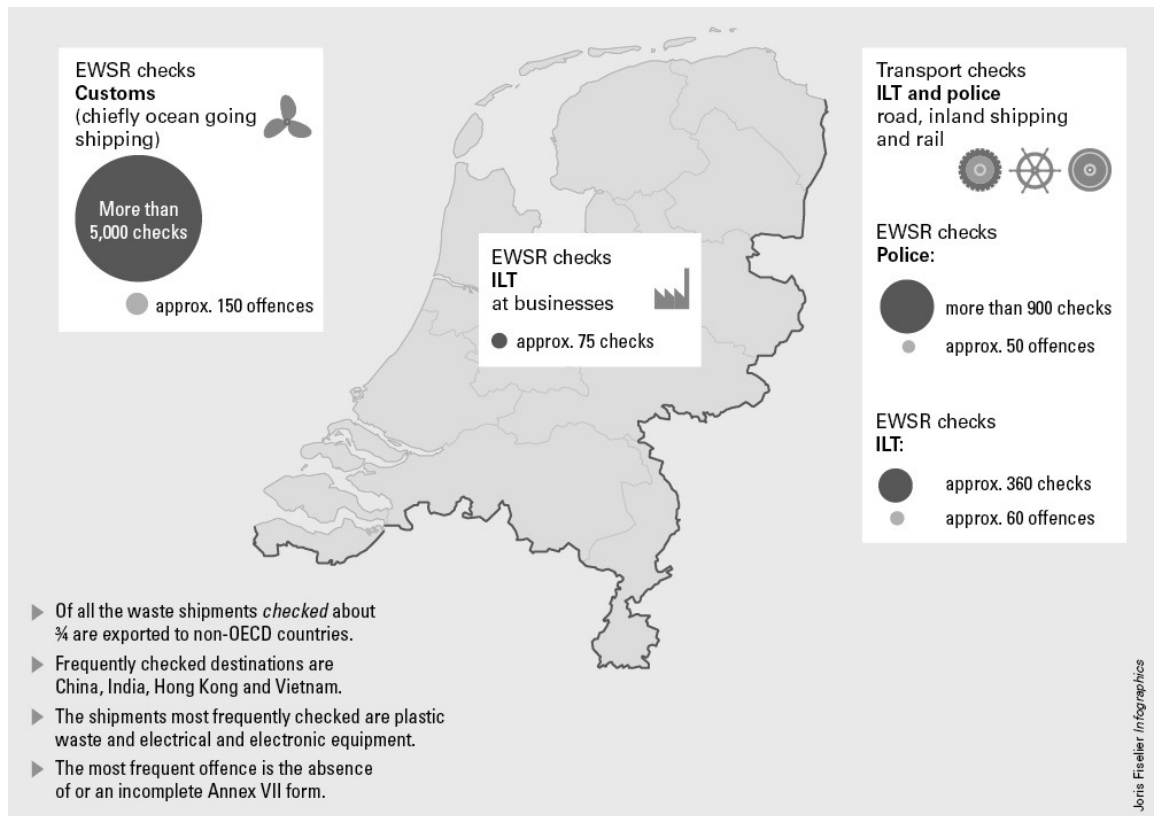
<sup>16</sup> The Shipping Information and Tracking System (IVS90) contains up-to-date information on all vessels using the main waterways in the Netherlands. It concentrates chiefly on inland shipping.



service can decide during an inspection to check for compliance with the EWSR. In practice, this produces some noise in the data files. Since the enforcement partners deal with this in a variety of ways, there are discrepancies between their reports regarding both the number of checks and the offences detected.<sup>17</sup> In this section we therefore apply a wide margin for the number of checks and the offences detected. Appendix 2 includes a summary of the figures we received from Customs, the police service and the ILT for the period 2008-2010. In view of the discrepancies among the reports, we believe there is room to improve the information generated on the checks carried out and the offences detected.

The number of checks is summarised in figure 4.

**Figure 4 Number of EWSR checks carried out in 2010**



### Customs

Customs physically inspects and scans about 250,000 shipments every year, excluding checks of passengers and couriers/mail. In 2010, customs carried out more than 5,000 EWSR checks and detected about 150

<sup>17</sup> It is not always clear, for example, whether the EWSR is applicable, offences are not always recorded and some offences are not detected until the checks are assessed by specialists.





offences against the EWSR. The checks were based on both risk profiles (see section 2.4.2) and random checks that also considered the EWSR.<sup>18</sup>

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#### *Transport inspections*

The police inspect about 3,000 waste shipments every year and carry out about 16,000 combined transport inspections, two-thirds of which target road transport. The ILT (formerly the IVW) checks between 11,000 and 16,000 road shipments every year, most are concerned with driving times.<sup>19</sup> As noted above, combined transport inspections consider the EWSR if there is cause to do so. This was the case in more than 900 inspections in 2010. An offence against the EWSR was detected in more than 50 cases. The figures include both checks of road transport and checks of inland shipping and rail transport.

Further to the police service's checks, the ILT checks whether carriers comply with transport laws and the laws on the carriage of hazardous substances. If there is cause to do so, the ILT also checks compliance with the EWSR. Compliance with the EWSR was checked about 360 times in 2010 and 60 offences were detected.

#### *EWSR businesses inspections*

In addition to inspections of ships, heavy goods vehicles, barges and trains, other sorts of checks are carried out, such as business inspections. The ILT or one of its partners sometimes finds something during an inspection that prompts it to visit and/or inspect a business. In 2010, the ILT inspected 75 businesses with regard to the EWSR (VROM Inspectorate, 2011a). It is not known how many of the business inspections were exploratory (or informative) and how many were in-depth inspections or investigations.

#### *Two most common offences*

The most common offences are: absence of an Annex VII form or incomplete form, and lack of notification. We describe how the Netherlands deals with such offences in Appendix 1.

### **2.3.5 Exchange of information**

The exchange of information among the services is open to improvement. Only limited feedback is provided on the outcome of files that are transferred from one service to another. It is not always clear to

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<sup>18</sup> The latter contain a lot of noise. The checks may be dedicated EWSR checks or just the conclusion that the EWSR does not apply because the shipment contains no waste.

<sup>19</sup> The data on combined transport inspections kept by the police and the ILT's road inspectorates may include duplications owing to the use of different registration systems.



Customs, for example, why a particular case did not lead to a conviction, and it consequently cannot learn from the case (see also chapter 4).

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### **2.3.6 Cooperation and the exchange of information within the EWSR system**

The main cooperative alliances in the enforcement network are between the ILT and Customs and between the ILT and the KLPD. Cooperation is organised in broad lines by means of agreement and is realised at *strategic level* by means of periodic management meetings. At this level, the cooperation consists chiefly of discussion of the enforcement priorities proposed by the ILT. We have identified opportunities for further strategic cooperation at this level, for example in the preparation of joint risk analyses, the agreement of technical standards for electronic data interchange between the services and improved feedback on files that are transferred from one actor to another within the network. These points are discussed further in the next two chapters.

