



STUDY ON INSPECTION REQUIREMENTS FOR WASTE SHIPMENTS

**A project under the Framework Contract
G.4/FRA/2007/0067**

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1 EXECUTIVE SUMMARY

The European Commission has stated that one of the main priorities of its environmental policy is the correct implementation of EU environmental legislation, including the EU Waste Shipment Regulation (1013/2006) (WSR). The WSR seeks to prevent and control environment and health hazards in relation to shipments of waste within the EU and between the EU and third countries. This regulation prohibits all exports of hazardous waste to countries outside the OECD and all waste for disposal outside the EU/EFTA (Articles 34 and 36 of the regulation). However, there is clear evidence of illegal shipments of waste directly contravening this regulation, in particular through hazardous waste exports and exports of waste for disposal to developing countries. Problems relating to illegal waste shipments have also arisen between Member States.

Article 50 of WSR sets out certain obligations on the Member States aiming to ensure that effective inspection systems are put in place to achieve this. However, analysis undertaken in a number of contexts has shown that enforcement of the WSR is patchy and significant levels of different types of illegal waste are continuing to be exported from the EU. Recent studies and media reports on the exports of certain waste streams, in particular from electronic goods and vehicles (WEEE, ELVs) indicate that significant volumes leave the EU whilst not respecting the export bans of the WSR, and at the same time serious gaps have been identified in the enforcement and inspections carried out by Member States.¹ These gaps include, *inter alia*, inadequate inspections of waste shipments 'in situ', e.g. random on-the-spot checks without opening of containers; in-sufficient frequency of 'in situ' inspections; and lack of clear criteria for inspections. A major problem seems to be that the WSR currently lacks specific criteria related to the frequency or quality of inspections.²

In view of the above, it is important that the effectiveness of enforcement of the WSR in the Member States is improved. One approach to achieving this objective is to identify criteria for effective inspection regimes under the WSR that could be established at EU level. This report sets out such criteria in detail, drawing on a range of different information sources.

¹ For example, awareness events organised 2007-2009 in Member States, reports on: <http://ec.europa.eu/environment/waste/shipments/reports.htm>. Media reports on: http://news.sky.com/skynews/Home/UK-News/Sky-Probe-Reveals-Recycling-Scandal-As-Broken-TVs-Are-Shipped-Over-To-West-Africa/Article/200902315224628?lpos=UK_News_News_Your_Way_Region_0&lid=NewsYourWay_ARTICLE_15224628_Sky_Probe_Reveals_Recycling_Scandal_As_Broken_TVs_Are_Shipped_Over_To_West_Africa; http://www.letsrecycle.com/do/ecco.py/view_item?listid=37&listcatid=217&listitemid=51995§ion=waste_management; <http://www.cbsnews.com/stories/2008/11/06/60minutes/main4579229.shtml>).

² Article 50 of the regulation, see also the Commission's proposal for a recast of the WEEE Directive (2002/96/EC), http://ec.europa.eu/environment/waste/weee/index_en.htm.

The report reviews the requirements of the WSR itself, noting the importance of different types and locations of inspections and the need for co-operation between authorities within and between Member States.

It examines practice and guidance at international level. In particular detailed inspection guidance has been developed under the Basel Convention, describing how to undertake waste shipment inspections. Customs play an important role in waste shipment controls and the World Customs Organisation has sought to promote the implementation of waste shipment controls, linked to analytical processes such as risk profiling.³

Inspection obligations are set out in various ways in EU law. The Recommendation on Minimum Criteria for Environmental Inspections (RMCEI) does not include WSR inspection, but does set out various inspection criteria, such as inspection planning. The Commission's review of the RMCEI identified WSR inspection criteria as a major gap to be addressed. Inspection criteria are also being developed further with the WEEE Directive Recast Proposal (of direct relevance to the WSR) and the IPPC Directive Recast Proposal – setting precedents for elaboration of criteria to ensure effective inspection regimes under the WSR.

The report sets out details of practices in the Member States on WSR inspection. In most cases a number of authorities are involved (environmental inspectorates, Customs, police, etc.) and these can, variously, be established at national, regional and local level. Co-operation is, therefore, a challenge and a number of best practices to address this are described. The capacity of inspectorates responsible for the WSR varies, with a number indicating that capacity is well below what is required. The processes for inspection also vary, with significant differences justified according to different Member State circumstances, while some others show poor levels of inspection activity. Therefore, while there is some important best practice (e.g. control strategies and port controls in the Netherlands and the intelligence-led approach in the UK), a number of inspection procedures cannot ensure effective control of illegal waste movement. Further details of Member State approaches to inspection planning, information sharing, skills, training, etc., are provided – all necessary to ensure effective inspection capacity.

The criteria for inspection under the WSR use the RMCEI as a starting point. The report lists a number of possible criteria that could be established at EU level (e.g. in a Directive, Regulation, Recommendation or as guidance). The criteria proposed are provided to stimulate discussion and could serve as a basis for the Commission in its preparation of proposals on this matter.

³ See press release from the World Customs Organisation concerning the joint global customs initiative 'operation Demeter', <http://www.wcoomd.org/press/default.aspx?lid=1&id=187>.

The criteria for effective inspection under the WSR reflect key features of what should be required from an effective and comprehensive control- and inspection system for waste shipments. The criteria are set out under a series of headings, each of which is expressed itself as a criterion:

- Member states shall ensure that competent authorities have sufficient capacity to ensure effective enforcement of the WSR
- Member States shall have an effective control strategy to ensure implementation of the WSR
- Member States shall ensure that they have sufficient understanding of illegal waste movement to meet the enforcement requirements of the WSR
- Member States shall ensure that they undertake risk profiling and risk analysis of waste streams that may result in illegal waste shipment
- Member States shall ensure that they undertake an assessment of criminal activity contributing to illegal waste shipment
- Member States shall have an effective inspection plan covering all aspects of waste shipment inspection
- Member States shall undertake an effective review of the inspection plan
- Member States shall ensure that they have an effective inspection programme
- Member States shall ensure effective procedures are followed for the preparation of an inspection
- Member States shall ensure effective procedures are followed for undertaking an inspection
- Member States shall ensure effective procedures are followed for the follow-up to an inspection
- Member States shall ensure that inspectorates adopt a sampling plan for the taking of samples during an inspection
- Member States shall ensure that laboratory facilities and procedures are of a high quality to support inspection actions
- Member States shall ensure that relevant aspects of waste shipment inspection activity are transparent
- Member States shall ensure that the inspectorate responsible for waste shipment inspection operates in an effective way
- Member States shall ensure that the inspectorate has sufficient budget to deliver its obligations regarding enforcement of the WSR
- Member States shall ensure that the inspectorates have high quality staff
- Member States shall ensure that staff in authorities responsible for inspection under the WSR shall have the necessary competence
- Member States shall ensure that inspectorates recruit staff of high quality

- Member States shall ensure that staff in inspectorates receive training to ensure the maintenance of the quality waste shipment enforcement
- Member States shall ensure that waste shipment inspection activities are undertaken to a high quality
- Member States shall ensure effective co-operation within the competent authority responsible for waste shipment inspection
- Member States shall ensure effective co-operation between competent authorities necessary to deliver enforcement of the WSR
- Member States shall adopt measures to inform and involve stakeholders in enforcement activity
- Member State authorities shall participate in EU and International level actions

2 INTRODUCTION

The European Commission has stated that one of the main priorities of its environmental policy is to ensure the proper implementation of EU environmental legislation, including the EU Waste Shipment Regulation (WSR) (1013/2006). This Regulation seeks to prevent illegal waste shipments and it contains a series of requirements on the Member States to ensure that this is achieved. Amongst these are provisions (Article 50) regarding enforcement and the need to undertake inspections.

As will be seen later in this report, illegal waste export continues from the Member States and there are concerns over the levels of enforcement undertaken by some Member State authorities. These concerns have been highlighted by the European Commission, the European Environment Agency and the European Union Network for the Implementation of Environmental Law (IMPEL).

Inspection is a key element of many environmental regulation regimes. Specifically, Article 50 of the WSR requires that Member States shall provide for inspections of establishments and undertakings (in accordance with Article 13 of the Directive on Waste (2006/12/EC)) and for spot checks on shipments of waste or on the related recovery or disposal. The checks on shipments shall include the inspection of documents, the confirmation of identity and, where appropriate, physical checking of the waste.

However, the WSR lacks any specific criteria related to how inspections should be organised or undertaken to help guide their effectiveness. This contrasts with some other EU legislation where inspection criteria are set out, such as in the Seveso II Directive or the details in the Recommendation for Minimum Criteria for Environmental Inspection.

Given the importance of implementation of the WSR and the precedence of inspection criteria in EU law, the European Commission considered that this study should be undertaken in order to assess the nature and types of inspection criteria that might be established (such as at EU level) to support inspections. Such criteria could include:

- Procedures and elements of inspection planning, including risk assessments.
- Inspection frequencies.
- Inspection processes.
- Institutional capacity, including skills.

In order to support the development of such criteria, the European Commission directed that this study be undertaken with the objective to assess available data and information (relating to related EU law and other requirements, international guidelines, Member State practice and procedures) with a view to determine which specific requirements could be relevant as a basis for EU legal requirements for waste shipment inspections and enforcement. This review should develop options for potentially new legislative requirements relating to waste shipment inspection.

This report sets out the results of this work. The report is structured as follows:

1. It begins by describing the methodology used in the work.
2. It then follows with two sections outlining the main obligations of the WSR and the extent of the problem of illegal waste export and its enforcement.
3. The following section describes guidelines for inspection and enforcement arising from international institutions, such as the Basel Convention.
4. EU legislation is the subject of the following section, describing the ways that inspection requirements and criteria are set out in different regulatory contexts and how changes to these are being considered.
5. The practices, processes and problems for inspection under the WSR in the Member States are the subject of the following section.
6. The following section considers how criteria can be established with recommendations for how these are addressed.
7. The potential criteria are set out in the following section, addressing a wide range of different issues related to inspection and enforcement under the WSR.
8. The final section considers how such criteria could be taken forward, for example in EU law by the EU institutions.

3 METHODOLOGY

3.1 Overview

The project included the following tasks.

The first task was to compile and assess relevant information concerning EU, international and Member State legal requirements, guidelines, procedures, etc., relating to inspections and enforcement and, if available, proposals for changes to these, where these are relevant to use as the basis for EU legal requirements for waste shipment inspections, controls and on-the-spot checks.

It was agreed with the European Commission that it would be useful to focus the Member State review on particular Member States. Nine principal Member states were studied for best practices, as well as those which face capacity constraints. These factors would help in considering the most appropriate inspection guidelines. The Member States chosen were: Austria, Czech Republic, France, Germany, the Netherlands, Poland, Spain, Sweden and the UK. Four of these Member States have large sea ports and have significant waste shipments compared to the EU total and have the potential for developing best practice in inspection. Austria is a land-locked country for which other Member States have to have confidence in its implementation of the WSR. The two new Member States were chosen because of their size and industrial capacity whereby they could have sufficient waste shipments for which inspection systems are developed. Spain is chosen as a southern Member State with possible additional issues relating to co-ordination of inspection resulting from its federal administrative structure.

The second task was to compile and assess criteria for waste shipment inspection, controls and on-the-spot checks which could be most appropriate to apply to ensure optimal effectiveness in enforcing the WSR, in particular with regard to the control of illegal waste movement.

The third task was to make recommendation as regards the appropriateness of the different requirements and examples of how such requirements could be designed in an appropriate way.

Finally, assessment of the potential centralisation of the tasks concerning inspection and enforcement should be made (e.g. the extent to which this would work practically and appropriately in terms of effectively achieving the WSR objectives), including the role the European Commission could play in relation to monitoring and supervision of the criteria and requirements.

This report sets out the results of these tasks. The individual Chapters of the report do not, however, correspond to each task, one after the other. The first task, for example, is the subject of three Chapters due to the varying nature of the information, with conclusions relating to the second task. The subsequent Chapters follow the logic of tasks 2 and 3, with elements of each set out in a way which examines how criteria can be established and then proposes criteria with justifications. Task 4 is the subject of the final Chapter.

3.2 Literature review

A key part of the study has been to review and analyse the literature and documents from international, EU and Member State organisations relating to the issues to be addressed in 2.1 above. These included guidance and reports from authorities enabling planning, processes and procedures to be examined. Member State officials were helpful in providing such documents, including drafts under development, and in helping to interpret them.

3.3 Questionnaire

A questionnaire was developed under the project which was used to gather information and views from IMPEL TFS members on issues related to WSR inspection capacity, planning, processes and the criteria to support these. A copy of the questionnaire is provided in Annex I. IMPEL TFS members were therefore, asked questions which seek to identify both best practice and views on the criteria that can be used to support effective and efficient inspection regimes for waste shipment regulation. The questionnaire was developed subsequent to an examination of practice in some Member States and examination of reports produced by IMPEL TFS, etc.

Responses were obtained from 12 IMPEL TFS members. This report does not provide a separate collated analysis of the responses received, but the results are used within relevant sections of the report in order to inform their conclusions, etc. Responses also assisted in informing the discussion with IMPEL TFS members in subsequent stages of the project.

3.4 IMPEL TFS Conference

IMPEL TFS members are responsible for many inspection activities under the WSR. The IMPEL TFS Annual Conference was held in March 2009 and the opportunity was taken to attend the Conference and organise a workshop addressing the issues of this study.

An information note outlining the scope of this study and purpose of the workshop was prepared by the contractors was sent to all Conference participants by the IMPEL TFS Secretariat prior to the Conference. A large number of participants attended. The pre-Conference information note and report of the workshop included in the IMPEL Conference Report are provided in Annex II. The workshop allowed for a group discussion of key issues, such as how to set criteria, drawing together experience from Member States with very different contexts of waste shipment inspection.

3.5 Discussions with competent authorities

At various stages of the project discussions have been held with competent authorities for implementation of the WSR. At least one competent authority (and usually more) was contacted for each of the Member States chosen for particular study. Discussions were held by meetings (at the offices of the authority or the contractor), telephone interviews and during the IMPEL TFS Conference. The opportunity was also taken to raise specific points at other meetings where competent authority officials and contractors were both present.

These discussions allowed issues to be explored in detail, seeking to understand issues underlying statements in official publications, etc., and highlight new developments. Discussions allowed for enforcement problems to be frankly discussed and to address the nature of criteria for inspection. Discussions were also able to confirm where certain information, procedures, etc., were lacking.

4 INSPECTION UNDER THE WASTE SHIPMENT REGULATION (WSR) (1013/2006)

4.1 Introduction

This Chapter provides a short introduction to the WSR – the focus of this study. The purpose of the Chapter is to establish clearly the inspection obligations which are the subject of the research that has been undertaken and its context within the Regulation.

The WSR establishes procedures and control for the shipment of waste depending on the origin, destination and route of shipment, the type of waste shipped and type of treatment applied. It applies to shipments of waste between Member States, within the Community and to/from third countries.

The WSR implements the Community's obligations with regard to the Basel Convention. It addresses the requirements for the legal shipment of waste (types, destination and administrative processes, etc.). It also identifies clear restrictions on what waste can be exported from the Community.

Implementing the obligations of the WSR is a major challenge to the Member States. The Regulation applies to waste in different locations and requires co-operation between authorities within and between Member States to be effective. As will be seen in the next Chapter, the illegal waste shipment problem is extensive. Therefore, effective control is needed.

For this reason the WSR also establishes obligations on the Member States to ensure that there is effective enforcement of its provisions – including a systematic approach to inspection. The requirements for inspection are set out in the following section. Some of the key points that arise from this are then highlighted. However, much of the specific discussion on the interpretation and implementation of these provisions is addressed later in this report.

4.2 The regulation's requirements

The WSR sets out certain requirements relevant to enforcement in Article 50. This states that:

'Enforcement in the Member States

1. Members States shall law down the rules on penalties applicable for infringement of the provisions of the Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify the Commission of the national legislation

relating to prevention and detection of illegal shipments and penalties for such shipments.

2. Member States shall, by way of measures for enforcement of this Regulation, provide, inter alia, for inspections of establishments and undertakings in accordance with Article 13 of Directive 2006/12/EC⁴, and for spot checks on shipments of waste or on the related recovery or disposal.

Checks on shipments may take place in particular:

- a. At the point of origin, carried out with the producer, holder or notifier.
 - b. At the destination, carried out with the consignee or the facility.
 - c. At the frontiers of the Community; and/or
 - d. During the shipment within the Community.
3. Checks on shipments shall include the inspection of documents, the confirmation of identify and, where appropriate, physical checking of the waste.
 4. Member States shall co-operate, bilaterally or multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments.
 5. Member States shall identify those members of their permanent staff responsible for the co-operation referred to in paragraph 5 and identify the focal point(s) for the physical checks referred to in paragraph 4. The information shall be sent to the Commission which shall distribute a compiled list to the correspondents referred to in Article 54.
 6. At the request of another Member State, a Member State may take enforcement action against persons suspected of being engaged in the illegal shipment of waste who are present in that Member State.'

⁴ Consideration of inspection requirements of this Directive will be addressed later in this report together with other relevant EU law.

4.3 Issues arising for this study

This study focuses on the development of criteria for inspection and spot checks under the WSR. The WSR specifies some elements (e.g. documentation and physical checks) to be undertaken and potential variation in where inspection may take place. It also stresses the need for co-operative relationships within inspection.

However, effective inspection under the WSR begs a number of questions, such as:

- What constitutes an inspection?
- Which institutions should undertake inspection?
- How do authorities co-operate?
- How should inspections be targeted to achieve WSR objectives?
- How should inspections be planned?
- What needs to be done before, during and after an inspection?
- What support is needed for inspection activity?
- How much inspection activity is needed and how is the capacity for this determined?

These issues will be addressed in the following Chapters examining how they are addressed in other regulatory regimes and how the Member States have approached them under the WSR. This will lead to recommendations for criteria on these (and related issues) to help ensure an effective regime for inspection as required under Article 50 of the WSR.

5 THE NEED FOR EFFECTIVE WASTE SHIPMENT INSPECTION

5.1 The illegal waste shipment problem

This report is not the place to provide a detailed review of the illegal waste shipment problem in the EU. However, it is important to stress that illegal waste activity is a serious problem – hence the need for effective inspection and wider enforcement. There is a wide range of different types of illegally exported waste, from WEEE and ELVs to unsorted municipal waste, hazardous chemicals, etc. Examples⁵ of illegal shipment include:

- transporting any waste subject to the Basel Export Ban out of the EU or the OECD;
- transporting waste without notifying the authorities of source and destination when such a notification is necessary;
- falsifying any documentation regarding waste loads or not declaring waste on documentation;
- mixing certain types of waste;
- classifying hazardous waste as non-hazardous ('green-listed');
- shipping waste whilst falsely claiming that it comprises second-hand goods and is therefore not subject to waste regulations.

The EEA published a report⁶ in 2009 on transboundary shipments on waste arising from the EU. It states that while 'illegal shipments of waste clearly are a matter of concern for the environment as well as for the economy', 'scarcity of information means that illegal activities of any kind are difficult to analyse'. Indeed, only a small number of countries have made an assessment of the scale and threats from illegal international traffic (such as Germany, Norway, Sweden, Netherlands and UK)⁷.

⁵ More examples can be found in article 2, paragraph 35 of the WSR

⁶ EEA 2009. Waste without borders in the EU? Transboundary shipments of waste, EEA.

⁷ Impel-TFS Threat Assessment Project: The Illegal Shipment of Waste Among Impel Member States. 2006

The EEA noted that illegal shipments of waste cause several problems:

- The dumping of waste following an illegal shipment may have severe implications for the environment and human health, and the subsequent clean-up is an economic burden, especially for developing countries with inadequate waste facilities;
- Illegal shipments of waste have an adverse effect on trade and competition, putting law-abiding businesses at an economic disadvantage;
- Illegal shipments undermine international policy and enforcement efforts.

Based on instances of illegal shipments of waste reported to the European Commission, the EEA concluded that reported annual illegal shipments vary between 6,000 and 47,000 tonnes with an average of about 22,000 tonnes; equivalent to 0.2 % of the notified waste. However, it also considered that these are probably **minimum** figures, as many Member States reports lack sufficient information on the amounts shipped, therefore the 'reported cases represent a fraction of the actual number and that the number of illegal shipments is considerable'. Based on reports over time, the number of reported illegal shipments has increased during the period 2001 to 2005. A detailed analysis of data for 2003 shows that two thirds of the illegal shipments were related to hazardous or problematic waste mainly within the EU. One third of these were related to non-hazardous waste and mainly consisted of waste to non-OECD countries for recovery.

The EEA concluded that '*sufficient control and inspections of transboundary shipments of waste are important tools if the number of illegal shipments is to be reduced, especially when we consider that illegal shipment may take many forms*'. Hence there it is critical that there is effective inspection implementing Article 50 of the WSR.

With regard specifically to WEEE, the Commission's Impact Assessment (IA) for the WEEE Directive Recast Proposal⁸ stated that there is evidence that very large volumes of WEEE are shipped out of the EU illegally for sub-standard treatment in the developing world. These shipments are often disguised as export of used equipment, but in fact are shipped for their material value. It also concluded that due to the illegal nature of these shipments there are no data available on the overall volume of the shipments, but there are some specific cases available. There is evidence of shipments of WEEE disguised as goods from the port of Hamburg and findings that 28% of businesses (collectors and exporters) were found to be exporting WEEE illegally from the Netherlands. In the United Kingdom about 10% of WEEE transports were shipped illegally to non-OECD countries.

⁸ Commission Impact Assessment accompany a proposal for a Directive of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE) (Recast). 2008.

The IA provided the following figure which illustrates the complexity of WEEE management, but critically illustrates the different potential routes from retailer, municipal site, collection centre, transport, etc., that can lead to illegal export. This presents a difficult enforcement challenge and demonstrates the importance of an enforcement strategy for waste shipment control that relies of actions more than those focused on controls on the frontier alone.

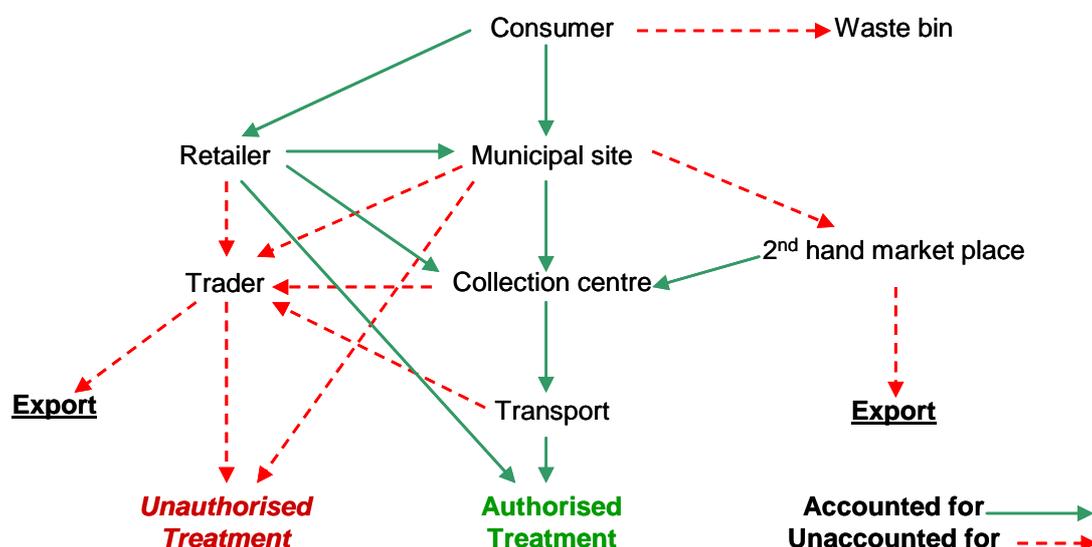


Figure 1: possible leaks in return logistics of WEEE from private households⁹

The potential for illegal waste export is related to overall waste production and management. Further data on the export of waste are given for some of the Member States in the Annexes as examples. However, the EEA reports and consolidated Commission reports of Member State reporting should be consulted for more detailed analysis.

5.2 Drivers for illegal waste shipment

The extent of illegal waste export stresses the importance of enforcement. However, effective enforcement needs to take account of the reasons why such illegal activity is taking place. There are a number of drivers for illegal waste shipment – economic and legal – with some of these factors being significant to result in the development of serious organized crime. The EEA¹⁰ has summarized these below:

⁹ Municipal site: operated by the municipality or by a commissioned company, often with its own commercial interest; Collection centre: WEEE is handed over to a take-back scheme, commissioned recycler/logistic company, or commercial agent, who may or may not have his own commercial interest

¹⁰ EEA 2008. ETC/RWM Technical Report 2008/1. Transboundary shipments of waste in the EU- Developments 1995-2005 and possible drivers

Economic factors

The relatively high labour costs of treatment or disposal of waste in EU countries compared to costs in countries outside Europe like Africa and Asia are a strong driver for illegal shipments, sometimes the most important economic reason. Therefore, wastes are often transported out of the EU illegally in an attempt to reduce costs. The main importers of WEEE are developing countries in Africa or Asia. WEEE that yields valuable secondary raw materials is often recovered in facilities with very low technical and health standards. The labour costs are very low. Useless WEEE and treatment residues from WEEE often end up in small dumps without protection measures for citizens and the environment.

Waste in the EU can be used as a product outside the EU

Several waste streams are shipped to countries outside the EU as 'second hand goods'. This concerns primarily ELV and WEEE, but also old clothes, car tyres and other types of waste. Sometimes illegal shipments are caused by the different interpretations between 'waste' and 'product', even by the authorities and enforcement agencies of the countries. The huge difference in prices between used and new products in these countries is one of the most important factors encouraging illegal shipments.

Sometimes chemicals which are banned in EU countries (in fact becoming waste) are not totally banned in countries outside Europe and can find legal or illegal use as normal products (e.g. CFCs or other ozone depleting substances). Sometimes harmful substances, or goods which are forbidden and no longer allowed to be used and traded in EU Member States, are shipped illegally outside the EU to save treatment costs.

Technical factors

Shortage of waste facilities for the treatment and recovery of waste within the EU is generally not the main driver for illegal shipment within the EU Member States.

EU border

The ten new Member States have not only had the task of adhering to all EU regulation, but they also became responsible for protecting the new EU border along the east of their 'old' EU. These are challenges, and make them particularly vulnerable to the threat of illegal transboundary shipments of waste.

Random waste inspection/organised crime and lack of awareness of punishment for illegal shipments

Often, illegal shipments of hazardous and non-hazardous wastes are committed by organised crime always looking for new opportunities, with the potential for illegal shipments to increase profits. It is not possible to carry out area-wide and permanent inspections, because waste inspections are very expensive and must be well organized and prepared. Developing countries are often not equipped with the special know how, infrastructure and specially educated staff, and lack money to organise and operate inspections in their countries.

5.3 The enforcement gap

Of course, another driver to illegal waste export is the level of enforcement of legislation to control such activity. A later Chapter in this report considers the practices in the Member States in some detail. However, it is important at this point to stress that control of illegal waste movement has significant failings.

The IMPEL TFS Threat Assessment project reported that Member State authorities identified the following as problems undermining effective enforcement:

- lack of resources
- interpretation of law and co-operation between countries
- lack of expertise
- legal definitions
- weak legislation, and
- the importance of violations being underestimated by superiors or the Criminal Justice System.
- lack of good data and information on the issues.

The most common theme was lack of resources, with five Member States considering that more resources would allow them to more thoroughly and effectively inspect containers and paperwork and identify suspicious activity. Related to this was the lack of expertise.

Further IMPEL work¹¹ identified the following critical problems:

¹¹ IMPEL-TFS Seaport Project II; 'International cooperation in enforcement hitting illegal waste shipments', Project report September 2004 – May 2006

- **Lack of capacity and recourses:** there is a serious lack of capacity and recourses for adequate enforcement. Many enforcement activities are reactive and based upon complaints and signals from other public and private organisations. Ring-fencing of capacity for proactive inspections, aimed at preventing illegal shipments, is not a daily practice.
- **Existing enforcement structures sometimes form barriers for effective enforcement:** existing national enforcement structures are sometimes barriers for effective enforcement. National coordination and the wide spread allocation of tasks and competences (also over various regions) are often bottlenecks in effective enforcement.
- **Education and training should be intensified:** authorities feel a strong need for intensifying education and training on the details of enforcement, not only for environmental inspectorates, but also for other involved networks like Customs and police.
- **Problematic cooperation between police and Customs networks:** limited competences and experiences from police and Customs networks form, in a number of countries, a bottleneck to discovering illegal waste exports. Support by environmental inspectorates is necessary as they have specialised knowledge. Although cooperation between environmental inspectorates, Customs and police networks has been improved in many countries, cooperation between those organisations is still problematic in some.

The Commission's IA for the WEEE Recast Proposal also concluded that as waste enforcement has a history of inadequate resourcing in some Member States, it is possible that the requirements for more rigorous inspection may be resisted by Member States. Also inspection activity would need to be extensive to be effective. The IA argued that, using 2008 costs of a representative bundle of WEEE for treatment in line with Annex II, the additional costs are around €250/tonne WEEE. Where these are not offset by payments from producers, for a treatment operator running 50,000 tonnes of WEEE through the plant each year, the financial gain from avoiding proper treatment on, for example half the input, would be €6.25 million. Even if the penalties or non-compliance were set very high, at €12.5million, inspection would have to be rigorous enough to discover more than 50% of non-compliance to provide sufficient counter-incentive for non-compliance. It is estimated from Member State reporting that there are currently 4,000 authorised treatment plants in the EU and 200 shredders which would require inspection. It is possible that additional inspections would be necessary for presently unauthorised treatment plants. However, some enforcement actions have been effective. In the Netherlands, due to enforcement actions, the total percentage of illegal

activities decreased from 2004 to 2006, where retailers had a 60% violation in 2004, but only 11% in 2006.

All of these problems have to be considered in the development of recommendations and criteria for effective WSR inspection systems. Each of these issues (and others) will be considered in more detail in this report together with best practice for addressing them.

However, at this point it is also important to note that these enforcement problems focus on the WSR (which is the focus of this study). However, the drivers for illegal waste export activity are not only subject to regulation through the WSR. The waste arisings and processes for municipal waste, packaging waste, ELV, WEEE, etc., are all subject to other regulatory regimes as well as other instruments (information, financial, etc.) to assist in their implementation. If these regimes are implemented properly, then this reduces the drivers for illegal waste export. If other waste regulations are poorly implemented, then implementation of the WSR becomes a 'fire fighting' operation. The implementation of wider regulatory issues (as well as other issues such as links between illegal waste activity and other types of organised crime) needs to be addressed in an integrated control strategy. The nature of a wider control strategy and criteria relating to this will be addressed in this study.

6 INTERNATIONAL LEGISLATIVE CONTEXT

6.1 Introduction

At the international level two main pieces of legislations regulate the transboundary movement of waste: the Basel Convention and the Organisation for Economic Co-operation and Development (OECD) Recommendation on Environmental Sound Management of Waste. These two agreements serve as the basis of the EU Waste Shipment Regulation.

6.2 The Basel Convention

The Basel Convention entered into force in 1992¹². It was originally a voluntary agreement conceived to ban the transfrontier movement of hazardous waste (except radioactive/nuclear waste). The Basel Convention regulates the transboundary movements of wastes by applying the “Prior Informed Consent” procedure (shipments made without consent are illegal). Shipments to and from non- Parties are illegal unless there is a special agreement. Also, each Party is required to introduce appropriate national or domestic legislation to prevent and punish illegal traffic in hazardous and other wastes. Illegal traffic is criminal. Finally, the Convention obliges its Parties to ensure that wastes are managed and disposed of in an environmentally sound manner (ESM). It was signed by 170 countries, of which three have not ratified yet¹³.

The amendment to the Basel Convention (Ban Amendment) adopted on 22 September 1995, bans hazardous wastes exports for final disposal and recycling from what are known as Annex VII countries (Basel Convention Parties that are members of the EU, OECD, Liechtenstein) to non-Annex VII countries (all other Parties to the Convention). However, the Ban Amendment has not yet entered into force because entry into force can only take place upon ratification by at least three-fourths of the Parties, which is not yet the case.

Illegal traffic is the subject of Article 9 of the Basel Convention. Article 9.1 defines illegal traffic as any transboundary movement of hazardous wastes or other wastes:

- a) without notification pursuant to the provisions of this Convention to all States concerned; or
- b) without the consent pursuant to the provisions of this Convention of a State concerned; or

¹² <http://www.basel.int/text/con-e-rev.pdf>

¹³ Afghanistan, the United States and Haiti have not ratified the Convention

- c) with consent obtained from States concerned through falsification, misrepresentation or fraud; or
- d) that does not conform in a material way with the documents; or
- e) that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law.

Article 9.2 specifies what must be done if a transboundary movement is deemed to be illegal traffic as the result of conduct on the part of the exporter or generator. The State of export shall ensure that the wastes in question are:

- a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,
- b) are otherwise disposed of in accordance with the provisions of the Convention,

within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time States concerned may agree to. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.

Article 9.3 specifies what must be done if a transboundary movement is deemed to be illegal traffic as the result of conduct on the part of the importer or disposer. The State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself. This shall be done within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period of time as the States concerned may agree on. To this end, the Parties concerned shall cooperate, as necessary, in the disposal of the wastes in an environmentally sound manner.

Article 9.4 specifies what must be done if responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer. The Parties concerned or other Parties, as appropriate, shall cooperate to ensure that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.

Article 9.5 requires each Party to introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall cooperate with a view to achieving the objectives under this Article.