The Ministry of I&M, the ILT and NL Agency also have consultation structures between the strategic and operational levels. The consultation considers, for example, new priorities and questions of interpretation and the approach to and progress of important EWSR cases.

At *operational level*, cooperation within the enforcement network is expressed in joint transport inspections and enforcement actions, support by the ILT at case level and taking over complex cases by the ILT. Customs and the ILT also work together on the management of risk profiles and the operational implementation of enforcement priorities. Any problems caused by of the ILT's annual letter of priorities being phrased in general rather than specific terms can therefore be resolved on the shop floor.

We learnt from interviews that most of the parties involved are satisfied with the operational cooperation. The customs files we inspected also show that the cooperation generally runs smoothly.

## **2.4 Detection and prosecution of EWSR offences**

In the Netherlands, the police service, the IOD (Information and Investigation Service of I&M) and the OM (public prosecutor Service) are jointly responsible for detecting and prosecuting offences against the EWSR. In this section, we explain the specific tasks of these actors.



### *Public Prosecution Service*

The Public Prosecution Service (OM) is responsible for the criminal enforcement of the EWSR and is the leading organisation in investigations. Within the OM, the Office for Financial, Economic and Environmental Offences (FP) has four enforcement units; the Rotterdam unit is the unit most involved with the EWSR. Details of criminal enforcement are presented in chapter 4, where we also discuss administrative enforcement.

### *Police service*

There has been a move within the police service from 'enforcement' to 'detection' in recent years. This is also reflected in the EWSR field. The Water Police, Seaport Police and some regional forces also conduct large-scale investigations to detect infringements of the EWSR as well as carrying out transport inspections. An example of this is the Water Police's investigation of hazardous waste blended with bunker oil. Such waste is often shipped across borders and is then subject to the EWSR. This form of environmental crime is also relevant to enforcement activities. Extensive checks were made during a three-day operation in October 2011 of the inland shipping route between Rotterdam and Antwerp. During this operation, 28 tanker ships were inspected, with 21 cases needing further investigation. A similar large-scale operation was held in March 2012. The results are not yet known.

Waste flows that are difficult to track, such as blended fuel oil, will remain a serious challenge for the KLPD in the future. The KLPD thinks it is very important to oversee the entire chain (disposal, collection, transport, export and processing). The ILT has named this form of waste as one of its priorities for 2012 and will investigate businesses that operate in this chain (I&M, 2011a). It will consider ways to improve the enforcement instruments in the months ahead.

### *International cooperation in prosecutions*

According to the OM there is/was a gap in the prosecution of EWSR cases at European level. The OM cannot simply exchange information on the prosecution of EWSR offences with its counterparts in Europe. The public prosecutors in several European countries do not exchange any information on their prosecution guidelines for the EWSR. Furthermore, the courts do not exchange information on the penalties imposed or on the interpretation of EWSR rules (De Rijck, 2011). A project was recently launched to facilitate such exchanges. The OM also noted that recent judgments by foreign courts had referred to Dutch rulings or Dutch policy. At case level, the OM consults with the French public prosecution service.



### *IOD*

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The IOD (Information and Investigation Service – part of the ILT) investigates Dutch businesses and individuals suspected of systematic offences against the EWSR.<sup>20</sup> In 2010, the ILT investigated ten businesses selected by the IOD on the basis of indicators and risk analysis. Irregularities were detected at all the businesses.

Criminal proceedings usually commence once an offence is detected. The IOD's investigation is part of the proceedings. Its investigation can provide important information on the conduct of offenders and can thus be used to sharpen the focus of enforcement. According to VROM-IOD, eight criminal investigations were completed in the period from 2007 to 2011 with the OM preparing an official report. Some of them are still waiting prosecution by the OM or are being appealed.

### *Pilot scheme for serious international environmental crime*

The pilot scheme for serious international environmental crime is a new cooperative initiative of the National Public Prosecutor's Office for Financial, Economic and Environmental Offences (FP), the police service, Customs, the ILT, ILT-IOD and DCMR Rijnmond Environmental Protection Agency. The partners, acting under the authority of the FP, are collecting information, carrying out investigations and exercising supervision in anticipation of a definitive national arrangement for environmental crime. As the pilot scheme was not introduced until 2012, there are as yet no results.

The pilot scheme was developed further to the Minister of Justice's (Justice, 2009) response to the report *Grip op Milieuzaken, Evaluatie van de strafrechtelijke milieuhandhaving* (Grip on Environmental Cases, Evaluation of Criminal Environmental Enforcement, De Ridder et al., 2009). An important conclusion in the report was that the national investigation of serious environmental crime was fragmented. The authorities could not respond adequately to organised national or international environmental crime. This conclusion is consistent with an earlier finding by the Mans Committee (VROM, 2008).<sup>21</sup> The committee found that fragmentation and poor exchange of information prevented a fitting response to organised international environmental crime. We consider the problems of the current information systems in chapter 3.

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<sup>20</sup> The IOD investigates irregularities in the fields of the environment, housing and spatial planning.

<sup>21</sup> The committee found that the enforcement organisation was not tailored to the enforcement task. Partly on the basis of the committee's recommendations, the government favours the formation of regional implementation bodies.



The pilot scheme is a follow-up to the Environmental Nodal Orientation Experiment (PNOM), a project launched in 2006 by the Rotterdam Rijnmond regional police force. Nodal orientation is based not on individual cases but on the entire network and cooperation between the enforcement partners, the identification of common risks, the establishment of links and the coupling of information systems. This should enable the partners to detect international environmental crime and enforce the rules more efficiently. The experiment has not yet been evaluated.

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#### *Strategic Environmental Centre*

Further to the policy response to the evaluation of the criminal enforcement of environmental law, the ILT, the Netherlands Food and Consumer Product Safety Authority (nVWA), the national police service and the OM decided to set up a strategic consultative body: the Strategic Environmental Centre (SMK). The SMK's ambition is to improve management and set more specific priorities to tackle environmental crime in order to give more direction to the criminal enforcement of environmental law.

The SMK is made up of the two inspectorates' inspectors-general and their deputies, the environmental portfolio-holder of the police service and the Chief Public Prosecutor of the FP. The inspector-general for social affairs and employment and the director-general of the Tax and Customs Administration or the director of Customs, also participate in environmental areas of relevance to their services.

The SMK has taken responsibility for commissioning a number of strategic developments to enforce and investigate EWSR cases.

## **2.5 Conclusion**

The Dutch government has fulfilled the requirements arising from the EWSR. There is a clear allocation of tasks and responsibilities to the organisations concerned. The ILT has primary responsibility for enforcement and is assisted by Customs and the police service. The ILT manages the larger enforcement network, supports the partners with specialised knowledge and tools and carries out its own checks and investigations. The main partners have made agreements on their cooperation with each other and cooperation at operational level is good. The ILT and its partners have developed a clear enforcement strategy based on both random sampling and risk-based checks, visits, thematic inspection operations and investigations.