The Basel Convention also undertakes co-operation with other relevant international bodies. It has identified the following as most important: Interpol, World Customs Organization, UN Commission on Crime Prevention and Criminal Justice, UNEP, UNDP, IAEA/World Atom, the Secretariat of Climate Change, CITES, Ozone Secretariat, the UN High Commissioner for

Human Rights, the Food and Agriculture Organization of the United Nations (FAO), the European Commission, the International Maritime Organization (IMO), the Organization for Economic Cooperation and Development (OECD), the Organization for the Prohibition of Chemical Weapons (OPCW). It has, or intends to have, Memoranda of Understanding or similar agreements with most, if not all, these organizations. These agreements will outline each party's area of responsibility and modalities for cooperation. Future co-operative efforts will be focused on achieving practical and concrete results in the following priority areas:

- Identifying opportunities for combating illegal traffic.
- Information exchange.
- Improving data collection and analysis.
- Updating criminal profiling.
- Improving methodologies for compliance and enforcement.
- Identifying and resolving deficiencies in existing national legislation.
- Training in compliance and enforcement.
- Awareness raising and information dissemination.

These types of co-operation agreements and the subjects that may be addressed within joint working are also relevant to inter-institutional criteria for implementation of the WSR within the Member States of the EU.

Inspection/control procedures

During the sixth Conference of Parties to the Basel Convention, a guidance document was published for the detection, prevention and control of illegal traffic in hazardous wastes¹⁴. A section specifically applies to waste shipment inspection and offers recommendations on how national authorities should inspect waste. These recommendations can also be considered within the WSR. The following are some excerpts from the Basel Convention guideline document:

- Intelligence about intentions of identified illegal traffic is crucial for preventing, monitoring and detecting illegal activities¹⁵.

¹⁴ 6th Conference of Parties to the Basel Convention, 9 - 13 December 2002, "Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes" www.basel.int/legalmatters/illegtraffic/ge_e.doc

¹⁵ The justification for this recommendation stipulates that in identifying the reasons for non-compliance, procedures

- Proper procedure for evidence collection and witness interviewing are vital if a successful prosecution is to take place under the relevant jurisdiction.
- In certain cases it would be more convenient to inspect a transboundary shipment when it arrives at the importer's facility rather than at the border crossing. In this case the inspectors can follow up their inspection of transboundary shipment by also inspecting equipment and processes at the inspector's facility to assess if they are consistent with the recycling and/or disposal operation(s) indicated in their licences/permits. Non-tariff requirements could be established so that at the border the environmental inspectors could verify the documents related to hazardous wastes.
- In all circumstances, the inspection procedure should begin with the collection of all documents related to the generation of hazardous wastes, related to plans of export/import, related to recycling activities, disposal facilities and any other documents which might be useful.
- A visual inspection of the hazardous waste is necessary, including storage facilities once the documents are gathered and checked.
- Sampling might be necessary to determine the precise characteristics of the hazardous wastes.
- In all cases of inspection, if there are signs of violation, the inspectors should remember that the purpose of inspection is to collect evidence to determine if a violation of the law was made so that appropriate procedures of investigation should be followed.

The Convention has also produced additional checklists and guidance for Customs officers on verification of documentation for shipments and procedures for inspection, sampling, institutional capacity and crime scene investigation. These are also valuable in helping to development criteria for implementation of the WSR. Details that are contained in these documents are set out in Annex III of this report.

can be refined or education programmes targeted to reduce the likelihood of a recurrence. Intentional breaches can point to weaknesses in national legislation or procedures that may need to be amended or may point to wider organized criminal activity that may require further monitoring.

Lessons learned and recommendations

At the ninth meeting (most recent) COP to the Basel Convention held in Bali, from 23 to 27 June 2008, several statements were made concerning progress and developments regarding implementation of the Basel Convention. Some of these lessons can be taken into consideration to identify how European legislation could further contribute to improving and optimising the implementation and enforcement of the EU WSR. For example:

- Governments alone cannot ensure successful implementation of the Basel Convention. The COP thus called for the strengthened engagement of all stakeholders, in particular industry.
- Further action is necessary to unblock the Ban Amendment so that it is ratified and enters into force at the international level.
- Further enforcement efforts are required, thus a real need to work closely with customs services and prosecute all forms of illegal traffic.
- Continue to move forward with the issue of the identification of the wastes covered by the Basel Convention in the World Customs Organization Harmonized Commodity Description and Coding System and to report regularly to the Open-ended Working Group and the Conference of the Parties on progress¹⁶.

6.3 OECD Council Recommendation C(2004)100 on Environmentally Sound Management of Waste

This decision concerns waste shipments between the OECD countries and specifies a distinction between non-hazardous waste, “green list” and hazardous waste in the “amber and red list”, which also applies under the Basel Convention and the WSR.

Inspection/control procedures

Since March 1992, transboundary movements of wastes destined for recovery operations between countries of the OECD have been supervised and controlled under a specific intra-OECD Control System. This Control System uses a simplified procedure as well as a risk-based approach to assess the necessary level of control for materials. Wastes exported outside the OECD area do not benefit from this simplified control procedure. The OECD Control System is based on two types of control procedures: the Green Control Procedure for wastes that present low risk for human health and the environment and, therefore, are not

¹⁶ COP to the Basel Convention, 9th meeting Bali, 23–27 June 2008 “Report of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal”, <http://www.basel.int/meetings/cop/cop9/docs/39e-adv.pdf>

subject to any controls other than those normally applied in commercial transactions; and the Amber Control Procedure for wastes presenting sufficient risk to justify their control.

The controls of waste shipments are carried out by national competent authorities and Customs Offices as appropriate, through the use of notification and movement documents. Detailed information on how to implement the OECD Control System is provided in a Guidance Manual which has been updated and published in early 2008¹⁷.

Lessons learned and recommendations

The OECD provides an interactive database on its website where OECD members can include information on transboundary movement of waste within the OECD area. The database includes the necessary information to complete the forms for notification and movement documents required by national competent authorities. For example it includes the name, address, phone number, e-mail address of national competent authorities. It also includes useful information on specific national requirements, such as financial guarantees for certain wastes, or the list of pre-consented recovery facilities, etc.¹⁸ However, very few OECD member states have actually inputted much information into the database. A similar database implemented at the EU level could help monitor activities and provide a common database to access important waste shipment information but attention must be made so that MS cooperate and input information into the database on a regular basis for such a database to be truly beneficial.

Another interesting development has been the “harmonisation” process of the OECD Control System with the Basel Convention. This was requested by member countries to work toward a “global control system”. The harmonisation process is on going and includes revision of the OECD Control System in order to harmonise to the extent possible its procedures, its notification and movement forms and waste lists with those of the Basel Convention.

6.4 North American Agreement on Transboundary Waste

The North American Commission for Environmental (NACEC) is an international organization created by Canada, Mexico, and the United States to address regional environmental concerns. The agreement on transboundary waste shipments complements the environmental provisions of the North American Free Trade Agreement (NAFTA). In terms of waste shipment regulation, the US, Canada, and Mexico employ the concept of prior informed consent (PIC) to control transboundary hazardous waste shipments. Under this system, material regulated in one country as hazardous waste may only be exported with the prior consent of the importing country, which also corresponds to the WSR.

¹⁷ OECD, 2007, “Guidance Manual for the Implementation of the OECD Recommendation C(2004)100 On Environmentally Sound Management (ESM) of Waste “ <http://www.oecd.org/dataoecd/23/31/39559085.pdf>

¹⁸ <http://www2.oecd.org/waste>

Lessons learned and recommendations

There are two major differences in waste shipment regulation in the North American context that has great potential to improve the tracking and prevention of illegal waste shipments.

Firstly in North America, new measures are being taken to compliment border inspections. For example, most North American ports have little space for trucks or containers to wait and backups would cause gridlocks in the transportation system. Therefore, Customs typically is able to inspect only about 3 to 5 percent of all shipments.¹⁹ These border realities have pushed NAFTA states to move beyond an import-safety approach where decisions are made at the border to one that targets critical points in the import's life cycle. The Action Plan for Import Safety has thus been developed that finds that the border should be one of many spots in a network of interconnected points in the import process where verification and inspection of goods occurs.

Secondly, the CEC is working on a project that will allow the governments of Canada, Mexico and the US to replace their current paper-based system of tracking transboundary shipments of hazardous waste and hazardous recyclable materials with an **electronic-based system**. Governments will be able to exchange hazardous waste export request and consent information electronically. This will reduce government administrative burdens, improve data quality, and make it easier to provide data to environmental enforcement and border protection agencies. Electronic data exchange will facilitate the adoption of emerging tracking technologies and help the governments provide more timely and coherent information on what crosses their national borders. It will also enhance compliance.²⁰ These two practices that concern where waste inspections take place and developing electronic data on waste shipment tracking could prove to be highly relevant in the EU context to improve and develop guidelines for more efficient waste shipment inspection and compliance.

6.5 The Bamako (Africa) and Waigaini (Asia, South Pacific islands) Conventions

These two Conventions are regional conventions that cover the shipment of transboundary waste in Africa and in Asia.

The Bamako Convention was adopted by 51 African Countries at the Conference of Environment Ministers in Bamako, Mali, on January 30, 1991 and came into force the 22 April 1998. The principle is based on the Basel Convention which regulates the movement of wastes between countries and ensures sound management and disposal of wastes. Only African Union countries can become party to the Convention, however it has not yet held its

¹⁹ Whitehouse, Tim & Rain, Kelly, 2008, "A New Dynamic for the Hazardous Waste Trade in North America, http://www.inece.org/conference/8/papers/C.8%20Whitehouse-Rain_27March_Final.pdf

²⁰ Commission for Environmental Cooperation, 2007, "Tracking Hazardous Waste :Improving the Transboundary Tracking of Hazardous Waste in North America: A Regional Approach to a Global Effort", http://cec.org/files/pdf/ECONOMY/hazwaste%20tracking_en.pdf

first Conference of Parties. Impetus for the Bamako Convention arose from the failure of the Basel Convention to prohibit trade of hazardous waste to less developed countries (LDCs)²¹, and from the realisation that many developed nations were exporting toxic wastes to Africa. The Bamako Convention is administered within Africa by the African Union.

The Waigani Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region was established in 1995. The Convention is open to all Pacific Island Forum countries. As of June 2008, there were 13 Parties. The Convention covers toxic, poisonous, explosive, corrosive, flammable, eco-toxic, infectious and radioactive wastes. It is designed to reduce or eliminate transboundary movements of hazardous and radioactive wastes into and within the Pacific Forum region; as well as ensure that disposal of wastes is done in an environmentally sound manner and as close to the source as possible.

These legal measures on transboundary waste shipments demonstrate that apart from the WSR, other regional agreements on waste shipment exist. Thus, there is significant opportunity for potential synergies and partnerships between the WSR and other regional initiatives on transboundary waste shipments.

6.6 World Customs Organisation

The World Customs Organization (WCO) was established in 1952 as the Customs Co-operation Council, and is the only international intergovernmental organisation that specialises in Customs matters. Its 173 member governments are responsible for processing 98 per cent of world trade.

The WCO aims to enhance 'the efficiency and effectiveness of member Customs administrations, thereby assisting them to contribute successfully to national development goals, particularly in the areas of trade facilitation, revenue collection, community protection and national security'. To fulfil its mission, the WCO:

- Develops, maintains and promotes a series of international Conventions, other instruments and best-practice approaches in seeking to harmonise and simplify Customs systems and procedures.
- Promotes the strategic interests of the WCO and wider international Customs community by cooperating, communicating and acting in partnership with governments, other international and regional organisations, donor agencies and the private sector.

²¹ This is because the Basel Convention's Ban Amendment prohibiting waste shipment to developing countries has not yet been ratified.

- Provides a range of capacity-building, training and technical assistance, and integrity programmes to increase the capacity of member Customs administrations to contribute effectively to national development goals.
- Analyses issues and trends of strategic importance to the WCO and member administrations.

In addition, the WCO conducts a range of training and technical assistance activities for its members on a regionalised basis as well as via e-learning tools. Since June 2003, the WCO has been offering its member administrations Internet e-learning courses, such as those on Customs controls, risk assessment, profiling and selectivity.

The WCO has also developed a Harmonized System (HS) which has been effectively applied to implement and enforce trade related Multilateral Environmental Agreements (MEAs) by Customs officers worldwide. Based on several recommendations adopted by the WCO Council, numerous subheadings and their explanatory notes have been inserted into the HS for the purpose of monitoring and controlling international trade in certain goods covered by the MEAs.

In 2000, the World Customs Organization (WCO) initiated a network called Customs Enforcement Network (CEN). The aim of this network is to link all Customs administrations for enforcement purposes and provide them with a common database and reference system. Any national Customs administration should be connected to CEN through its WCO National Contact and, equally important, should contribute to the further development of CEN.

The Green Customs Initiative is a further development and consists of a series of collaborative activities carried out by its partner organisations and aimed at raising the awareness of Customs and border control officers on several trade-related MEAs. Activities include training workshops.

A 50-day operation was coordinated during 2009 by the World Customs Organisation (WCO) to target illegal waste shipments from Europe to Asia/Pacific and Africa. Through this globally coordinated initiative, "operation DEMETER", more than 30,000 tons and 1,500 pieces of illegal hazardous wastes were captured, as described in the press release issued by the WCO: <http://www.wcoomd.org/press/default.aspx?lid=1&id=187>.

Operation DEMETER shows that that coordinated customs involvement can be very effective in combating illegal shipments. The outcome of this operation supports the fact that cooperation among Member States and among the various authorities within a Member State is crucial in the struggle to prevent and detect illegal shipments. The full report from the WCO will be available by the end of September 2009.

In 2003, the United Nations Environment Programme (UNEP) signed a memorandum of understanding (MOU) with the WCO Secretariat on co-operation in their own mandates, ranging from mutual consultation and information exchange to reciprocal representation and technical co-operation.

In 1997 the Basel Convention Secretariat and the WCO Secretariat signed an MOU creating an administrative base for further co-operation and exchange of information within their competences. The WCO Council also adopted a recommendation that invited its members to strengthen the current bilateral and multilateral co-operation and to share experience and limited resources in combating the illegal trafficking in hazardous materials, the subject of the Basel Convention.

The WCO and Interpol have lent Green Customs activities overarching support by providing technical assistance, Customs authority contacts, development of secretariat-specific Harmonized System codes, exchange of information and investigative support to track environmental crime.

The WCO and Green Customs have variously developed guidance to assist Customs officers in their implementation of MEAs in general and the Basel Convention in particular. Annex IV provides some examples of the detailed guidance that it has developed. This includes:

- Guidance on the identification of legal and illegal shipments of hazardous materials and waste through documentation checking and physical examination. This includes the identification of risk characters such as considering the industrial sector from which the waste arises, the shape of container, etc.
- The production of a detailed Risk Management Guide. This promotes the concept of risk profiling in customs action. It sets out the benefits of adopting a risk management philosophy and how such an approach should inform the strategic, tactical and operational work of Customs. It then provides a set by step guide to the process of risk profiling:
 - Identify risks
 - Analyse risk
 - Assess and prioritise risks
 - Address risks
 - Monitor and review – compliance measurement using risk indicators
 - Documentation and audit
- The Risk Management Guide also provides detailed discussion on compliance measurement and how the results of this should be used within a Control Programme. Importantly, the Guide then considers the organisational structure that is

necessary to take forward a risk based approach, including the need for effective managerial leadership and how changing approaches have to reach local Customs operations. Institutional capacity is also considered in relation to supporting facilities (e.g. IT) and human capacity.

- The WCO has also made recommendations on practical implementation issues, such as Health and Safety procedures for Customs officers involved in actions to implement the Basel Convention.

It can be seen from this that the WCO has developed important guidance to inform the development of criteria within the implementation of WSR inspection. This includes some key issues on the nature of the criteria, in particular concerning risk profiling and institutional development. However, the WCO guidance also stresses the fact that such expectations and guidance is available for Customs organisations and, therefore the establishment of criteria at EU level for WSR implementation should not be seen as directed only at environmental inspectorates, but there is already a foundation in relation to Customs upon which further criteria can be applied.

It can also be seen that there is good practice of inter-institutional co-operation, including formalised agreements between Customs, Basel and Interpol – these form lessons which can be used in the development of specific institutional criteria with regard to inspection under the WSR within the EU.

6.7 WSR Seaport Environmental Security Network

The INECE Seaport Environmental Security Network (SESN) is an informal network established at the 8th INECE Conference held in April 2008 in Cape Town²². The network involves professionals from industrialised and developed countries involved in the inspection and monitoring of transboundary movements of hazardous wastes through seaports. Its goals are to:

- Raise awareness of illegal movements of hazardous waste through seaports, their environmental risks and the need to take action against them.
- Build capacity for inspections and enforcement actions.
- Facilitate international enforcement collaboration among government officials on ways to detect and stop illegal and dangerous shipments of hazardous waste.

²² SESN 2008. Seaport Environmental Security Network. Kick-Off Meeting Report. 9-10 October 2008. Interpol Headquarters. Lyon, France.
Website: <http://inece.org/seaport/>

The SESN recognises that difficulties in performing inspection, tracking waste shipments and sharing information lead to a failure to detect, deter and prevent illegal transboundary movements of hazardous wastes. SESN aims to assist in overcoming these problems.