On the basis of our findings we can conclude that the government pays specific and systematic attention to the enforcement of the EWSR. Many of the elements necessary for adequate enforcement are present. The enforcement authorities have a good understanding of the waste market and a coherent enforcement policy. There is room for improvement, however, in a number of areas, chiefly concerning the exchange of information within the enforcement network, the provision of information on checks carried out and offences detected, the limited insight into the impact of enforcement activities and the large number of EWSR cases that are not prosecuted. We consider the last two points in the next two chapters.



## 3 Insight into the impact of enforcement

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### 3.1 Insight into the impact of enforcing the EWSR

Illegal goods flows are by nature difficult to study, this also holds for the export of waste. It is therefore difficult to relate the number of EWSR offences to the total number of illegal waste flows. In other words, it is not known what part of the illegal flow is intercepted. Furthermore, only general conclusions can be drawn on compliance with the EWSR in the Netherlands and the impact of the enforcement activities.

#### *Compliance rate difficult to establish*

The fact that only a rough estimate can be given of the compliance rate is an inherent outcome of the enforcement model used by the ILT. The ILT and its partners concentrate their checks on priority waste flows and high risk shipments. In itself, this strategy is efficient but the number of offences detected cannot be used directly to calculate the overall compliance rate. By combining a variety of sources, however, the ILT has been able to make a rough estimate of the compliance rate. The ILT's 2012 multiyear plan puts the compliance rate at between 70% and 80%. The ILT bases its estimate on investigations of electronic waste (see also section 2.4.1), thematic investigation of plastic waste and the outcome of the Transport Police's combined transport inspections.

In theory, Customs' data should provide a better insight into the compliance rate. Customs carries out both information-based checks and random checks of several thousand shipments leaving the EU every year. Owing to a weakness in the software Customs uses for its checks (see section 3.4), however, Customs cannot use the checks to calculate the compliance rate. The same weakness also makes it difficult to evaluate and refine the effectiveness of individual risk profiles. In our report on alcohol and tobacco duty fraud (Netherlands Court of Audit, 2011a) we also noted that the way Customs recorded its activities made it impossible to measure the impact of checks of specific issues.



#### *Customs works with learning circles*

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Customs is evaluating its own activities in order to improve enforcement. It uses learning circles to continuously refine its risk assessments. This process is ongoing on a large scale (the 'large' learning circle at a more strategic level) and on a small scale (the 'small' learning circle at specific engagement level). The learning circles draw lessons from practical experiences in order to improve the enforcement activities. Customs also learns from the knowledge and experience of the specialists at the ILT.

#### *Suspected cross-border avoidance*

Enforcement pressure in Europe differs from one country to another. This can encourage businesses and institutions to export their waste through other countries. The ILT suspects that such cross-border avoidance does occur but cannot estimate its extent. According to the inspectorate, the volume of electrical waste being exported through the port of Antwerp seems to be increasing.

### **3.2 Insight into the functioning of the waste system as a whole**

#### *Receipt and processing notifications not always reliable*

The EWSR's objective is to prevent waste being processed at facilities that might represent health and environmental risks. Exporting countries must combat the illegal export of waste and importing countries must process legal waste responsibly. The EWSR therefore requires notification to be given of receipt and processing. The waste processor sends the notifications to the competent authority in the exporting country, in the Netherlands: NL Agency. NL Agency does not investigate whether the notifications it receives are correct or not (see also section 2.3). That is a matter for the recipient country.

There are indications that the system of receipt and processing notifications is inadequate. About half the plastic waste exported from the Netherlands is shipped to Hong Kong, yet it has only limited capacity to process plastic. The ILT has concluded that it is often uncertain which company ultimately processes the waste (VROM Inspectorate, 2010). A large proportion of it (if not all) is probably shipped on to China without it being clear whether the plastic is processed in an authorised facility. The extent and strictness of EWSR enforcement are not constant; there are differences over the years, as illustrated by the case of waste paper in China (see box). Since there is no insight into the final link in the chain, insight into the functioning of the system *as a whole* is limited.



**Recent developments in the shipment of waste paper to China**

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In the summer of 2012, the Chinese authorities sent back waste paper shipments (consisting of dozens of containers) to the Netherlands because they did not meet Chinese import requirements. The waste paper, originally from Great Britain and Ireland, was said to have been mixed with domestic waste. The Netherlands Waste Paper Federation (FNOI) revealed that their members and other international industry organisations were experiencing more and more stringent checks in China than in the past.

*Chain supervision essential for EWSR objective*

The objective of the EWSR can be achieved only if the entire system functions correctly: from the creation of the waste to its ultimate processing. There must accordingly be adequate supervision of the various links in the chain and the supervision itself must form a chain. The Court of Audit therefore recommends that the Minister of I&M gain an understanding of the functioning of the EWSR system as a whole. The minister can ask the ILT to analyse the system. The analysis should consider both enforcement and NL Agency's implementation of the EWSR. How does it assess the notifications? And how does it deal with receipt and processing notifications? A specific point would be whether NL Agency passes on indications of irregularities to the ILT.

We also think the ILT should sample waste shipments to establish that they are processed abroad in accordance with the processing notifications. This would provide an insight into the functioning of the system as a whole. The ILT could also use this information to further refine its information-based enforcement. It might reveal, for example, that certain destinations are suspect. Businesses that export to them could then be checked more rigorously. The findings might also prompt inspections of the businesses concerned. By way of illustration, the box below provides a brief description of the recent Otapan case.

The ILT could carry out the analysis in collaboration with Customs. Customs has gained experience in tracing shipments from its post-export control procedures (see section 2.4.4). The ILT itself has contacts with the environmental authorities in other EU member states and in the main destination countries.

**The Otapan case**

The Otapan was a tanker that contained asbestos. It had been anchored in Amsterdam since 1999 but was sold, with the permission of the Dutch authorities, in 2006 for scrapping in Turkey. The Turkish authorities denied the ship entry because it contained much more asbestos than officially disclosed. The ship was towed back to the Netherlands and the asbestos was removed. It was ultimately dismantled in Turkey in 2008.

In October 2011, the Public Prosecution Service announced the findings of a criminal investigation of the Otapan case. The investigation had focused on the EWSR notification under which the Otapan had been towed to Turkey. According to the notification, the ship was being exported for recovery, namely recycling, and contained 1,000 kg of asbestos. Under the original disposal notification, the ship's export would have been forbidden. The notification was changed to 'recovery' after officials had pointed this out. The OM concluded that several officials had been involved in the incorrect completion of the notification and that the circumstances justified prosecution but blame for the case could not be apportioned to one or more officials. An important factor in the OM's opinion was that the officials had not acted to promote their own interests.

The Otapan inquiry committee was established in February 2012. Chaired by Pieter Zevenbergen, it will investigate the chain of events surrounding the Otapan and how the lessons learned have been used to improve implementation and enforcement of the EWSR. This inquiry has similarities with the Court of Audit's audit but there are also differences: the Otapan case took place before our audit period and our audit is not concerned with specific EWSR incidents but with routine enforcement activities. We therefore did not include the Otapan case in our audit.

### 3.3 Functionality of information systems

Information-based enforcement relies on adequate information systems. Our audit raised several concerns.

*System hinders the evaluation of Customs' approach to checks*

It is difficult to evaluate Customs' control strategy using its ICT system. Once a check has been ordered it cannot be determined from the system why a particular shipment was selected for physical inspection. An evaluation of the findings therefore cannot distinguish between the outcome of random samples and the outcome of inspections based on risk profiles. Customs will undertake an ICT operation in the near future but it is uncertain whether it will address this system weakness.

*ILT's system has limited functionality*

The ILT records its leads and checks in the system used by the former VROM Inspectorate. This system, HOLMES, was phased in as from 2007 but still had insufficient enquiry and analysis functions in 2011 and there were problems with the addition of documents. Owing to these teething problems there are no complete figures for 2008.

*Figures not systematically reported to MIC*

Customs and the police service must report all infringements of the EWSR to the ILT's Reporting and Information Centre (MIC). In practice, however, they do not do so systematically. As a result, there are significant discrepancies between the MIC's figures and the reporting organisations' figures.

*A lot of time lost on standardising business names*

The ILT and its partners must have up-to-date information on businesses in the Netherlands and abroad. It currently costs the analysts at the various services a great deal of time to standardise the spelling of business names. A business may be entered in a database under a variety of names (is it 'BV J. Jansen', 'BV Jansen, J' or 'Jansen BV?'). This makes it difficult to include past experience with a business in information-based checks and the enforcement authorities cannot exchange their findings efficiently. Foreign names are even more problematic. The ILT used to have a subscription to an international business database. Owing to spending cuts, however, the subscription was ended in 2011.

*Teething problems in NL Agency's system*

NL Agency uses the TERRA program to record the documents necessary to grant permits and issue notifications of cross-border waste shipments. TERRA, too, has not been without start-up problems. Reports of shipments could not be processed and a serious backlog built up in the processing of receipt and processing notifications. As a result, the enforcement authorities were also frustrated by a lack of up-to-date information. NL Agency has stated that most of the backlog had been cleared by early 2012.

*Exchange of information and information-based enforcement*

Information-based enforcement is designed to increase the likelihood of detecting offenders. The enforcement authorities, however, use their own risk analyses and their own data. Any information they receive from, say, the ILT or Customs must be entered manually in their ICT systems. Only the IOD has analysed risks using electronic data provided by more than one of the partners. It takes a lot of work however, to correlate the data



as the business particulars are not recorded uniformly. Furthermore, fiscal information and investigation information cannot be used in risk analyses for information-based enforcement.

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### 3.4 Conclusion

Our audit found that the ILT and its partners have only limited insight into the impact of their enforcement activities. They do not know the extent to which their activities deter illegal waste flows and encourage compliance with the EWSR. It therefore cannot be known with certainty whether the Netherlands is enforcing compliance with the EWSR effectively. This is because, firstly, illegal flows are difficult to spot and, secondly, there are weaknesses in the ICT systems.

#### *What we know*

We can say more about the impact of enforcement at an output level and at an individual case level: the ILT and its partners know how many checks they carry out and how many offences they detect. They also have an insight into the influence of enforcement on the functioning of the electronics waste chain: compliance has improved in this chain.

#### *Insight essential for enforcement and compliance*

It is difficult to develop an efficient enforcement tool and achieve a specific level of compliance without an insight into the impact of enforcement. We therefore recommend that the Minister of I&M, the State Secretary for I&M and the State Secretary for Finance work together on an information management system<sup>22</sup> that is more appropriate to the EWSR. Good information management can provide a clearer picture of the impact of enforcement and of individual enforcement tools. The network partners can also use it to further refine their information-based enforcement. They will then not be reliant on information solely from Customs.

Furthermore, we recommend that the Minister of I&M gain a thorough understanding of how the EWSR system functions as a whole. The ILT could map out the system. It could first analyse the processes in place at NL Agency: how does it deal with applications from businesses and processing notifications, and how does it communicate risks? The ILT should also sample the plausibility of receipt and processing notifications: to what extent can it be assumed that the notifications are correct?

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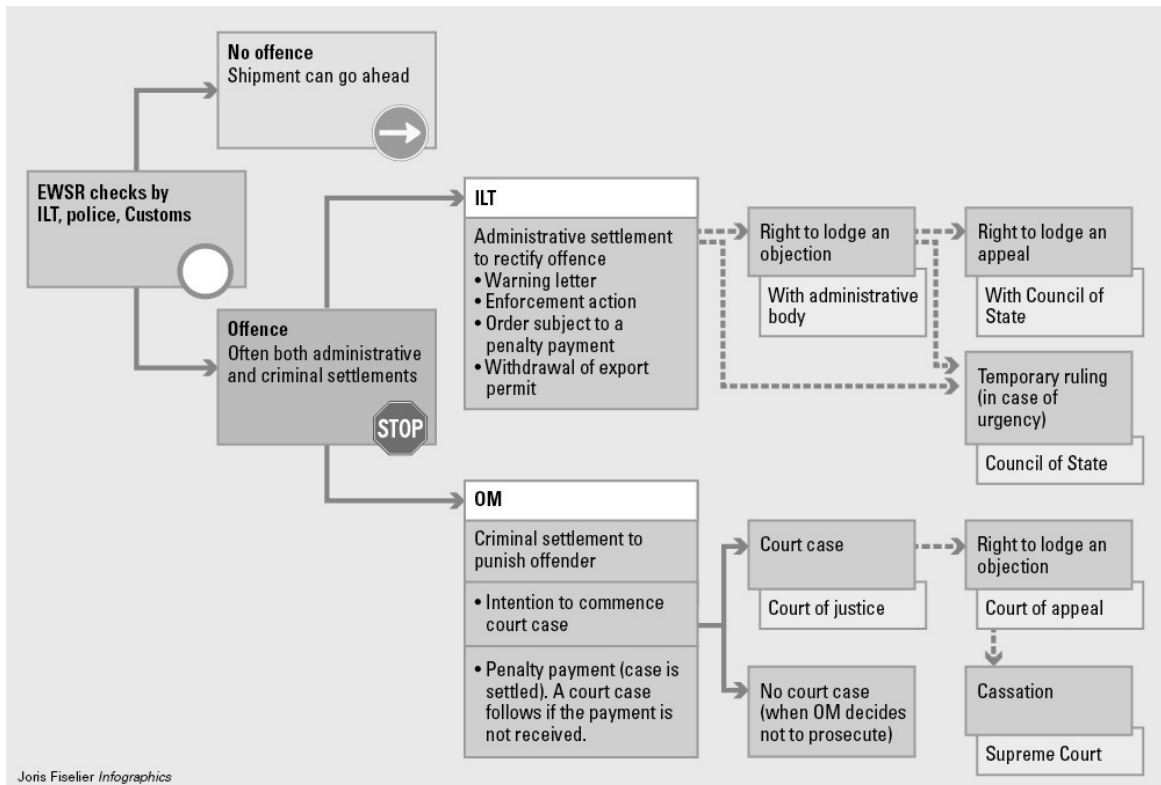
<sup>22</sup> An information management system for central government, i.e. all rules and facilities concerned with information flows and the storage and/or filing of information.