The kick-off meeting of the network included representatives from 12 countries, including representatives from Latin America, Africa and Asia (often recipients of illegal waste movements), the United States and four EU Member States (Belgium, Germany, the Netherlands and the UK), as well as representatives from Interpol, UNEP, the Basel Convention and INECE.

To support the SESN goal of raising awareness of the challenges on hazardous waste movement, it recommended that it:

- Prepare country profiles to share information.
- Develop online collaboration.

To support its goals of building capacity, it recommended that it:

- Develop an inventory of existing capacity building, training and inspection tools.
- Support the development of new training materials as necessary, such as online training on how to conduct inspections at seaports.
- Identify linkages among related project to leverage resources to develop country or regional specific projects and share outcomes more widely.

To support the network's goals of facilitating enforcement collaboration, it recommended that it:

- Support the development of exchange programmes for port inspectors.
- Provide information resources on risk-based profiling techniques.
- Share existing and model memoranda of understanding between customs, environmental authorities and police agencies.

The SESN is in far too early a stage of development for outcomes of the network to feed into development of criteria for WSR implementation. However, it is important to note the goals of the network. These include the objectives of improving inspection, training and improving collaboration between enforcement authorities.

The outcomes of this project, which aims to improve enforcement capacity within the EU Member States, will help to contribute to the aims of SESN. Improving enforcement within

developed and developing countries more widely is critical to reducing illegal waste movements and, therefore, wider application of EU level approaches will be beneficial to achieving the aims of the WSR.

6.8 Conclusions

This short review of international legislation relating to the WSR has shown that there are several Conventions, organisations and networks that correspond to the scope and objectives of the WSR. These present potential opportunities for synergies and information exchange on good practices and lessons to be learnt from the experiences of other countries on the many issues that encompass transboundary waste shipment inspection.

Harmonised inspection criteria would benefit the implementation of these international agreements. However, the principle driver in their development in this regard is the Basel Convention. It must be noted, though, that the emphasis here has been to develop guidance on the process of inspection. This is, indeed, particularly useful. However, some of the criteria that need to be developed to support inspection under the WSR have to address and challenge important structural and capacity issues in the Member States. Intelligence operations as seen in the recommendations under the Basel Convention could also serve to identify why illegal trafficking of waste is happening to more efficiently target ways to prevent illegal waste shipments.

It is important also to stress the importance given to promotion of guidance or criteria within the World Customs Organisation. Guidance has set out an important stress on risk profiling and effective organisational processes as well as more detailed procedural issues.

Finally, as seen with the OCED Recommendation and the North American agreement on transboundary waste shipments, the development of electronic databases would simplify and make more efficient the tracking and monitoring of the types of wastes that are being shipped, the different documents required under the WSR, and the contact information of the various Competent Authorities, focal points, etc. involved in each Member State.

7 INSPECTION IN EU LAW

7.1 Introduction

There are a number of developments relating to inspection of EU legal requirements which, although not currently covering waste shipment inspections apart from the specific category of "WEEE", may nevertheless have an importance in this context.

This section will consider some of these key developments. It is worth starting with the inspection requirements in Article 18 of the Seveso II Directive, adopted in 1996, as an early example in EU law:

"1. Member States shall ensure that the competent authorities organize a system of inspections, or other measures of control appropriate to the type of establishment concerned. Those inspections or control measures shall not be dependent upon receipt of the safety report or any other report submitted. Such inspections or other control measures shall be sufficient for a planned and systematic examination of the systems being employed at the establishment, whether of a technical, organizational or managerial nature, so as to ensure in particular:

- that the operator can demonstrate that he has taken appropriate measures, in connection with the various activities involved in the establishment, to prevent major accidents,
- that the operator can demonstrate that he has provided appropriate means for limiting the consequences of major accidents, on site and off site,
- that the data and information contained in the safety report, or any other report submitted, adequately reflects the conditions in the establishment,
- that information has been supplied to the public pursuant to Article 13 (1).

The system of inspection specified in paragraph 1 shall comply with the following conditions:

(a) there shall be a programme of inspections for all establishments. Unless the competent authority has established a programme of inspections based upon a systematic appraisal of major-accident hazards of the particular establishment concerned, the programme shall entail at least one on-site inspection made by the competent authority every twelve months of each establishment covered by Article 9;

(b) following each inspection, a report shall be prepared by the competent authority;

(c) where necessary, every inspection carried out by the competent authority shall be followed up with the management of the establishment, within a reasonable period following the inspection.”

The importance of this Directive is that it sets out the foundation for subsequent development of inspection criteria at EU level – the need for a programme of inspections, that they should check all relevant issues concerning compliance, obligations on frequency (with flexibility) and specific procedural obligations. These types of elements (or criteria) occur in one form or another in subsequent EU law and, as will be seen, are all addressed in the criteria that are proposed later in this report.

This Chapter focuses principally on inspection obligations set out (or proposed) in related waste legislation – the new Directive on Waste and the WEEE Directive and its Recast Proposal, as these interact strongly with the WSR. However, this Chapter begins by analysis of the Recommendation on Minimum Criteria on Environmental Inspections which explicitly sets out criteria for environmental inspections and has been subject to review by the European Commission, one of the conclusions of which was to state that the lack of criteria on waste shipment inspections in the Recommendation should be addressed – hence the starting point for this study.

7.2 Recommendation 2001/331/EC (RMCEI)

The Recommendation on Minimum Criteria on Environmental Inspections (RMCEI) is an important EU measure that sets a minimum criteria for organising, performing, following-up and publishing the results of environmental inspections in all Member States with the aim of improving compliance and ensuring that EU environment legislation is applied and implemented more consistently. RMCEI was adopted in 2001. Its development arose from two foundations.

In 1997 IMPEL produced a report on the Minimum Criteria for Environmental Inspections which examined the nature of different types of inspections that regulators in the Member States undertake and set out basic criteria for how these should be conducted. This subsequently formed the basis for the RMCEI.

However, the European Commission’s proposal for the RMCEI was not stimulated simply by the work of IMPEL. In a Commission Communication of 5 November 1996 it proposed the establishment of guidelines at Community level in order to assist Member States in carrying out inspection tasks and reduce the disparity between Member State inspections. The Council subsequently (in October 1997) invited the European Commission to take this forward based on the IMPEL work²³ and the European Parliament had earlier (in May) called for Community

²³ OJ C 321, 22.10.1997

legislation on environmental inspections. This demonstrates the early commitment of the EU institutions to the issue of effective inspection.

It is worth noting that the European Commission proposed a Recommendation rather than a Directive. The European Parliament argued during the adoption process for a Directive, but this was not accepted by the Commission or Council. However, the Council (20.3.2000) acknowledged that a later Directive could be needed (if improvements in inspection in the Member States did not take place). The Council also stated that the different systems for inspections in the Member States should not be replaced. However, Community guidelines for minimum standards should be adopted to improve performance. This approach formed the foundation of the RMCEI.

The Recommendation contains non-binding criteria for the planning, carrying out, following up and reporting on environmental inspections. Its objective is to strengthen compliance with Community environmental law and to contribute to its more consistent implementation and enforcement in all Member States.

Key elements of the RMCEI

Annex V reproduces the full text of the RMCEI. However, the key points are outlined here, given their importance to this study. The RMCEI addresses inspections of controlled installations, but much is relevant to other types of environmental inspection.

The RMCEI firstly defines "environmental inspection" as checking and promoting the compliance of controlled installations and monitoring the impact of controlled installations on the environment to determine whether further inspection or enforcement action is required. Environmental inspections, including site visits, may be routine (carried out as part of a planned inspections programme) or non-routine (carried out in such cases in response to complaints, incidents, etc.). Member States should ensure that environmental inspections aim to achieve a high level of environmental protection. The activities to support this include:

- site visits,
- monitoring achievement of environmental quality standards,
- consideration of environmental audit reports and statements,
- consideration and verification of any self monitoring carried out,
- assessing the activities and operations carried out at the controlled installation,
- checking the premises and the relevant equipment and the adequacy of the environmental management at the site,

- checking the relevant records kept by the operators.

Environmental inspections may be carried out by any public authority at national, regional or local level, which is established or designated by the Member State. They may delegate the tasks provided for in this recommendation to be accomplished to any legal person provided such person has no personal interest in the outcome of the inspections it undertakes.

The RMCEI sets particular criteria for plans for environmental inspections. Thus Member States should ensure that environmental inspection activities are planned in advance, by having at all times a plan or plans for environmental inspections providing coverage of all the territory of the Member State and of the all controlled installations within it. Such a plan or plans should be available to the public. Such plan or plans may be established at national, regional or local levels. Plans should be based on the register of controlled activities, EU legal requirements, assessment of environmental issues, monitoring information and compliance history. Each plan for environmental inspections should as a minimum:

- define the geographical area which it covers, e.g. all or part of the territory of a Member State;
- cover a defined time period, for example one year;
- include specific provisions for its revision;
- identify the specific sites or types of controlled installations covered;
- prescribe the programmes for routine and non-routine environmental inspections, taking into account environmental risks; these programmes should include, the frequency of site visits;
- provide for coordination between the different inspecting authorities.

For the site visits, the RMCEI requires that Member States should ensure that the following criteria are applied in respect of all site visits:

- an appropriate check is made of compliance with the EC legal requirements;
- if site visits are to be carried out by more than one environmental inspecting authority, they exchange information on each others' activities and coordinate site visits, etc.;
- that the findings of site visits are contained in reports and exchanged, as necessary, between relevant inspection, enforcement and other authorities;

- that inspectors or other officials entitled to carry out site visits have a legal right of access to sites and information, for the purposes of environmental inspection.

Following inspections, the RMCEI states that Member States should ensure that after every site visit the inspecting authorities process or store the inspection data and their findings, an evaluation thereof and a conclusion on whether any further action should follow. Member States should ensure that such reports are properly recorded in writing and maintained in a readily accessible database, communicated to the operator of the controlled installation in question and be publicly available within two months of the inspection taking place.

Finally, the RMCEI requires Member States to report to the Commission on their experience of the operation of this recommendation, with information on:

- data about the staffing and other resources of the inspecting authorities;
- details of the inspecting authority's role and performance in the establishment and implementation of relevant plan(s) for inspections;
- summary details of the environmental inspections carried out, including the number of site visits made, the proportion of controlled installations inspected (by type) and estimated length of time before all controlled installations of that type have been inspected;
- brief data on the degree of compliance by controlled installations with EC legal requirements as appears from inspections carried out;
- a summary, including numbers, of the actions taken as a result of serious complaints, accidents, incidents and occurrences of non-compliance;
- an evaluation of the success or failure of the plans for inspections as applicable to the inspecting body, with any recommendations for future plans.

Overall, therefore, the RMCEI is a model for the setting of inspection criteria. Key aspects are that:

- That the legal/operational basis for different types of inspections is available in the Member State.
- That the purpose of inspections is clearly established.
- That there is clear planning for inspections.
- That there are procedures in place for inspections.

- That there is reporting to the Commission and review by the Commission.

These are important issues to address in developing inspection criteria in other regimes, such as for implementation of the WSR.

Review of the RMCEI

In 2007 the European Commission published a review of the implementation of the RMCEI²⁴. It concluded that:

- Although almost all Member States have partially implemented the Recommendation (to varying degrees), only a few have achieved full implementation.
- There are still large disparities in the way environmental inspections are being carried out within the Community. Such disparities mean that the full implementation of environmental legislation in the Community can not be ensured. They also lead to distortions of competition for businesses.
- Incomplete implementation is partially due to differing interpretations by Member States of the definitions and criteria of the Recommendation and of the reporting requirements.
- There are large differences in the political priority given to environmental inspections in Member States.
- Some Member States indicated that limited resources available for inspecting authorities did not allow them to develop a fully effective system of environmental inspections.

The Commission noted, in particular, that the RMCEI does not contain criteria for the inspection of waste shipments. It stated that 'the implementation of [the WSR] is a high priority for the Commission', noting important cases of enforcement problems. It also noted that the WSR does not lay down criteria for inspections of waste shipments.

Some specific conclusions from the review are relevant to this study:

- On the **definition of inspection** in the RMCEI the review concluded that it is 'very broad and should cover any activity that aims to promote compliance with environmental requirements by installations. It has, however, been interpreted

²⁴ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the review of Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States. COM(2007) 707

differently by Member States, some having a very narrow interpretation covering for instance only direct controls at installations and others a much broader approach. This difference in interpretation has an effect on the implementation of the Recommendation and in particular on the planning of inspections, as all activities concerned should be taken into account in the inspection plans. It also makes it difficult to compare the information provided by Member States on the inspections carried out and in particular the proportion of controlled installations that have been inspected.'

- Under the RMCEI an **inspection authority** is any public authority, which is established or designated by Member States and responsible for matters covered by the Recommendation and any legal person to whom these tasks have been delegated by these authorities to be accomplished under their authority and supervision, provided such person has no personal interest in the outcome of the inspections it undertakes. The review concluded that 'in some Member States where many different authorities could be directly or indirectly involved in inspection activities it was sometimes difficult to distinguish which authorities should be regarded as inspection authorities. This lack of clarity has implications for the implementation of the Recommendation, and in particular for the planning of inspections, as the plans should cover the activities of all inspection authorities.'
- The terms **inspection plan** and **inspection programme** are not defined in the Recommendation. The review found that 'a number of Member States seem to have different interpretations of what the term 'inspection plan' means'. It also found that 'there was some confusion with the term 'inspection programme' which indicates the installations that are to be inspected in a certain period and which according to the Recommendation should be a part of the inspection plan'. It concluded that 'the distinction between plans and programmes could be useful in order to separate the policy aspect (plan) from the operational aspect (programme)'
- The review found that 'there seems to be a potential for further improving the **planning of inspections** in the Member States' and so 'allow Member States to make the best possible use of their available resources by better targeting inspections of installations'. This could include the use of risk-based management approaches to plan inspections.

The Commission concluded that as the RMCEI is a general framework for environmental inspection systems in Member States and its criteria are of a general nature, describing how environmental inspections should be planned, carried out and followed up, 'it does not seem appropriate to transform them into legally binding requirements'. However, the Commission concluded that it should be amended 'in order to improve its implementation and strengthen

its effectiveness'. Importantly, the Commission concluded that consideration should be given 'to broaden its scope so that it covers as far as possible all environmentally significant activities' as well as clarification of definitions, further development of criteria for inspection planning and improved reporting requirements.

The Commission also concluded that 'specific legally binding requirements for the inspection of certain installations or activities should be included in sectoral pieces of legislation'. It argued that this is 'necessary to ensure that a higher political priority is given to inspections and that environmental legislation is better enforced throughout the Community'. Furthermore, 'defining the inspection requirements in each legislative act has the advantage that the requirements can be adapted to the specific nature and risks of the installations or activities covered and can be more precise and better targeted than general criteria' and that they 'can be complementary to the Recommendation or they can concern installations or activities that are not covered by the Recommendation'.

In this regard the review stated that the Commission is 'considering proposing specific legally binding rules for inspections of waste shipments'. This noted the different nature of waste shipment inspections (such as not being focused on stationary installations and involving different authorities) and concluded, therefore, that 'specific criteria should be defined to ensure sufficient quality and frequency of inspections and provide for appropriate training and co-operation among authorities'.

Comments by others concerning the review of the RMCEI

IMPEL has provided input on further improving the effectiveness of the the RMCEI. Recently, IMPEL launched a project on RMCEI and invited Member States to report on their implementation of the Recommendation and on a list of issues related to the application of the recommendation. Important conclusions of the project report revealed that many countries consider that under the current text transfrontier waste shipments are not covered, whereas some argue that the RMCEI does indeed cover waste shipments. In addition, a majority of the IMPEL members are in favour of explicitly including the inspection of waste shipments in the scope of the RMCEI. Suggestions included the modification of RMCEI criteria if waste shipments become explicitly covered. This would also mean that the scope of the RMCEI would need clarification. A modular approach that would designate specific criteria for installations, for waste transport activities etc, could be an option but again would need to be clearly described and defined.²⁵

²⁵ IMPEL,2007 "Draft Final Report (RMCEI) Input for the Further Development of the Recommendation on Minimum Criteria for Environmental Inspections" http://ec.europa.eu/environment/impel/pdf/final_report_input_rmcei.pdf

On November 20 2008 the European Parliament adopted a non-legislation resolution on environmental inspections reacting to Communication COM(2007)707²⁶. The Parliament stated that, *inter alia*:

- It is concerned that the full implementation of environmental legislation in the Community cannot be ensured, since this leads not only to continuing damage to the environment but also to distortions of competition.
- It opposed the Commission's intention of dealing with the problem only through a non-binding Recommendation and through the insertion of specific legally binding requirements in sectoral legislation.
- It urged the Commission to come forward, before the end of 2009, with a proposal for a Directive on environmental inspections, clarifying the definitions and criteria and extending the scope.
- It proposed that IMPEL should be strengthened and that the Commission should report, before the end of 2009, on how to do this, including the establishment of a Community environmental inspection force.