## 4 Settlement of offences

This chapter explains how infringements of the EWSR are dealt with (see figure 4). Section 4.1 considers administrative procedures and section 4.2 considers criminal procedures. We then look at the high rate of non-prosecution.

**Figure 5 Settlement of infringements of the EWSR**



### 4.1 Administrative law

Pursuant to the Environmental Management Act, the Minister of I&M is responsible for enforcing the EWSR under administrative law; the minister may also impose administrative penalties. The inspector general of the ILT carries out these tasks on behalf of the minister. Under administrative



law, the inspector can enforce the EWSR in three ways. He can:

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- impose an enforcement action;
- issue an order subject to a penalty payment;
- withdraw permission for shipment (VROM Inspectorate, 2009).

#### *Order subject to a penalty payment*

In 2009 and 2010 only orders subject to penalty payments were issued. In total, 16 were issued (MIC statement). The ILT can also decide that a warning letter will suffice. Several dozen warning letters were issued in 2008 and 2009.<sup>23</sup> No information is available on 2008, when a new ICT system was introduced.

Objections may be lodged against the three forms of administrative enforcement. In the final instance, an appeal can be made to the administrative law sector of the Council of State. Between 2008 and 2010, the ILT won five EWSR cases and lost six.<sup>24</sup> Three of the lost cases questioned whether the waste was homogenous or mixed. The other three related to the transition to the new EWSR regime. During the period concerned, the ILT won five cases in the civil courts and lost one.

## **4.2 Criminal law**

### **4.2.1 Punishment**

Infringements of the EWSR can also be prosecuted under criminal law pursuant to the Environmental Management Act and the Economic Offences Act (WED) as well as under administrative law. Both regimes can be applied at the same time. Under the WED, *serious* EWSR offences are punishable by up to six years imprisonment, an alternative sanction or a fine of up to € 76,000 for natural persons and of up to € 760,000 for legal persons. *Minor* EWSR offences are punishable by up to one year's detention, an alternative sanction or a fine of up to € 19,000 (all amounts as at 1 January 2010).

If a suspect has breached the EWSR he can be offered an out-of-court settlement by the OM or by an administrative authority, in which case it is known as an administrative settlement.<sup>25</sup> The OM has stated that administrative settlements are not appropriate for all EWSR offences and in any event not for illegal shipments.

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<sup>23</sup> At least 11 warning letters were issued in 2009 and 37 in 2010. The number increased chiefly because better records were kept.

<sup>24</sup> As the audit focus lies on enforcement, EWSR cases brought by NL Agency are not taken into account here.

<sup>25</sup> The OM's 'Guideline on the prosecution and administrative settlement of environmental offences' contains non-obligatory guidelines for the settlement of environmental offences for which an out-of-court settlement is possible.



#### *Different decisions on out-of-court settlements*

Interestingly, decisions on the level of an out-of-court settlement differ significantly among the four enforcement agencies of the National Public Prosecutor's Office for Financial, Economic and Environmental Offences (FP). This complicates the work of the KLPD's inspectors: they must always know in which region they are operating to determine what sanction is expected.

#### **4.2.2 Quality of official reports**

It is vital that the OM receives high quality official reports from the network partners. An official report is the most important element in the case brought to court. There are significant differences, however, in the quality of the official reports prepared for EWSR cases.

#### **4.2.3 Criminal settlement 2008-2010**

We received a statement from the FP in Rotterdam detailing all EWSR settlements in the period from 2008 to 2010. They are classified into OM settlements (chiefly decisions not to prosecute and out-of-court settlements) and judicial settlements (chiefly sanctions and acquittals by the courts). The cases came from all over the Netherlands, not only from Rotterdam.

#### *OM settlements*

Table 1 shows the various types of settlement decided upon by the OM and their frequency in the period 2008-2010.

**Table 1 Types of settlement by the OM in EWSR cases 2008-2010**

Type of settlement	Number	Percentage
Out-of-court settlement	215	64%
Decision not to prosecute	106	31%
Combined cases <sup>26</sup>	10	3%
Other	7	1%
<b>Total</b>	<b>338</b>	<b>100%</b>

The table shows that decisions not to prosecute and out-of-court settlements are the most common types of settlement by the OM. The greater part of the OM cases (more than six out of ten) are settled out of court and in a further three out of ten cases, the OM decides not to prosecute. This is a remarkably high proportion because the OM's target is that no more than 10% of cases should not be prosecuted. It is not known why this target is not achieved in EWSR cases.

<sup>26</sup> Several offences combined into a single case.

*Out-of-court settlement in six out of ten EWSR cases*

The OM settles more than six out of ten EWSR cases out of court. About half the settlements are fines of between € 1,000 and € 2,000. A relatively high proportion (about a quarter) of the fines is lower than € 1,000. The remainder (also about a quarter) are far higher than € 2,000.

*No explanation of high number of decisions not to prosecute*

To explain the unusually high number of decisions not to prosecute EWSR cases, we grouped the reasons into the general categories used by the OM. The three most common grounds for non-prosecution were:

- 'inadequate or unconvincing evidence';
- 'administrative intervention preferred to criminal intervention';<sup>27</sup>
- 'old (not time-barred)' offence.

These three grounds not to prosecute form the 'top 3' more frequently. The study of the grounds therefore does not explain why the decision not to prosecute EWSR cases is so high. Further to our findings, the OM is investigating the causes of the high rate. Its findings were not known on the publication of this report. What was clear was that a change in the OM's policy on the absence of Annex VII forms led to a decision not to prosecute 17 cases. Even without these cases, however, the rate remained high. Earlier this year we had audited the performance of the criminal justice system and the number of decisions not to prosecute violent and property offences.<sup>28</sup>

*Customs' need for explanation of decisions not to prosecute*

Customs thinks the OM could improve its feedback on decisions not to prosecute. It is always informed of the outcome of a case but does not always learn why a case is not prosecuted. Customs needs this information, however, to improve its own performance. The OM decided not to prosecute one case, for example, because it lacked sufficient lawful evidence but did not explain why it did not have sufficient evidence.

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<sup>27</sup> According to the OM, the 'administrative intervention preferred' category was introduced following a change in policy on the absence of Annex VII forms provided the report otherwise satisfied all applicable rules. If this category is excluded, the proportion of decisions not to prosecute falls from 31% to 26%.

<sup>28</sup> For further information, see the report at [www.rekenkamer.nl](http://www.rekenkamer.nl)





### Judicial settlement

Table 2 shows the type and frequency of judicial settlement in 2008-2010. The most frequent type of settlement – in more than three-quarters of cases – is the imposition of a penalty. The suspect was acquitted in about one-tenth of cases.

**Table 2 Judicial settlement of EWSR cases 2008-2010**

Settlement	Number	Percentage
Summons revoked <sup>29</sup>	5	3%
OM not allowed to prosecute <sup>30</sup>	3	2%
Acquittal	17	10%
Referred to another forum	6	3%
Combined cases <sup>31</sup>	1	1%
Imposition of penalty	130	78%
Imposition of penalty and/or measure	5	3%
<b>Total</b>	<b>167</b>	<b>100%</b>

Further analysis of the penalties is difficult because the courts often impose a combination of penalties. We will therefore suffice by observing that in most cases the courts imposes a fine (suspended in some cases).<sup>32</sup> In a very limited number of cases, a community service order<sup>33</sup> or a suspended prison sentence<sup>34</sup> is imposed. Although the case falls outside the period audited, we would note that the Rotterdam district court imposed relatively high penalties in an EWSR case in November 2011: an unconditional prison sentence of one year with credit for time on remand in the case of a natural person<sup>35</sup> and a fine of € 100,000 in the case of a legal person.<sup>36</sup> At the end of 2011, the court hearing the Probo Koala case imposed a fine of € 1,000,000 for the shipment of waste to the ACS state of Ivory Coast (contrary to the then applicable EEC regulation (EWSR)) and for the delivery of hazardous substances in the knowledge that they were harmful to health, see box.<sup>37</sup>

<sup>29</sup> The summons did not satisfy the formal requirements.

<sup>30</sup> Why the OM was not allowed to prosecute these cases is not known. In general, the causes include the suspect already having been convicted for the same offence, the OM already having proposed a settlement (out-of-court settlement) or the time limit having expired.

<sup>31</sup> Several offences combined into a single case.

<sup>32</sup> Ranging from € 75 to € 1,000,000.

<sup>33</sup> Ranging from 60 to 120 hours.

<sup>34</sup> Ranging from 60 to 180 days.

<sup>35</sup> Case number: LJN: BU4356, Rotterdam district court, 10/997513-06.

<sup>36</sup> Case number: LJN: BU4360, Rotterdam district court, 10/997511-06.

<sup>37</sup> LJN BU9237, Amsterdam court of appeal, 23-003334-10, Date of judgment: 23 December 2011.

**The Probo Koala case**

In July 2006 the tanker Probo Koala docked in the Port of Amsterdam to discharge sludge. The ship's operator, a company called Trafigura, wanted to discharge the sludge and have it processed. The sludge consisted of washing water and oil residues released when the inside of the tanker was cleaned. A process carried out on the ship meant the waste also contained caustic soda. The sludge was therefore not the cargo but a waste (it was not a waste shipment within the meaning of the EWSR). When the 550 m<sup>3</sup> hold was emptied, the sludge proved to be considerably more polluted than Trafigura had stated. The recipient company would accept and process the sludge only at a far higher cost.

The discharged sludge (250 m<sup>3</sup>) was pumped back into the tanker when Trafigura found a company in Ivory Coast that was willing to accept and process it. Because the sludge was pumped back onto the tanker and thus became the Probo Koala's cargo, it became a waste shipment. Under the EWSR, the sludge could not be shipped to Ivory Coast. According to the court of appeal, Trafigura was aware of the chemical composition of the sludge and exported it illegally to Ivory Coast. The court imposed a fine of € 1,000,000 on 23 December 2011.

### 4.3 Conclusion

The OM decides not to prosecute three out of ten EWSR cases. This is a higher rate than the OM's own target of 10%. We found no explanation for this high rate and are concerned that it means either that EWSR offences go unpunished or that time is spent on preparing official reports for cases that do not have a chance of success. We recommend that the Minister of V&J analyses the causes of the high rate of non-prosecution and takes measures to reduce it. Customs and the KLPD should also be better informed of the outcome of cases so that they can take them into account when preparing new official reports.



## 5 Response of the state secretaries and the minister and the Court of Audit's afterword

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Both the State Secretary for I&M and the State Secretary for Finance responded to our draft report on 30 August 2012; the Minister of V&J responded on 19 September. We have summarised their responses below (section 5.1). The full responses have been posted on [www.rekenkamer.nl](http://www.rekenkamer.nl). The responses prompted us to make a number of editorial changes to the text and to add information on the Strategic Environmental Centre (in chapter 2). They also prompted us to write an afterword (section 5.2).

### 5.1 Response of the state secretaries and the minister

#### Response of the State Secretary for I&M

The State Secretary for I&M wrote that he was pleased with our general conclusion, which is a credit to all concerned. He also referred to the Strategic Environmental Centre (SMK) in an appendix to his response.

The state secretary acknowledged that our conclusions reveal a number of areas for improvement. An internal investigation by the ILT in 2010 had come to the same conclusion and measures had already been taken to bring about improvement.

The Inspectieview system has been set up to improve insight into the impact of enforcement activities. It facilitates the electronic data interchange among the inspectorates. The enforcement partners' activities can therefore be better recorded and responded to. The state secretary also expects the national rollout of the new commercial register in 2014 to improve insight into the impact of enforcement at an individual business level. In consultation with the SMK, the state secretary will study how more effective use can be made of international business reference files (see section on the SMK).



The state secretary noted that supervision is risk-based and he therefore cannot express a generally applicable opinion on the impact of enforcement and compliance behaviour, only on the effectiveness regarding risk flows.

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The state secretary assumed that our recommendation to analyse the functioning of the entire EWSR system and the achievement of the EWSR targets related only to shipments subject to notification. He thought the transfer of tasks from NL Agency to the ILT on 1 January 2013 would make it easier for the permit issuer to share its waste shipment expertise with the supervisor. This would improve the risk-based supervision. The ILT has also already started to cooperate with the authorities in the main destination countries to improve the information provided on the final processing of waste flows. Furthermore, Customs has been asked to carry out more post-export control procedures of certain shipments. These procedures, which are usually carried out with the aid of foreign customs authorities, will provide more insight into the final links in the chain. Criminal enforcement activities will also improve insight into the functioning of the waste system as a whole and the achievement of the EWSR objectives.