In the debate the Commission Vice-President, Siim Kallas, stated that the Commission considers that there is a need for EU-wide legally binding rules to ensure effective environmental protection and does not exclude the possibility of proposing a Directive on environmental inspections. However, the question remains on whether such rules should be horizontal and cover all environmental inspections or whether they should be sectoral and apply to specific installations or activities. He stated that a horizontal approach would be simpler and quicker to put in place. On the other hand, the sectoral approach would be better able to address the specific aspects of the different installations or activities. In particular, he noted that the requirements for inspections of waste shipments are completely different from those for the inspection of industrial installations and, therefore, by being more targeted more effective requirements could be established. Such a sectoral approach is already set out in the Seveso II Directive and is included in the IPPC Recast Proposal (see below).

The Vice-President placed specific emphasis on waste shipment inspections, stressing their importance in protecting health and the environment from illegal activity and that there is concern over recent data from IMPEL on the levels on illegal activity. Therefore, the Commission is actively examining the need for additional initiatives, including improved legislative requirements, in order to further and strengthen the inspections and controls of waste shipments.

²⁶ Communication COM(2007)707 sets out the Commission's views on further development of the recommendation, based, *inter alia*, on the reports that the Member States have submitted on their implementation of the recommendation.

However, he noted that there is also a need to establish common definitions for terms that are relevant for inspections and to do this a horizontal recommendation would be an appropriate instrument. Caroline Jackson MEP had suggested in the debate that there could be a general Directive regarding environmental inspections and specific rules attached to specific Directives where they are appropriate.

With respect to the role of IMPEL, the Vice-President stated that IMPEL should retain the role that it currently has, including bringing together the expertise of inspectors and allowing for an informal exchange of ideas at European level, including promoting joint inspections of waste shipments throughout the Community. To go further and create an EU environmental inspection force with powers of entry and powers to refer Member States to the Court of Justice would raise important legal and institutional questions.

The debate over the future of the RMCEI has also been addressed in other regulatory regimes, such as the enforcement of the REACH Regulation for chemicals. The role of the RMCEI has been discussed within the Forum of the European Chemicals Agency, which consists of representatives of Member States enforcement authorities. At the first meeting of the Forum in 2007, the Commission presented the status of the revision of the RMCEI to the Forum, including the conclusion in the Commission review of the RMCEI that, although it does not apply to REACH, since there could be some overlaps in inspecting installations and activities with chemicals regulated under REACH, it may be desirable to use similar minimum criteria. The minutes of the meeting²⁷ stated that some of the Forum members 'were not convinced that including REACH under the scope of the RMCEI is feasible as there are many differences between the enforcement of REACH and enforcement of environmental legislation and separate criteria should be developed'. However, it was noted that the RMCEI may have useful elements for the Forum and the suitable parts could be taken over for its own recommendations.

It was suggested that the Commission should also consult the Chemical Legislation European Enforcement Network (CLEEN) and the Senior Labour Inspectors Committee (SLIC), which may have already done some work in this regard as the networks have experience with enforcement of different provisions of the previous chemicals legislation, partly taken over by REACH. Moreover, it would be impossible for the Forum to elaborate the necessary changes in the text of the Recommendation in the given timeframe.

²⁷ Forum of the European Chemicals Agency. Minutes of the 1st Meeting of the Forum for Exchange of Information on Enforcement. 11-12 December 2007

At the second meeting of the Forum²⁸, the results of a survey of members were presented regarding the RMCEI. A majority of the members replied that REACH should not be included under the RMCEI, one of the reasons being that the scope of REACH inspections is more extensive as they also cover health and workplace issues. Some members suggested that minimum criteria for REACH should be developed by the Forum itself. The Commission asked the Forum to wait with any further comments until the outcome of a public consultation on the review of the RMCEI, although the Forum may proceed independently on the development of the minimum criteria for REACH, as was already indicated in its draft work programme.

Lessons learned and recommendations

Other aspects of the RMCEI that are also relevant for the WSR include the recent publication in November 2008 of a "Step-by-step Guidance Book for the Planning of Environmental Inspection" by IMPEL²⁹. The guidance book gives simple but detailed answers and recommendations, as well as case studies of good practices for any inspecting authority responsible for developing an inspection plan. This guidance document can also be a significant source of information in developing improved criteria for inspection regimes under the WSR. For example concerning inspection planning under the WSR, the Guidance Book recommends that each inspection plan should as a minimum:

- define the geographical area which it covers, which may be for all or part of the territory of a Member State,
- cover a defined time period, for example one year,
- include specific provisions for its revision,
- identify the specific sites or types of controlled installations covered,
- prescribe the programmes for routine inspections, taking into account environmental risks,
- specify the frequency of site visits for different types of or specified controlled installations, and
- provide for coordination between the different inspecting authorities, where relevant.

Finally, IMPEL has also published several reports on topics such as minimum criteria for frequency of inspections, planning and reporting programmes of environmental inspection of industrial installations, a reference book on environmental inspection, best practices concerning the training and qualifications of environmental inspectors, and quality parameters

²⁸ Minutes of the 2nd meeting of the Forum for Exchange of Information on Enforcement, 14-15 May 2008.

²⁹ IMPEL, 2008 "Doing the Right Things II "Step-by-step guidance book for planning of environmental inspection http://ec.europa.eu/environment/impel/pdf/step_by_step_guidance%20book.pdf

for environmental inspectorates that could all prove useful in the case of the WSR³⁰. The RMCEI is therefore very important within the context of the WSR as it is an essential resource in determining the conditions in which inspections should be controlled and regulated.

7.3 The RoHS and WEEE Directives – Waste from Electrical and Electronic Equipment

The Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment commonly referred to as the Restriction of Hazardous Substances Directive (RoHS) came into effect on 1 July 2006, and is required to be enforced and become law in each Member State. This Directive restricts the use of six hazardous materials in the manufacture of various types of electronic and electrical equipment. RoHS is closely linked with the Waste Electrical and Electronic Equipment Directive (WEEE) which sets collection, recycling and recovery targets for electrical goods and is part of a legislative initiative to solve the problem of huge amounts of toxic e-waste.

There are several aspects of these two closely linked Directives that concern the Waste Shipment Regulation. Firstly, studies of the RoHS Directive have shown that in terms of enforcement, there is a lack of standardisation of testing and sample preparation for assessing the concentration of the restricted substance within a homogenous material³¹. This also seems to be the case in terms of testing procedures for waste shipments within the WSR.

Within the WSR context, the WEEE Directive is also quite significant as waste electrical and electronic equipment is the fastest growing waste stream in the EU, producing 8.3-9.1 million tonnes in 2005, growing to 12.3 million tonnes of WEEE by 2020. Recent proposals to improve the implementation and effectiveness of the WEEE Directive include options that also concern the WSR: minimum inspection and enforcement requirements for treatment of WEEE, minimum inspection and enforcement requirements for waste shipment, and minimum monitoring requirements for shipments. These options have been proposed in order to bridge the implementation gap and to strengthen the enforcement of the WEEE Directive³².

Article 6 of the WEEE Directive sets out the requirements for inspection for recovery operations for WEEE. The Directive specifies two types of criteria:

- Issues to be addressed in inspection (type, quantities of waste; general technical requirements; safety precautions).

³⁰ RMCEI Reports published by IMPEL, http://ec.europa.eu/environment/impel/impel_guidance_doc.htm

³¹ NWML, 2007 "Enforcement of the Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2006 (RoHS)", <http://www.rohs.gov.uk/Docs/NWML%20Year%20One%20Report%20-%20November%202007.pdf>

³² EC, 2008 "Commission Staff Working Paper accompanying the Proposal on waste electrical and electronic equipment (WEEE), Summary of the Impact Assessment", http://ec.europa.eu/environment/waste/wEEE/pdf/sec_2008_2934_ia_sum.pdf

- Frequency: at least one inspection per year.

This Directive, therefore, establishes criteria that link to inspection under the WSR. Recital 23 of the WEEE Directive states that 'Member States should ensure that inspection and monitoring infrastructure enable the proper implementation of this Directive to be verified having regard, inter alia, to Recommendation 2001/331/EC ...providing for minimum criteria for environmental inspection in Member States'. Article 16 on monitoring and inspection supplements these requirements, stating that 'Member States shall ensure that inspection and monitoring enable the proper implementation of this Directive to be verified'.

A number of details pertaining to inspections under the WEEE Directive were agreed by Member States in the group of waste shipment correspondents designated pursuant to Article 54 and 57 of the WSR and were published in Correspondents' Guidelines³³. These were agreed in 2007 and are not legally binding. However, they do set out guidance for enforcement activities under the Directive relevant to the development of inspection criteria under the WSR. A key focus of the Guidelines is the determination of when EEE becomes WEEE. In order to do this authorities may undertake various actions. On controls, in particular, the Guidelines state:

'Inspections are undertaken by state authorities (e.g. police, customs, and inspectors) at facilities and during transport. Those persons shipping used EEE should ensure that the equipment is accompanied by proof of adequate testing, and that it is appropriately packaged in order to demonstrate that the items concerned are not WEEE. Where it is asserted that non-hazardous WEEE is being shipped, those responsible for the shipment should ensure that it is being accompanied by evidence of appropriate testing to demonstrate that the waste that is being shipped is non-hazardous.

For practical reasons of control, every load (e.g. shipping container, lorry) of used EEE should be accompanied by a:

- CMR document,
- Proof of the evaluation/testing in form of copy of the records and a protocol containing all testing and recording information [...] on each item; and
- Declaration of the liable person on its responsibility.

In the absence of appropriate documentation and packaging state authorities are likely to presume that an item is hazardous WEEE and, in the absence of consents on accordance with the requirements of the WSR, presume that the load comprises an illegal shipment.'

³³ Revised Correspondents' Guidelines: Shipments of Waste Electrical and Electronic Equipment (WEEE).

The Guidelines also provide guidance regarding testing and record keeping in relation to control activity.

For testing, it states:

- 'The tests that should be conducted depend on the kind of EEE [see Annex 1B of the WEEE Directive]. Functionality should be tested and hazardous substances should be evaluated.
- The completion of a visual inspection without testing functionality is unlikely to be sufficient.
- For most of the used EEE a functionality test of the key functions is sufficient.
- Results of evaluation and testing should be recorded and a record (certificate of testing, displaying/stating functional capacity) should be placed on each tested EEE.'

Regarding the record, the Guidelines state that the record should be fixed securely but not permanently on either the EEE itself (if not packed) or on the packaging so it can be read without unpacking the equipment. The Guidelines list the elements of the functionality record and state that the protocol of testing and evaluation should accompany the transport.

The WEEE Correspondents' Guidelines, therefore, set out some specific inspection actions, including where to inspect, careful examination of documentation, presumptions in the case of lack of/poor documentation, the need for testing of functionality and recording testing results. These types of activity inform wider inspection activity under the WSR.

The inspection provisions of the WEEE Directive remain largely unchanged in the proposed revision to the Directive (new Article 9). However, the proposal contains an expanded Article 20 (old Article 16) which would establish more detailed inspection obligations. Inspections would cover 'at least' exports of WEEE outside the Community, thus linking inspection with the WSR. The minimum monitoring requirements for such shipments are set out in proposed Annex I. These establish criteria that can be built upon in this project on the WSR inspection criteria. Proposed Article 20 also states that additional rules on inspections and monitoring may be laid down and indicates that this may, if 'non-essential', be established under Comitology.

Article 20 of the Recast Proposal covering 'inspection and monitoring' states:

1. Member States shall carry out appropriate inspections and monitoring to verify the proper implementation of this Directive.

Those inspections shall at least cover exports of WEEE outside the Community in accordance with the Waste Shipment Regulation and the operations at treatment facilities in accordance with Directive [2008/98/EC] on waste and Annex II of this Directive.

2. Member States shall carry out the monitoring of shipments of WEEE in accordance with the minimum monitoring requirements in Annex I.

The WEEE Recast Proposal contains proposals for minimum monitoring requirements for shipments of WEEE (Annex I). These draw on the guidance in the Correspondents' Guidelines described above. These state:

'In order to distinguish between electrical and electronic equipment and WEEE, where the holder of the object claims that he intends to ship or is shipping used electrical and electronic equipment and not WEEE, Member State authorities shall request the following to back up this claim:

- A copy of the invoice and contract relating to the sale and/or transfer of ownership of the electrical and electronic equipment which states that the equipment is for direct re-use and fully functional.
- Evidence of evaluation or testing in the form of a copy of the records (certificate of testing, proof of functionality) on every item within the consignment and a protocol containing all record information according to [see below].
- A declaration made by the holder who arranges the transport of the electrical and electronic equipment that none of the material or equipment within the consignment is waste as defined by Article 3(1) of Directive [2008/98/EC] on waste, and
- Sufficient packaging to protect the shipped products from damage during transportation, loading and unloading.

In order to demonstrate that the items being shipped are used electrical and electronic equipment rather than WEEE, Member States shall require the following steps for testing and record keeping for used electrical and electronic equipment to be carried out:

Step 1: Testing

- Functionality should be tested and hazardous substances should be evaluated. The tests that should be conducted depend on the kind of electrical and electronic equipment. For most of the used electrical and electronic equipment a functionality test of the key functions is sufficient.

- Results of evaluation and testing should be recorded.

Step 2: Record

[The Recast Proposal requires details of the record of functionality testing – identification, type of test, results, etc., to be fixed to the consignment]

In addition to the documentation requested [above], every load (e.g. shipping container, lorry) of used electrical and electronic equipment should be accompanied by a:

- CMR document,
- Declaration of the liable person on its responsibility.

In the absence of appropriate documentation and packaging state authorities are likely to presume that an item is hazardous WEEE and, in the absence of consents on accordance with the requirements of the WSR, presume that the load comprises an illegal shipment.¹

As noted above, these provisions would place the details of these inspection requirements from the Correspondents' Guidelines in law and would place specific obligations for inspection related to implementation of the WSR on the Member States. These, therefore, need to be addressed in the development of inspection criteria within this study.

IMPEL has undertaken a study³⁴ on the practicability and enforceability of the WEEE Recast Proposal and made particular comments in relation to the proposals regarding inspection. Many IMPEL members stated that the requirements as proposed are justified and that the minimum inspection requirements proposed (in particular the new Annex I establishing minimum monitoring requirements for shipment of WEEE) will strengthen enforcement of the WEEE Directive, although there must be scope for Member States to adopt risk-based strategies.

It was noted that there was concern that terms such as 'appropriate inspections' (which is the term used in the current Directive) 'amount only to good intentions and do not bind the Member States to do anything in a particular way'. Thus this indicates the importance of clarity and precision in setting inspection criteria. However, IMPEL also noted that while some consideration might be given to setting quantified targets for inspection effort, this is fraught with practical difficulties and, certainly, a uniform approach is not appropriate. This illustrates the balance between the need for precision and flexibility in setting inspection criteria.

³⁴ IMPEL (2009). IMPEL Project "Practicability and Enforceability of the WEEE Recast Proposal".

The IMPEL report also recognised the importance of the link between inspections under the WEEE Directive and those under the WSR. Indeed, the report raised concern that implementation of the WSR in some Member States is 'very lax' and 'creates a giant loophole in the system, undermining the efforts of other Member States'. Therefore, it is recognised that improvements in inspection and enforcement of the WSR is essential in delivering objectives under other EU law such as the WEEE Directive.

More comprehensive monitoring of shipments of WEEE would need more intensive cooperation between the authorities supervising producer responsibility schemes and the competent authorities of the WSR. However, it was also noted that some other aspects of WEEE management operations may be subject to inspection under other waste Directives, although it should be noted that site based inspection tend to focus on the local environmental impacts of operations, not on the impacts of waste moving through the facility to elsewhere.

7.4 Developments concerning IPPC

Although inspection of installations under the IPPC Directive (2008/1/EC) is not, itself, directly relevant to inspection under the WSR, the developments on the obligations in EU law concerning inspection under IPPC are relevant in guiding some of the conclusions of this project.

The IPPC Directive contains little direct reference to inspection. Rather it simply contains the obligation on Member States to ensure operators comply with permit conditions. This implies an inspection regime, but there is no explicit reference to this. As a result, the Commission Recast Proposal (including IPPC and six other industrial emissions Directives) (COM(2007), 21.12.2007) proposes to introduce more explicit requirements for the inspection of installations to ensure compliance with permit conditions. Firstly, the proposal sets out two definitions of inspection in Article 3:

'(16) 'routine inspection' means an environmental inspection carried out as part of a planned inspection programme;

(17) 'non-routine inspection' means environmental inspections carried out in response to complaints or in the investigation of accidents, incidents and occurrences of non-compliance.'

These definitions simply define types of inspections according to the context of the inspection – planned or in response to an incident, etc. The definitions do not state what activity would constitute an 'inspection'.

Inspection activity for Annex I installations (i.e. IPPC) is set out in Article 25. This states:

'1. Member States shall set up a system of inspections of installations. That system shall include on site inspections.

Member States shall ensure operators afford competent authorities all necessary assistance to enable those authorities to carry out any on site inspections, to take samples and to gather any information necessary for the performance of their duties for the purposes of this Directive.