#### *Strategic Environmental Centre*

In the appendix on the SMK, the state secretary noted that enforcement of the EWSR is one of the SMK's priorities. The SMK will therefore use our report to sharpen the focus of its criminal enforcement activities.

The SMK endorsed our conclusion that there are opportunities for more in-depth strategic cooperation, for example in the conduct of joint risk analyses and information exchange. The state secretary noted that the SMK had already taken initiatives in this area. As part of an analysis of environmental crime, for example, it had commissioned an in-depth study of crime in international waste flows. In 2012 it had investigated natural and legal persons convicted of EWSR offences to gain an insight into the effectiveness of criminal intervention. The results of the study are expected to be presented later this year.

The state secretary also referred in the appendix on the SMK to the OM's investigation of the causes of the high rate of decisions not to prosecute EWSR cases. According to the state secretary, the investigation will provide an indication of the quality of criminal enforcement of the EWSR and, after completion, will be presented to the SMK.



The state secretary also considered the pilot scheme for serious international environmental crime (see section 2.4) in the appendix. He noted that an evaluation of the pilot scheme would be presented to the steering group to strengthen criminal enforcement of environmental laws on 25 September 2012 and then to the ministers and state secretaries for V&J, I&M and EL&I. Cooperation is already taking place at operational level; the SMK will reinforce cooperation at strategic level.

To promote international cooperation in the field of EWSR enforcement, the police service, with co-funding from the ILT, has decided to re-appoint a liaison officer at Interpol to combat international environmental crime. The quality of the international fight against EWSR crime will also be reinforced by the formalisation of cooperation at IMPEL level and the development of a database of jurisprudence and policy in EU member states.

These activities, according to the state secretary, show that the authorities are constantly cooperating with each other in a variety of ways to enforce the EWSR. In its growing role as a strategic consultative body, the SMK will take our findings to heart.

### **Response of the State Secretary for Finance**

The State Secretary for Finance's response focused on Customs' role in enforcing the EWSR. The state secretary accepts our recommendation that the state secretaries and the minister should together work on an information management system that is more appropriate to the EWSR and provides an insight into the impact of individual enforcement instruments and into the impact of enforcement activities as a whole. He also accepts our recommendation that risk assessments should be further refined by using information sources other than Customs' data. He noted that Customs likes participating in the Ministry of I&M's initiatives in this area. In this respect, Customs is already working on solutions to eliminate the system weaknesses referred to in our report. According to the state secretary, this will help improve information management and insight into the impact of enforcement activities.

The state secretary further considered our finding that EWSR enforcement is complicated by the two legal frameworks that Customs is subject to. He agrees with us that the difference between the EWSR (which is based on final destination) and customs legislation (which is based on next country of destination) can lead to complications. He noted that this could be fully rectified only through legislative amendment and by European institutions (DG Taxud and DG Environment) and world institutions (World Customs



Organization and World Trade Organization). The Netherlands has provisionally opted for a practical solution in which Customs, together with the ILT, carries out post-export control procedures. The state secretary noted that these procedures would continue to play a role in EWSR supervision in addition to the measures that the ILT had taken in response to this report.

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### **Response of the Minister of V&J**

The Minister of V&J wrote that he was satisfied with our general conclusion. Like the State Secretary for I&M, he appended the SMK's response to his own response.

The minister shares our concern regarding the high rate of decisions not to prosecute EWSR cases and refers to the investigation into the causes that has already been started by the Public Prosecution Service (OM). The study will be completed before the end of 2012 and the SMK will use the findings to improve the enforcement of the EWSR under criminal law. The finding will also be used to improve the OM's feedback on the outcome of cases OM to the ILT, KLPD and Customs.

Further to our recommendation to work together on improving information management, the minister wrote that cooperation could already be seen in the Inspectieview system.

The minister further noted that the OM, police service, the ILT, Customs and the Rijnmond Environmental Protection Agency were already cooperating in the Environmental Nodal Orientation Experiment (PNOM) and the pilot scheme for serious international environmental crime. The results of this cooperation are expected in autumn 2012.

## **5.2 Court of Audit's afterword**

The state secretaries and minister accept our core audit findings and have already taken measures to improve enforcement of the EWSR. Below, we consider a number of the points made in their responses

### *Insight into the impact of enforcement*

Improvements to the ICT system can improve insight into the impact of enforcement, as will the investigations being carried out for the SMK and OM. The State Secretary for I&M noted that our recommendation to investigate the functionality of the EWSR system as a whole suggests that the investigation should concentrate on shipments subject to compulsory



notification. However, we do not support such a restriction. An overall picture would also include shipments subject to the Annex VII procedure. It is unfortunate that the state secretary will not follow up our recommendation. We conclude from his response that he expects the transfer of tasks from NL Agency to the ILT in combination with existing networks, Customs' post-export control procedures and ongoing investigations will provide adequate insight. Regardless of their significance, we still call for an investigation of the system as a whole. There is a risk that a series of separate investigations will not produce a coherent picture and that insufficient attention will be paid to transfer points in the system.

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*Number of decisions not to prosecute*

We are pleased that the causes of the high percentage of decisions not to prosecute are being investigated and that the findings will be used to improve enforcement under criminal law. We consider it important that those concerned act on a thorough analysis of the problems. We will follow the improvements based on this analysis with special interest.

*Finally*

Further to the transfer of tasks from NL Agency to the LIT, we would note in closing that the ILT's permit issuing tasks and its supervisory tasks should be clearly segregated.



## Appendix 1 Procedure for two most common offences

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### **Enforcement procedure if there is no Annex VII form**

If a shipment is incorrectly not accompanied by an Annex VII form, it is illegal under article 2 (35) (giii) of the EWSR. The Environmental Management Act refers to this EWSR article in section 10.60 (2). A person committing this offence will first be given an opportunity to produce the Annex VII form. This usually takes several hours. If the right Annex VII form is produced within the time limit, the shipment can go ahead (without an official report being prepared). The party discarding the waste, however, is issued a warning letter by the ILT.

#### *Annex VII form not produced within set time limit*

If the Annex VII form cannot be produced within the set time limit, the enforcement authority (usually Customs or the KLPD) prepares an official report. Two administrative measures can also be taken:

- A. The shipment is delayed until all legal requirements are satisfied.
- B. The shipment is delayed until the owner of the waste (voluntarily or otherwise) arranges for the waste to be returned to the country of dispatch.

#### *Warning letter sometimes sufficient*

Some offenders receive a warning letter as well as an official report if the offence is not committed deliberately, is evidently incidental and of minor importance, was committed by an otherwise compliant offender and the offender has taken immediate and appropriate measures.

#### *Less favourable circumstances: order subject to a penalty payment*

If the offence is too serious for a warning letter, an administrative measure can be taken in the form of an order subject to a penalty payment or in the form of an enforcement action. The offender can also be punished under criminal law and any illegally obtained advantage can be confiscated. Such an offence is a category 1 offence under the Economic Offences Act (WED). The offender must accordingly pay a fine.

### **Enforcement procedure if there is no notification**

If notification has not been given of a shipment, the shipment is illegal under article 2 (35) (a and/or b) of the EWSR. The Environmental Management Act refers to this article in section 10.60 (2). If the owner of the waste commits such an offence the waste must be returned to the country of dispatch (return shipment). The holder can then follow the notification procedure.





*Some offenders receive a warning letter*

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In such an offence, the enforcement authority prepares an official report and administrative measures are taken (as in the case where a shipment is not accompanied by an Annex VII form). In some cases the ILT issues a warning letter if the offence is not committed deliberately, is evidently incidental and of minor importance, was committed by an otherwise compliant offender and the offender has taken immediate and appropriate measures.

If the offence is too serious for a warning letter, the enforcement authority can again take administrative measures. It can propose, for example, that an order subject to a penalty payment or that a particular form of enforcement action be imposed. The offender can also be punished under criminal law and the illegally obtained advantage can be confiscated. Such an offence is a category 1 offence under the Economic Offences Act (WED). The offender must accordingly pay a fine.



## Appendix 2 Number of checks

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This appendix provides quantitative information on the number of EWSR checks carried out by Customs, the police service and the ILT (the former VROM Inspectorate and the former IVW). As noted in section 2.4.4, there are differences between the reports prepared by the three enforcement partners. The differences arise because of the various ways to deal with the noise in the databases. For example, if the type of shipment is not known (domestic or cross-border shipment), the checks might not always be recorded. Differences also arise because some offences are detected immediately whereas others are detected only after assessment by specialists. As noted in chapter 2, the ILT takes over the more complex EWSR cases from its enforcement partners. The ILT dealt with 251 EWSR cases in 2009 and 263 in 2010. It assumed the vast majority of them from its partners.

**Table II.1 Checks by Customs that included waste regulation and number of irregularities detected**

	Customs statement		ILT statement	
	Waste checks carried out	EWSR irregularities*	EWSR checks	Not EWSR compliant
<b>2008</b>	7,664	146	No information	No information
<b>2009**</b>	5,915	182	4,389	168
<b>2010</b>	5,238	145	5,238	145

\* Owing to the divergent nature of the checks in the various customs procedures, as explained in Customs' 2010 evaluation report, the total number of irregularities cannot be related directly to the total number of checks.

\*\* The ILT reported 4,389 checks in 2009; Customs reported 5,976 checks to the Court of Audit. The differences are due to the selection criteria used. As the ILT has not reported figures for 2008, we have used Customs' statement in this table. There are no differences in respect of 2010.

Source: ILT statement and Customs statement.



**Table II.2 EWSR checks by the KLPD and regional police forces in 2008, 2009 and 2010 (road, inland shipping and rail)**

	Police statement		ILT statement	
	EWSR checks*	Official report / warnings**	EWSR checks	Not EWSR compliant
<b>2008</b>	1,187	67 / 85	No information	No information
<b>2009</b>	1,075	91 / 76	897	70
<b>2010</b>	920	50 / 83	882	105

\* Excluding checks where it was not known whether the shipment was domestic or international; including checks with unknown results (offence field left empty).

\*\* Including offences detected only after processing the registration form. Excluding offences not related to EWSR

Source: KLPD statement and ILT statement.

**Table II.3 On-site inspections by the VI and road transport checks by the VI and IVW to enforce the EWSR**

	Number of on-site inspections to enforce the EWSR	Road transport checks with partners other than the police or in an international context (number of days)*	Road transport checks by VI (in days)	Vehicle checks by IVW to enforce transport laws and the Hazardous Substances Act, including EWSR checks.	
				checks	offences
<b>2009</b>	47	11	5		
<b>2010</b>	75	14	3	454	61
<b>2011</b>	125	13	3	363	60

\* About five vehicle checks per day.

Source: ILT statement.



## Appendix 3 Standards

The main audit standard related to compliance with the requirements arising from the EWSR and its implementation in national law. We also audited compliance with a number of general standards the Court of Audit applies for supervision and enforcement.<sup>38</sup>

- Supervision must be independent and expert and consist of information collection on the one hand and professional judgement and intervention on the other.
- The object of supervision must be covered in full. To this end, there must be an understanding of the applicable legislation and the objects being supervised, a compliance level, an enforcement policy, an activity plan and a risk analysis.
- There must be an insight into the inspection activities and their impact.
- The enforcement policy must be periodically evaluated.
- Frequently occurring offences must be discussed with the field. Organisations that commit many offences should receive extra attention.
- Enforcement activities must be coordinated with detection activities (and vice versa).

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<sup>38</sup> See for example our reports on Marine Pollution from Ships, Enforcement by National Inspectorates, Enforce and Tolerate, and Frameworks for Supervision and Accountability (Netherlands Court of Audit, 2001; 2002; 2005; 2008).



## Abbreviations

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ADW	General Customs Act
ANPR	Automatic number plate recognition
CNU	Post-export control procedure (by Customs)
CTI	Combined Transport Inspection (by the KLPD)
DGMI	Directorate-General for the Environment and International affairs (Ministry of I&M)
EFTA	European Free Trade Association (Norway, Iceland, Switzerland and Liechtenstein)
EWSR	European Waste Shipment Regulation
FP	National Public Prosecutor's Office for Financial, Economic and Environmental Offences
I&M	Ministry of Infrastructure and the Environment
IMPEL	European Network for the Implementation and Enforcement of Environmental Law
ILT	The Human Environment and Transport Inspectorate, inspectorate of the Ministry of I&M, formed from the merger of the VI and IVW
IOD	Information and Investigation Service of I&M
IVW	Transport, Public Works and Water Management Inspectorate (as from 1 January 2012 merged with the VI to form the ILT)
KLPD	National Police Services Agency
LAP	National Waste Management Plan
MIC	Notification and Information Centre of ILT
OECD	Organization for Economic Cooperation and Development
OM	Public Prosecution Service
SAI	Supreme Audit Institution
TFS-EA	Transfrontier Shipment of Waste Enforcement Actions, international enforcement actions, part of Impel
VGEM	VGEM tasks are non-fiscal customs tasks for health, safety, the economy and the environment
VI	VROM Inspectorate (merged with the IVW on 1 January 2012 to form the Netherlands Shipping Inspectorate)
VIM	VROM-Inspectorate, reporting centre (part of the VI)
VROM	Ministry of Housing, Spatial Planning and the Environment, became part of the Ministry of I&M at the end of 2010.
VROM-IOD	Information and Investigation Service of the former Ministry of VROM
WED	Economic Offences Act
WM	Environmental Management Act



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<sup>39</sup> Regulation (EC) 1013/2006 replaced Regulation (EC) 259/93 on 12 July 2007.



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