2. Member States shall ensure that all installations are covered by an inspection plan.

3. Each inspection plan shall include the following:

- (a) general assessment of relevant significant environmental issues;
- (b) the geographical area covered by the inspection plan;
- (c) a register of the installations covered by the inspection plan and a general appraisal of their state of compliance with the requirements of this Directive;
- (d) provisions for its revision;
- (e) an outline of the programmes for routine inspections pursuant to paragraph 5;
- (f) procedures for non-routine inspections pursuant to paragraph 6;
- (g) where necessary, provisions on the co-operation between different inspection authorities.

4. Based on the inspection plans, the competent authority shall regularly draw up inspection programmes, determining the frequency of site visits for different types of installations.

Those programmes shall include at least one site visit every twelve months, for each installation, unless those programmes are based on a systematic appraisal of the environmental risks of the particular installations concerned.

The Commission shall establish criteria on the appraisal of the environmental risks. Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 69(2).

5. Routine inspections shall be sufficient for the examination of the full range of relevant environmental effects from the installation concerned. Routine inspections shall ensure that the operator complies with the permit conditions. Routine inspections shall also serve to assess the effectiveness of the permit requirements.

6. Non-routine inspections shall be carried out to investigate serious environmental complaints, serious environmental accidents, incidents and occurrences of non-compliance

as soon as possible and, where appropriate, before the issue, reconsideration or update of a permit.

7. Following each routine and non-routine inspection, the competent authority shall prepare a report describing the findings as to compliance of the installation with the requirements of this Directive and conclusions on whether any further action is necessary.

The report shall be notified to the operator concerned and made publicly available within two months after the inspection takes place. The competent authority shall ensure that all the necessary actions identified in the report are taken within a reasonable period.'

From this it can be seen that the Commission envisages the following elements:

- That inspections, at least, include site visits.
- That different types of inspection may be appropriate – planned (routine) inspections and unplanned inspections in response to incidents, etc.
- Inspection planning is needed, setting out how inspectorates will address the Directive's requirements.
- Criteria for individual inspections are needed.
- Inspections need to address the full range of relevant environmental effects.
- Inspection frequency may either be established based on a standardised frequency or be established on a risk-based approach.
- Following inspections, reports shall be produced detailing the findings.
- Inspection reports shall be made public.

The European Parliament agreed its First Opinion on the Recast Proposal on 10 March 2009, amending the Commission's proposals on inspection. The amendments are set out below (in bold in the text).

The Parliament added a new definition:

(17a) "environmental inspection" means any activity that involves verifying that an installation complies with relevant environmental requirements; (Amendment 16. Proposal for a directive. Article 3 – point 17 a)

This amendment adds to those of the Commission. The Commission's definitions are concerned with the process of inspection, while the Parliament's amendment addresses the purpose of inspection.

In Amendment 44, the Parliament amended Article 25 paragraph 4 on inspection:

"Based on the inspection plans, the competent authority shall regularly draw up inspection programmes, determining the frequency of site visits for different types of installations.

Member States shall ensure that a sufficient number of skilled persons are available to carry out the inspections.

Those programmes shall include at least one **random** site visit every **18 months**, for each installation. **This frequency shall be increased to at least every six months if an inspection has identified a case of non-compliance with the permit conditions.**

Where those programmes are based on a systematic appraisal of the environmental risks of the particular installations concerned, **the frequency of site visits may be lowered to a minimum of one every 24 months.**

The systematic appraisal of the environmental risks shall be based on objective criteria such as:

- a. **the record of the operators' compliance with the conditions of the permit;**
- b. **the impacts of the installation on the environment and human health;**
- c. **the participation of the operator in the Community eco-management and audit scheme (EMAS), pursuant to Regulation (EC) No 761/2001, or the implementation of equivalent eco-management systems.**

The Commission **may** establish **further** criteria on the appraisal of the environmental risks.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 69(2)."

These amendments raise the following points additional to those in the Commission Recast Proposal:

- There would be an obligation on inspection authorities to have sufficient personnel capacity to undertake the inspection requirements.

- There is greater specificity regarding the frequency of inspection and that approaches based on assessment of environmental risks have more limited flexibility than allowed under the Commission proposal.
- There are some initial determinants of risk included, such as compliance record and level of impact on the environment.

The Council formulated its views at the Environment Council meeting of 16 June 2009 (Interinstitutional File: 2007/0286 (COD), 10898/09). The Council also amended the definition of inspection to:

'Article 3 (16) 'environmental inspection' means all actions (including site visits, monitoring of emissions and checks of internal reports and follow-up documents, verification of self-monitoring, checking of the techniques used and adequacy of the environment management of the installation) undertaken by or on behalf of the competent authority to check and promote compliance of installations with their permit conditions and, where necessary, to monitor their environmental impact.'

This is a far more comprehensive definition than proposed by the Parliament. Parliament's definition simply stated that inspections were to be undertaken to ensure verification of compliance. The Council definition sets out some of the issues that could be included within this (checking techniques, documents, etc.). There are two important points arising from the amendment:

- Inspections include site visits. It is known that some Member States consider desk-based review of documents as 'inspection'. Under this definition checking reports is an inspection and does not necessarily involve a site visit.
- Inspections do not need to be carried out by the competent authority, but can be done on its behalf.

The Council also amended Article 25 to the following (text changed from the Commission Proposal in bold):

"Environmental inspections

1. Member States shall set up a system of **environmental** inspections of installations **addressing the examination of the full range of relevant environmental effects from the installations concerned.**

Member States shall ensure operators afford competent authorities all necessary assistance to enable those authorities to carry out site **visits**, to take samples and to gather any information necessary for the performance of their duties for the purposes of this Directive.

2. Member States shall ensure that all installations are covered by an **environmental** inspection plan **at national, regional or local level and shall ensure that this plan is regularly reviewed and, where appropriate, updated.**

3. Each environmental inspection plan shall include the following:

- a. general assessment of relevant significant environmental issues;
- b. the geographical area covered by the inspection plan;
- c. a register of the installations covered by the plan
- d. procedures for drawing up programmes for routine environmental inspections pursuant to paragraph 4;
- e. procedures for non-routine environmental inspections pursuant to paragraph where necessary;
- f. provisions on the co-operation between different inspection authorities.

4. Based on the inspection plans, the competent authority shall regularly draw up programmes for **routine** environmental inspections including the frequency of site visits for different types of installations.

The period between two site visits shall be based on a systematic appraisal of the environmental risks of the installations concerned and shall not exceed one year for installations posing the highest risks and three years for installations posing the lowest risks.

The systematic appraisal of the environmental risks shall be based on at least the following criteria:

- a. **the potential and actual impacts of the installations concerned on human health and the environment taking into account the levels and types of emissions, the sensitivity of the local environment and the risk of accidents;**
- b. **the record of compliance with permit conditions;**
- c. **participation in the Community eco-management and audit scheme (EMAS).**

5 Non-routine environmental inspections shall be carried out to investigate serious environmental complaints, serious environmental accidents, incidents and occurrences of non-compliance as soon as possible and, where appropriate, before the issue, reconsideration or update of a permit.

Following each **site visit**, the competent authority shall prepare a report describing the relevant findings as to compliance of the installation with the **permit conditions** and conclusions on whether any further action is necessary.

The **draft** report shall be **sent** to the operator concerned and **the final report** made publicly available **in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information** within **three** months after the **site visit** takes place.

Without prejudice to Article 9(2), the competent authority shall ensure that the operator takes all the necessary actions identified in the report within a reasonable period.”

The Council amendments, therefore:

- Clarify the purpose of inspections to cover all environmental impacts.
- Extend or clarify the scope of inspection planning to cover national, regional and local level and the need for review.
- Delete the Proposal's requirement that inspection plans should include information on the state of compliance of installations.
- Do not accept the Parliament's amendment requiring authorities to have sufficient capacity for inspection.
- Set a minimum and maximum periodicity for inspection visits.
- Follow the main example elements of risk criteria proposed by the Parliament.

In conclusion, it can be seen that the debate on the IPPC Recast Proposal demonstrates serious consideration of a number of inspection criteria – such as the frequency of inspection, the nature of inspection planning, etc. These are issues of relevance in this study, both in relation to the criteria themselves and how they might be set out at EU level, for example.

7.5 Council Directive 95/21/EC – Maritime Safety and the Prevention of Pollution From Ships (Port State Control) & the Paris MoU

An agreement was signed in Paris on the 26th January 1982, which is known as the Memorandum of Understanding on Control of Ships by the Port State (Paris MoU). In 1995, this regime was incorporated into EU law under the form of a Directive on Port State Control (95/21/EC as amended) to ensure that MS are fully committed to applying the Paris MoU regime. The Directive³⁵ involves the inspection of foreign ships in national ports to verify that

35 <http://europa.eu/scadplus/leg/en/lvb/l24072.htm>

the condition of the ship and its equipment comply with the requirements of international regulations for ship safety, pollution prevention and shipboard living and working conditions, and that the ship is manned and operated in compliance with these rules.

Port State Control is a major enforcement system in the European Union that ensures commercial vessel compliance with applicable regulations, laws and conventions. Port State Control allows the government of the foreign port control over the vessel to ensure compliance with applicable domestic and international requirements to ensure safety of the port, environment and personnel. The European Maritime Safety Agency (EMSA)³⁶ is the principal EU Agency that is responsible for monitoring and providing technical and scientific assistance MS with the Port State Control Directive.

Inspection/Control procedures

From the beginning of its inception the Port State Control Directive required each member country to inspect at least 25% of foreign ships calling at its ports each year. Although this approach has worked well, recent enlargements of the EU have provided the opportunity to improve the effectiveness of the regime³⁷. The New Inspection Regime (NIR), which has just recently been proposed, will ensure that all ships are inspected at intervals which reflect the risk they pose. If port state control inspectors find that a ship does not comply with the international requirements in force at the time, the port state can prevent it from sailing until it does comply. Should a ship be regularly found to be non-compliant, it can be banned from European ports. It is anticipated that the EU decision-making process will be completed during 2008, with the NIR entering into force in 2011.

Lessons learned and recommendations

For the WSR, enforcement measures could be improved by being able to pinpoint and track down waste shipments that are frequently non-compliant as is the case under the NIR. This could minimise overall waste shipment violations. For example, a database containing companies that have a record of violating waste shipments would make them more “risk-based” with more reason to be inspected regularly and with higher sanctions.

Legislation concerning European seaports are important within the WSR context because seaports handle almost all external trade and half of the EU’s internal trade. Under the Port State Control Directive, recent harmonised standards for Port State control inspections and common qualifications for inspectors will ensure a more consistent enforcement of maritime rules throughout Europe.

³⁶ <http://www.emsa.eu.int/>

³⁷ <http://www.emsa.eu.int/Docs/psc/leaflet-psc.pdf>

7.6 The Directive on Waste (2008/98/EC)

Article 34 of the Directive on waste addresses inspection requirements. It states that:

1. 'Establishments or undertakings which carry out waste treatment operations, establishments or undertakings which collect or transport waste on a professional basis, brokers and dealers, and establishments or undertakings which produce hazardous waste shall be subject to appropriate periodic inspections by the competent authorities.
2. Inspections concerning collection and transport operations shall cover the origin, nature, quantity and destination of the waste collected and transported.
3. Member States may take account of registrations obtained under the Community Eco-Management and Audit Scheme (EMAS), in particular regarding the frequency and intensity of inspections.

Other than setting out the need for inspections, the Directive on Waste does not define inspection criteria. It is clear that inspection can be undertaken at various locations and cover various types of operators. Also while no indication is given as to the expected frequency of inspection, the reference to EMAS suggests some consideration of the likely risks of an activity directing the relevant level of inspection.

The activities to be inspected covered by the Directive on Waste are of importance to implementation of the WSR. They form the source of waste that may be shipped, as well as include transfer and processing plants and the transport itself. Therefore, criteria developed to assist in implementing the WSR will also help to address inspection obligations under the Directive on Waste.

The Directive on Waste also sets out requirements related to waste planning. Article 28 states that:

1. Member States shall ensure that their competent authorities establish, in accordance with Articles 1, 4, 13 and 16, one or more waste management plans. Those plans shall, alone or in combination, cover the entire geographical territory of the Member State concerned.
2. The waste management plans shall set out an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken to improve environmentally sound preparing for re-use, recycling, recovery and disposal of waste and an evaluation of how the plan will support the implementation of the objectives and provisions of this Directive.
3. The waste management plans shall contain, as appropriate and taking into account the geographical level and coverage of the planning area, at least the following:

(a) the type, quantity and source of waste generated within the territory, the waste likely to be shipped from or to the national territory, and an evaluation of the development of waste streams in the future;

(b) existing waste collection schemes and major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste or waste streams addressed by specific Community legislation;

(c) an assessment of the need for new collection schemes, the closure of existing waste installations, additional waste installation infrastructure in accordance with Article 16, and, if necessary, the investments related thereto;

(d) sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations, if necessary;

(e) general waste management policies, including planned waste management technologies and methods, or policies for waste posing specific management problems.

4. The waste management plan may contain, taking into account the geographical level and coverage of the planning area, the following:

(a) organisational aspects related to waste management including a description of the allocation of responsibilities between public and private actors carrying out the waste management;

(b) an evaluation of the usefulness and suitability of the use of economic and other instruments in tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market;

(c) the use of awareness campaigns and information provision directed at the general public or at a specific set of consumers;

(d) historical contaminated waste disposal sites and measures for their rehabilitation.

5. Waste management plans shall conform to the waste planning requirements laid down in Article 14 of Directive 94/62/EC and the strategy for the implementation of the reduction of biodegradable waste going to landfills, referred to in Article 5 of Directive 1999/31/EC.'

Article 30 of the Directive on Waste states that Member States shall ensure that the waste management plans and waste prevention programmes are evaluated at least every sixth year and revised as appropriate and, where relevant, in accordance with Articles 9 and 11.

Although the waste planning envisaged in the Directive on Waste is different to inspection planning, it can be seen that there are important comparable elements, such as

understanding the waste context, institutional context, regulatory context and the need for review. It should also be noted that planning outcomes from implementation of the WSR, such as a Control Strategy, should feed into the assessment and actions within waste management plans.

7.7 Regulation (EC) No 882/2004 – Control of Feed & Food of Non-Animal Origin

This Regulation stipulates regular official controls by EU Member States of feed and food of non-animal origin imported into the (EU). Controls can take place at any point of the distribution of the goods, and necessitates close co-operation between the customs services and the competent authority. The aim is to create a more comprehensive, integrated, risk-based, EU-wide, 'farm to fork' approach to official controls. This will improve the consistency and effectiveness of controls across the EU. The Regulation also aims to provide a greater degree of transparency for consumers about enforcement arrangements. Enforcement checks carried out by the competent authorities in the Member States monitor compliance by feed and food businesses with the requirements set out in 'feed law' and 'food law'. Such checks include, for example, inspections, audits, surveillance, sampling and analysis etc. These checks could potentially play a joint role in the waste inspection process of Member States by detecting waste that would be considered within the scope of feed and food of non-animal origin.

7.8 Council Regulation (EC) No 768/2005 – Establishing a Community Fisheries Control Agency

The Community Fisheries Control Agency (CFCA) is a European Union body established in 2005 to organise operational coordination of fisheries control and inspection activities by the Member States and to assist them to cooperate so as to comply with the rules of the EU Common Fisheries Policy in order to ensure its effective and uniform application.

Member States are responsible for implementing the Common Fisheries Policy and ensuring that all involved respect its rules. But to be coherent and consistent, control and inspection activities need to be organised at European and international level. The Agency was created to help national authorities achieve this by ensuring national resources – patrol vessels, airplanes and inspectors – are deployed according to wider European requirements and not narrower domestic priorities. This will help to close potential loopholes which can arise from a lack of facilities or by operators playing one national jurisdiction off against another. At the same time, consistent and uniform application of control and inspection activities will ensure equal treatment for all those involved.

In terms of the WSR, CFCA can provide technical and administrative assistance as part of the Agency's mission is to set up and organise the coordination of the Member States' inspection and surveillance activities (within Common Fisheries policy). In addition, the Agency

contributes to research and development work carried out by the Member States and the Commission on inspection and surveillance techniques. It helps the Member States provide the Commission and third parties with information on inspection, surveillance and fishing activities. more specifically, the Agency may play a part in:

- training inspectors;
- undertaking the joint procurement of goods and services relating to inspection and surveillance activities;
- defining joint operational procedures for Member States working together;
- identifying criteria for exchanging and providing means of inspection and surveillance between Member States and between Member States and third countries³⁸.

7.9 Conclusions

It is evident from this short overview that the importance of setting obligations for inspection within EU law has increased since the obligations were set out in the 1996 Seveso II Directive. The nature of the obligations that are set out in Directives (or proposals for Directives) vary, some setting a basic requirement for inspection and some with a few additional criteria (such as location, frequency or reference to a risk-based approach).

To date detailed criteria have only been set out at length in the RMCEI and the Commission review of the Recommendation concluded that further elaboration of these criteria is necessary. However, it also stressed the importance for criteria relating to waste shipment inspection to be developed. These are addressed in this report. This will assist in taking forward the Commission's stated objective as well as enhancing inspection under related regimes, such as the WEEE Directive and the Directive on Waste.

Other notable lessons learned to be considered in this study include the concept of conducting inspections across the life cycle of the waste shipment (as identified in the WSR), as opposed to only at borders. This would allow for more frequent and thorough inspections by relieving the concentration of inspections at borders where they often take place. However, it is also important to keep in mind that by conducting inspections at other locations, some potential negative aspects to this approach could surface such as the need for more inspectors, the risk of increasing the administration burden, financial costs, etc. In terms of enforcement measures, we have seen that under the Port State Control Directive, by keeping track of waste shipments from companies, more stringent sanctions can be applied to repeated violations to ensure compliance and enforcement of the WSR.

³⁸ <http://europa.eu/scadplus/leg/en/lvb/l66019.htm>

8 PRACTICES AND PROCEDURES IN THE MEMBER STATES

8.1 Introduction

This Chapter provides an overview of the structures of enforcement institutions for the WSR in the Member States and considers issues relating to their capacity, practices and procedures for inspection under the WSR. It, therefore, addresses part of the first task under the project. However, description of the individual elements in this Chapter addresses specific issues relating to criteria for inspection, making some initial conclusions with regard to these – tasks 2 and 3 of the project. However, further consideration of how to develop criteria is also the subject of the following Chapter.

The Chapter is structured initially by considering the nature of the enforcement institutions and specific types of institutions. It then considers issues of capacity (e.g. numbers of inspectors), co-operative working, procedures, information gathering, etc. This structure is linked to the categories of criteria that are eventually set out later in this report.

This Chapter provides a summary of Member State issues. This is, where appropriate, illustrated by cases provided in examples in text boxes. However, more detailed information is provided in Annex VI, which summarises some key information for different Member States, including those not the primary focus of the project as set out in the methodology. Where individual Member States are referred to in this Chapter, the reader is, therefore, directed to the Annex for more detailed information.

8.2 Enforcement institutions overview

There is a wide range of different enforcement institutions in the Member States responsible for inspection/control actions under the WSR. In almost all cases, Member States inspection involves three types of body:

- An environmental authority.
- The Customs.
- The police.

The relative roles of these bodies vary, as will be seen in the specific discussions on the Customs and police in later sections of this Chapter (such as the role of the police in Italy). However, the important initial conclusion is that inspection and enforcement is not necessarily

the role of a single authority and, therefore, this has to be recognised in the implementation of criteria for inspection under the WSR.

The constitutional and administrative contexts of the Member States also have a strong influence on the role of the institutions. In the Czech Republic, for example, the Czech Environmental Inspection has competence for inspections and is a national body. Similarly, in the Netherlands the VROM inspectorate has a national role. In other cases, competence may be at the sub-national level.

- In Belgium, Spain and Germany, which are Federal Member States, for inspection by environmental authorities, competence lies clearly with the inspectorates of the regions, autonomous communities or Länder.
- In Sweden, inspections are undertaken at a regional or local level.
- In the UK, there are separate environmental inspectorates in England and Wales, Northern Ireland and Scotland, although the former represents a very large 'region' when compared to other Member States.

However, in most cases, the sub-national structures of environmental institutions are not necessarily reflected in other bodies. The police are sometimes established as regional forces, but may be national. Customs, on the other hand, being focused on the control of a country's borders is almost invariably a national body. Enforcement of the WSR may, therefore, involve competent authorities at different administrative levels in the Member States.

It is also important to note that a large institution across a country may allow for a more coherent approach to understanding and controlling illegal waste activity, but challenges may arise even here. For example, in England and Wales, the Environment Agency has an innovative national approach to WSR enforcement (see the description on the intelligence-led approach later in this Chapter), but it has a challenge to ensure its local staff fully co-ordinate their work with this strategy.

Therefore, with roles for these different institutions in WSR enforcement there is a significant challenge in achieving co-ordination and in sharing information, intelligence, etc. This not only applies to the environmental inspectorate, police and Customs, but also between environmental authorities. For this reason criteria relating to such relationships are important. Issues relating to co-operation between institutions are addressed in a specific section in this Chapter.

The project questionnaire to IMPEL TFS asked respondents to list the organisations involved in waste shipment inspection in their Member State and indicate how many dedicated

inspection staff they have. For Member States with many competent inspection authorities (such as federal states), they were asked to provide representative examples, if possible. The results are provided in the following table. The discussion on staff numbers arising from this table is provided in a later section in this Chapter.

This table demonstrates that enforcement of the WSR is undertaken by several institutions in each Member State. The role of these institutions may vary and, in some cases, is being clarified (see Box on Poland). The following sections each examine the environmental authority, Customs and police in more detail.

Member State/Organisation	Number of Staff	Comments
Belgium		
Federal Environmental Inspectorate	15	For control of waste transports (TRANSIT)
Environmental Inspection Division (Flemish inspectorate)		
IBGE/BIM : Brussels Environment Institute		
Unité pour la répression de la pollution (Walloon inspectorate)		
Croatia		
Environmental protection inspection within Ministry of Environmental Protection, Physical Planning and Construction	40	About 40 related to waste shipment inspection, 81 inspection staff overall
Czech Republic		
Czech Environmental Inspection	20	The CEI has about 80 inspectors in total for all areas. The 20 address waste shipment
Customs Service	50	These are 50 mobile groups
Police		
Estonia		
Environmental Inspection	5	One central person and one in each of the four regions
Tax and Customs Board		
Ministry of the Environment		
Hungary		
National Inspectorate for	2	Also involved in other permitting and

Environment Nature and Water		inspection tasks
Regional competent inspectorates		
Hungarian Customs and Finance Guard		
National Transport Authority		
Hungarian Police		
National Directorate of Disaster Management		
Ireland		
National TFS Office	8	
Local Authorities (34) and Customs Officers	~100	
Luxembourg		
Environment Agency	2	
Administration des Douanes et Accises (Customs)		There is a pool of inspectors – difficult to determine the number
FYR Macedonia		
State Environmental Inspectorate	12	All inspectors, not just WSR
Ministry of Interior, Police		20 Republic Police Teams
Ministry of Transport and Communication, State Transport Inspectorate		10 Republic Police Teams
Customs	50	
The Netherlands		
Inspectorate of the Ministry of Housing, Spatial Planning and the Environment	30	
Customs		Not known how many people exactly involved (they carry out tasks other than only waste shipment inspections)
Police		Not known how many people exactly involved (they carry out tasks other than only waste shipment inspections)
The Transport and Water Management Inspectorate		Not known how many people exactly involved (they carry out tasks other than only waste shipment inspections)
Romania		

National Environmental Guard	491	Total staff, not those involved in WSR
Sweden		
There are 21 County Administrative Boards of which only two have been involved in inspections concerning shipments of waste.	Unclear	
There are 280 municipalities of which only a couple have been involved in inspections concerning waste shipments.	Unclear	
United Kingdom		
Environment Agency (England and Wales)	1000	<p>The EA is responsible for a wide range of waste regulatory functions. In total there are just under 1000 inspection staff involved in making compliance checks at the sites it issues permits to and in taking enforcement action where it finds non-compliance. From time to time these staff will undertake inspection work connected with checking operators' compliance with the rules on international waste shipments.</p> <p>Currently there is a team of 12 staff involved exclusively on checking compliance with the rules on international waste shipments and on seeking out evidence of illegal activity. In undertaking their inspections, these staff rely upon the support of our wider community of inspection staff to assist in undertaking inspections and gathering intelligence on potential illegal activity. The 12 staff are essentially a catalyst to promote activity aimed at securing compliance and tackling illegal activity in the field of international waste shipments across all of our inspection staff.</p>

Changes to the legal framework in Poland

A recent revision of the Polish Act concerning Shipments of Waste will have important provisions to contain a clear assignment of responsibilities for customs, police, road inspectorates and of permitting responsibility for the Chief Inspectorate for Environmental Protection. New monetary fines related to illegal waste shipment are introduced.

8.3 The Environmental Inspectorate

It is typical that the main functions of inspection under the WSR are undertaken by an environmental authority – typically an environmental inspectorate. There, however, exceptions to this. For example, in Italy, a particular police force undertakes this role and, in Rotterdam, the Netherlands, Customs undertakes this role. These examples are considered in more detail in the following sections on the Customs and police.

In the Member States examined in this study, there is no example of an environmental authority with its only role being to enforce the WSR. Instead, competence for WSR inspection is given to environmental authorities with roles in the enforcement of other environmental legislation, particularly the inspection of installations, such as under the IPPC Directive. Within this context two trends can be observed:

- There are units or staff within these organisations that are dedicated to implementation of the WSR – this is found in all regions of the UK, the Netherlands, France, some German regions, etc.
- Staff responsible for enforcement of the WSR have duties for the enforcement of other legislation – this is seen in Hungary, Poland, Sweden, etc.

Where there are dedicated staff and/or units, the capacity of the organisation is more readily understood – including by its own internal management. Where the WSR is only one of several activities addressed by staff then it is both unclear how much WSR enforcement capacity there may be and, indeed, how specialised the staff are. This issue is considered further in the section below examining staff numbers.

Environmental enforcement authorities responsible for inspection under the WSR may be established at national, regional or local level:

- National level institutional structures are found in some Member States, such as the Czech Republic, France and the Netherlands. Further details on the latter two Member States are provided in text Boxes and a figure below. National competence

is the common model in small Member States, such as the Baltic States, Malta and Cyprus.

- Regional level competence is common in a number of Member States. This is the case in the UK (although the Environment Agency of England and Wales shares many characteristics of a national body). It is very specifically the case in Federal Member States, such as Germany and Spain (further information is provided in the Box below). Importantly, it is also the case in Poland, which has devolved much environmental competence to the Voivodships. In Sweden, much inspection competence lies with its counties.
- Some Member States show competence at the local level. This is not generally exclusive competence, but may be shared with other authorities, such as the role of municipalities in Sweden.

This overview is not, however, the full picture. Ireland, for example, had devolved competence to its counties, but, following a review of poor WSR implementation, it concluded that a single authority was required and placed competence with Dublin City Council (the largest port) – responsible for the whole country. Furthermore, much of the inspection function has been contracted to a private company specialised in criminal investigation. Further details on these changes are provided in Boxes below. However, the key conclusion from the Irish experience is that different ways of thinking and consideration of alternative approaches may help to develop more effective and efficient structures for environmental enforcement bodies responsible for WSR inspection.

Each type of structure presents challenges for inspection under the WSR. National (or large regional) institutions may have the resources to be able to establish a core of staff with sufficient expertise to undertake enforcement activities under the WSR. It may also be easier for national bodies, such as Customs, to form co-operative working relationships with them (co-operative working is addressed in a later section). However, where staff are distributed across the organisation, this may present challenges of consistency of approach. This is the case where there is innovation at the central level challenging working practices locally (this will be seen in the later discussion on the intelligence-led approach used by the Environment Agency of England and Wales). A key means to ensure a common approach is to set out coherent and detailed strategies and plans. The compliance strategy in the Netherlands is a case in point and will be discussed in a later section.

Regional bodies have other challenges. Some may be located at major sites of waste transit, such as major ports. Therefore regional authorities, such as those in Hamburg (Germany) or Gydinia (Poland) have a particular focus on WSR enforcement. The regional focus has the advantage of concentrating enforcement activity close to 'the action'. However, some regional authorities may have only low levels of cargo leaving the country from their territory or,

indeed, waste may only transit through their region to ports or border crossings elsewhere. In such cases, a focus on WSR inspection may be a low priority (particularly as staff may have other enforcement duties) and the development of expertise may be problematic. In Sweden, for example, activity relating to WSR inspection is reported for very few counties and it is not clear if this results in some waste being exported from lower activity ports (although there can be significant control activity by other authorities – see Annex VI). A further problem is the difficulty of developing coherent control strategies where there are a number of environmental authorities that would need to share data as waste may arise, be transported, be processed and then exported in different regions.

The challenges of environmental enforcement resulting from different structures are not limited to implementation of the WSR. However, the WSR has particular challenges in relation to such structures. The reasons behind the structures are sometimes pragmatic and, therefore, can be changed as circumstances change (as has been the case in Ireland). However, far more common is that there is a Constitutional or strong political and cultural context to the nature of the structures (e.g. a philosophy of decentralisation). For the enforcement of the WSR this has to be accepted – it is not within the scope of this study to challenge these conditions.

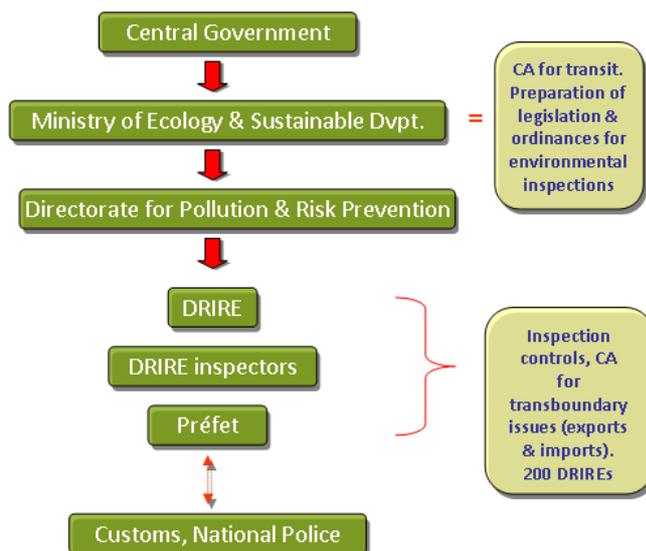
However, what is required of the Member States is that whatever structures exist for environmental enforcement organisations, they should be effective at implementing the EU legislation for which they have competence. It has already been noted that previous studies have highlighted a compliance gap for the WSR and it will be seen in a later section that a number of Member States think that they have a significant capacity gap. Therefore, whatever the structure, the institutions require sufficient resources, procedures (for activities, data handling, etc.) and effective working relationships. These are the subject of later sections of this Chapter and will be the subject of the development of criteria. It is not proposed that there should, therefore, be criteria for structures themselves, but what is important is that the criteria that are developed for other capacity and process issues are adaptable in the different structural contexts found in the Member States.

Environmental enforcement structure in France

In France the responsibility of environmental protection and environmental regulations lies within the Ministry of Ecology and Sustainable Development (referred to hereafter as MEEDDAT) and, specifically within its Directorate for Pollution and Risk Prevention (DPPR). In terms of environmental inspection, MEEDDAT is directly responsible for the preparation of legislation and ordinances, and management. However, responsibility for the organisation, implementation, and enforcement lies within the DRIRE (Regional Directorate for Industry, Research, and Environment) in each of France's 24 Regions. Even though the Inspection

services of the DRIRE prepare the permits, the authority for signing and issuing all the environmental permits, and administrative sanctions, lies with the Préfet of the relevant Department (100 geographical departments). He or she is the formal representative of the French government for administrative purposes in the Department. The Prefectures of the department are the competent authorities for imports and exports of waste, whereas MEEDDAT is the competent authority for waste in transit through France. This, therefore, represents an institutional context which has both centralised and decentralised elements, suggesting standard setting for inspection can be centralised, but capacity constraints might exist locally. This structure is illustrated in the following Figure.

Figure 2: the overall organisation of the French government agencies that are responsible for inspection and enforcement of the WSR.



Environmental enforcement structure in the Netherlands

In the Netherlands, the VROM Inspectorate (VROM Inspectie), part of the Ministry of Housing, Spatial Planning and Environment (VROM) is entrusted with the management and enforcement of the European Waste Shipment Regulation (around 25 staff are responsible for waste shipment inspection (divided between 5 regional offices). The Waste Management Department (WMD) of Senter Novem (an agency of the Dutch Ministry of Economic Affairs) implements the Waste Shipment Regulation on behalf of VROM. WMD is responsible for handling requests for permits to import or export waste and notifications of international waste

shipments. WMD issues more than 3,000 transshipment permits a year.

National and regional competence in Spain

In Spain under the “Waste Law 10/1998” of 21 April 1998, the national Ministry of the Environment (in particular the Sub-direction General for prevention of waste - *Subdireccion General de prevencion de residuos*) is responsible for the authorisation and inspection of waste shipments from Spain to third countries not belonging to the EU. The Ministry of the Environment is also competent for the control of waste shipments in transit through Spain, where it has to be supported by the authorities from the Autonomous Communities affected (article 1.4 of the law). The authorisation, control, inspection and sanction of shipments between Spain and other EU countries are in the responsibility of the autonomous communities. The same applies to waste shipments exclusively within Spanish territory (article 4.2 of the law).

Local Authority with national TFS competence: Ireland

Dublin City Council was made the competent authority of dispatch in respect of the export of waste from the State. All transfrontier shipments of waste originating in any local authority area in the State that are subject to the prior written notification procedures must be notified to and through Dublin City Council at the National TFS Office established to implement and enforce the Regulations. Previously TFS was administered locally by 34 individual Local Authorities and the EPA was the former Competent Authority for Import. Overall the change achieves a centralising and standardising of the process.

Enforcement by a Private Company: Ireland

Dublin City Council, after becoming the Competent Authority for the country as a whole, considered the most effective and efficient means to undertake its duties. To be effective, catching illegal waste shipment requires intelligence, skills in surveillance and perseverance, addressing movements at the main ports as well as road transport into the UK. It was decided that a private company with experience in this area should be contracted to undertake these

functions. Effective enforcement activity – effective inspection – can, therefore, be achieved under the WSR through the use of private companies where the public authority has a skills gap, etc.

8.4 The Customs

Customs bodies are the principle governmental institution controlling the movement of goods, people, items, money, etc., into and out of a country. It is, therefore, to be expected that they should play a significant role in the control of waste export. From the consideration of international practice earlier in this report, this is a role promoted by the World Customs Organisation, but the role of Customs varies in the Member States.

An important point to note is that much Customs work focuses on controlling what enters a country, e.g. illegal imports, drugs, etc. Control under the WSR requires Customs to focus on regulating what leaves a country. This can be a new challenge. In some cases, waste entry control is also a key element, such as where a Member State is a route of waste transit before it leaves the EU borders.

The variation in the role of Customs is illustrated by some examples:

- In the Netherlands, there are dedicated Customs officials in the port of Rotterdam, trained not only in the detection of illegal waste transport, but also to undertake the full environmental inspections – this is exemplified in the Box below. It is also important to note that Customs is also taking the initiative to examine new enforcement processes (termed ‘experimental gardens’), including in relation to waste (see separate Box).
- In Sweden, the legislative basis for waste control by Customs is minimal, resulting in a lack of effective Customs role.
- In England and Wales, Customs co-operates with the Environment Agency and police in enforcement activities, but it does not yet allow access to its shipment database for environmental authorities to allow for intelligence and risk assessment.

While particular Customs staff may be trained by the environmental inspectorate (see later section), the identification of Customs staff totally dedicated to implementation of the WSR is rare. The allocation of five dedicated Customs staff in Rotterdam is, therefore, an exception. Even where Customs are trained and aware, waste shipment controls will compete with the other priorities of customs, such as preventing drug trafficking. The importance of risk profiling for Customs activity was stressed earlier in regard to guidance by the World Customs

Organisation. However, it must be noted that Customs risk profiling will address all of its activities, resulting in a ranking of the risk associated with illegal waste shipments with risks associated with other illegal activities.

This, therefore, presents a challenge for the implementation of the WSR. Clearly, it is necessary to ensure that risks associated with waste shipment are fully assessed. It is also to be stressed that illegal waste activity can be linked to other illegal activities that are also of concern to the Customs. However, for the effective implementation of the WSR, this situation suggests that effective criteria for control are needed to help stimulate action by Customs where this is insufficient.

The physical presence of Customs also varies. Typically, Customs is viewed as a presence at the borders of the country. Therefore, in the Netherlands, for example, waste transport control activity inside the country is the responsibility of other authorities. However, in the Czech Republic and Finland there are mobile Customs units, allowing officers to address Customs related enforcement across the territory of the country.

It is also important to note the effect of the single market and the Schengen agreement. Open borders between most Member States have reduced the need for Customs action. In the Netherlands, for example, Customs has largely withdrawn its presence from the land borders, so that alternative enforcement by the police for WSR actions has been developed. Indeed, where Member States have no external EU border, the country border is less important and, hence, the development of mobile units as noted above.

Increasing Customs capacity in the Netherlands

Customs operate at the ports. It was recognised at an early stage that the role of the Customs is critical in achieving the objectives of the WSR. As a result, in Rotterdam the environmental inspectorate (VROM) has developed very close working relationships with Customs. This has been framed by a formal Memorandum of Understanding (see Annex VI). To begin with specialist knowledge lay with the VROM inspectors. However, it was recognised that there would be greater efficiencies if Customs officers could operate independently. Therefore, five Customs staff have been fully trained in WSR inspection and can undertake all inspection roles (training courses began in the early 1990s). They can call in VROM when particular advice is needed and there are, therefore, dedicated contact personnel. To facilitate the Customs work, a container scanner is available at the Port, which allows for much more rapid screening of the contents than is available through manual inspection.

Mobile units of Customs

In the **Czech Republic** customs control has been re-organised to include the use of 'Mobile Supervision Units'. This has resulted in 54 units across the country in an integrated control network. The Customs officials are connected electronically via an intranet for quick information exchange.

In **Hungary**, the custom offices are mainly located at the border-crossing points, but there are also mobile units. For examples, some controls on water ways (Danube) are also carried out via patrol boats although transport on water ways is relatively low.

Experimental action by Customs in the Netherlands

The 2009 enforcement plan of Customs states that Customs wants to experiment in enforcement by means of 'experimental gardens'. A variety of intervention measures can be used in such an 'experimental garden', with an examination - by trying it out – to see what does and not work in a particular situation. In cooperation with the VROM Inspectorate, Customs South in the Netherlands is developing such an 'experimental garden' for waste. The experimental garden instruction for waste dated 9 June 2008 lists four sub-projects:

- improvement of the declaration conduct of various actors;
- joint inspection;
- use of dynamic profile management;
- joint action.

Role of the Customs in the Czech Republic

The customs authorities are responsible for monitoring the cross-border shipment of waste and to impose obligations regarding cases of non-compliance. It checks the following:

- Whether the waste is accompanied with documents compliant with the WSR and the national Waste Act.
- Whether the waste matches the data provided on the accompanying documents.
- Whether the goods transported are not, in fact, transported waste.
- Whether the cross-border shipment of waste is not in breach of the WSR.

To do this the customs authorities are authorized to stop vehicles, check the documents accompanying the waste and goods, check documents proving the identity of persons, to carry out physical control and waste products, remove and analyze samples and take photographs. If there is an infringement, the customs authorities may conduct an on-site investigation of waste from where it originates, the holder of the waste or the destination for the recipient. The customs authority can also seize the vehicles used.

8.5 The police

The police are an important authority in the implementation of the WSR in many Member States. In many cases their role is supportive of the primary competence of another authority, such as an environmental inspectorate. However, this is not always the case. For example, in Italy (see box), while environmental authorities are the responsible authority for waste shipment notifications, it is the police which has primary control (inspection) functions.

Across the Member States, the police have varied roles. At one level they may provide environmental inspectors with the added authority to take enforcement action through their presence in certain inspections. They also are the primary authority responsible for stopping vehicles and, therefore, are critical in stopping illegal waste movement by road.

How proactive the police are in their function varies. In some cases, the police are aware of WSR requirements and, therefore, can alert environmental inspectors if they discover a potential infraction. More proactively, they may have information on certain individuals or vehicles and target inspections, such as using vehicle number plate recognition systems.

The importance of, and processes for, co-operation with environmental authorities will be addressed below. However, it is worth noting the example from the Netherlands (see Box) whereby the environmental inspectorate has set a target for the enforcement work of the police regarding waste shipment controls.

Finally, the role of the police may be more integrated into the work of the environmental inspectorate. This is seen in the intelligence-led approach (described below), where police priorities and environmental priorities are integrated along with the roles of the institutions.

It was noted above that the changing nature of EU internal borders has resulted in some structural changes to Customs. Such changes also result in a changing role of the police. This is seen in the example below from Austria.

It is difficult to be prescriptive about the role of the police in WSR enforcement in the Member States. Where they have a leading (or lead) role, then criteria for waste shipment inspection

need to be addressed in the actions that they take. Where they take a supporting role, then the role of criteria will vary. In any case, the importance of the police needs to be addressed in a waste shipment Control Strategy (see below).

Given the varied role of the police in WSR enforcement, it is not appropriate to establish criteria directed specifically at police forces. However, criteria relating to inspections, information, processes, etc., will variously have to be addressed by the police.

Leading role of the police in Italy

In Italy, the environmental police department (NOE) is the main control authority for all illegal activities with environmental impacts. The NOE is a national organisation with 29 “nuclei” distributed all over the country. The NOE has an official cooperation agreement with environmental agencies. For waste shipments NOE performs inspections in order to check the authorisation, etc., of transports (including chemical analysis). Inspections are based on risk assessments of sources and as far as possible work shall be preventive.

Importance of the police for road controls in Austria

The police in Austria play a central role in waste shipment controls. Waste being moved is predominantly by road across open borders. Therefore, intelligence is gathered on particular vehicles and waste risks to direct the police to stop vehicles. Particularly risk routes are also identified to direct the control activity. Where potential infringements of the WSR are identified, environmental inspectors may be called in.

The police in France

The Police (Gendarmerie) collaborate mainly for investigations in potential criminal activities of exporters/importers and provide support in investigations for original producers which in France are regarded as the responsible authority for illegal shipments. National police through the OCLAESP (Central Office against infringements on environment and public health) are responsible for preventing or suppressing environmental infringements (and not just hazardous waste). OCLAESP authority falls under the National Police and is responsible for all matters related to environmental and public health infractions. The OCLAESP can conduct under its own initiative control operations, notably concerning shipments of waste, when

circumstances call for it, such as control and inspection of containers that arrive at ports and control of waste that is transported along major roads.

Role of the police in the Netherlands

The controls of the National Police Services Agency are aimed at shipments by road, water and rail. Regardless of the focus of the control, there will be a check on compliance with the WSR. For 2009, the Inspectorate for Housing, Spatial Planning and the Environment is making an allowance for 52 weekly static waste shipment controls to be performed nationwide by the National Police Services Agency, whereby mobile controls will occur simultaneously on evasion routes. The National Police Services Agency will furthermore support regional police forces by providing expertise and information during performance of integral shipment controls. The Inspectorate is also relying on the participation of the National Police Services Agency in project-based activities.

8.6 Waste shipment control and inspection

Inspection and enforcement activity covers a wide range of actions in the Member States. Many examples have been indicated by the Member States, from scanning containers, road checks, detailed physical examinations, database interrogation, etc. It is important, therefore, at this stage to clarify the difference between a control programme under the WSR and 'inspection'. Control includes any activities taken to ensure effective prevention of illegal waste activity. Inspection involves more specific location based action. This is illustrated by the following examples.

1. The WSR states that 'inspection' may involve the checking of documents. In some Member States all waste shipment documentation is electronic. In Hamburg, for example, the Customs officers have all such electronic documentation available to them. This allows the officers to search the documentation for 'suspicious' indicators – second-hand electronic equipment destined for Nigeria, individuals or addresses that are known to be a compliance risk, etc. Such searching may be through an electronic search for key terms, with a subsequent more detailed study of the documentation if suspicious documents are highlighted. This process in Hamburg is clearly an inspection of documentation. However, it is part of the control process, rather than inspection per se.

2. The WSR states that inspection may take place at the point of origin. Municipal solid waste is often collected by local authorities and then subject to various forms of sorting. Recyclable materials (paper, plastic, etc.) may be exported as green list waste, but there may also be attempts illegally to export unsorted waste. Inspection of waste sorting facilities is regulated under the Directive on Waste (and linked to other regulatory regimes). Good inspection activity, checking on practice, documentation, etc., will help to deter illegal waste shipments, as illustrated by action in the Netherlands. However, the inspector may simply be focusing attention on site based regulatory objectives. This is clearly inspection, but it can be viewed as contributing to the Control Strategy, but probably not an inspection under the WSR.

3. In some cases illegal waste shipment is big business – it is serious organised crime. Indeed, those involved in illegal waste shipment may also be involved in other illegal activities such as drugs and money laundering. Therefore, co-operation between environmental authorities, police and customs may be appropriate. In such a situation, financial audits, etc., for example, may be instrumental in stopping the illegal activity, as is undertaken in England and Wales. This may not be directed at the waste shipment part of the operation, but may be undertaken knowing that success would lead to prevention of further illegal waste shipments. Such ‘inspection’, therefore, may contribute to achieving the objectives of the WSR, but it should not be considered to constitute ‘inspection’ under the Regulation, but again is part of the overall Control Strategy.

Understanding what is meant by ‘inspection’ is necessary, therefore, for the development of criteria for inspection under the WSR. Clarifying the role of control and inspection allows for criteria to be developed relating to overall control (without which inspections per se are de-contextualised and of unknown effectiveness) and for specific actions of the inspections themselves.

IMPEL members supplied information on the numbers of inspection undertaken. This is set out in the table below. This demonstrates the range in level of inspection activity. There are significant numbers of inspections in countries such as Belgium, Ireland and the Netherlands, but very little inspection in Sweden. It also demonstrates that some inspections (e.g. in Croatia and the Czech Republic) are undertaken as part of campaigns, rather than a continuous process.

Country	Number of inspections (latest year available)
Belgium	2008: 26,458 road inspections (trucks) 84,000 verified export documents

	1,223 containers in ports
Croatia	54 checks in 3 rounds of inspections
Czech Republic	About 300 vehicles were checked during 5 joint controls
Estonia	About 2,000
Hungary	5-7 on site checks in 2009, plus inspections of the regional inspectorates
Ireland	4,830
Luxembourg	2006: 7 2007: 11 2008: 10
FYR Macedonia	60
The Netherlands	About 3,000 by Customs, 1,000 by Police and 550 by Inspectorate of the Environment. Number of inspections by the Transport Inspectorate is not known, but not much.
Romania	2008: 2,545
Sweden	2
UK (England and Wales)	<p>The Environment Agency issues permits to operators of facilities undertaking waste management activities and periodically inspects permitted sites in accordance with Article 13 of the Waste Framework Directive. Waste management facilities exporting and importing waste will generally require a permit and therefore be subject to such inspections.</p> <p>In 2007/08 the EA undertook in excess of 30,000 inspections at such sites, including over 1,500 detailed audits. These inspections and audits focus on looking at a site's compliance with its permit. These inspections contribute to ensuring sites receiving waste from overseas are dealing with the waste according to their permits.</p> <p>During 2008 the EA also undertook a number of additional inspections exclusively concerned with checking compliance with waste export controls at some key facilities. The facilities targeted were informed by earlier "Threat Assessments". Current key priorities are to tackle potential illegal exports of poorly sorted waste derived from municipal collection systems and potential illegal exports of WEEE from households under the guise of second hand goods. This work has included:</p> <ul style="list-style-type: none"> • 147 detailed inspections at material recovery facilities involved in the separation and subsequent export of recyclables collected from households; • 60 site inspections for E waste shipments

	<ul style="list-style-type: none"> • 15 days of inspections at ports, involving inspections of 120 containers, 450 HGV, 400 smaller freight vehicles/vans assessed as being likely to be carrying waste.
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8.7 The numbers of enforcement staff

The ability of an enforcement body to undertake inspections depends upon the number of staff it has available to do this. However, determining the number that are available is problematic. Section 7.2 of this Chapter set out some figures of staff numbers provided by IMPEL TFS members through the project questionnaire. However, while members do provide information on environmental inspectorate staff numbers, they are usually unable to provide numbers for Customs and police (with an exception – see below) and it is clear that there is significant control activity by authorities not included in the staff numbers, such as for Sweden (see Annex VI).

Before considering the numbers in more detail, it is important to note that numbers may be misleading as to the capacity of an institution. This is particularly the case where inspection/enforcement staff are not only responsible for waste shipment controls. Across this project, only in the port of Rotterdam (with five Customs staff) has there been any identification of staff in the police or Customs solely dedicated to waste shipment enforcement. Thus while specific staff may be earmarked for waste shipment enforcement activity, Customs and police have other duties (and potentially greater priorities).

The same also applies in some environmental authorities. Inspectors in some Member States, e.g. Sweden, undertake the full range of environmental inspection tasks relevant to their regions. Therefore, understanding capacity through staff numbers alone is not sufficient. Some Member States do have dedicated waste shipment inspection staff, however. In the Netherlands, the VROM inspectorate has 30 dedicated staff. The Environment Agency of England and Wales has a national team of 12 staff. In Poland there are fifty TFS-specialised inspectors, but it is indicated that there is a considerable margin for enhancing their capacity.

The table in Section 7.2 shows that, where specific WSR inspection staff are indicated, numbers in many Member States are below ten and may be as low as two. Note that the high numbers for some Member States in the table are from listing all staff, rather than those responsible for the WSR.

The distribution of enforcement staff is also important and the following table lists the different types of enforcement staff according to the regions in the Netherlands (noting the main ports). Importantly, this does include staff numbers for police and Customs. It can be seen that in

Rotterdam, where Customs undertakes full inspection activity, there are no VROM inspectors. Therefore, their staff numbers are higher than in other regions.

WSR specialists in Dutch ports	Number
Rotterdam	
Customs	8
Police	2
Harbour Police	3
Railroad Police	2
Traffic Inspectorate	2
Amsterdam	
VROM Inspectorate	4
Customs	5
Police	2
Harbour Police	2
Railroad Police	-
Traffic Inspectorate	-
Building and environment inspection Amsterdam	1
Moerdijk	
VROM Inspectorate	4
Customs	1
Police	1
Harbour Police	2
Railroad Police	1
Traffic Inspectorate	-
Vlissingen	
VROM Inspectorate	Region South-West
Customs	1
Police	2
Harbour Police	-
Railroad Police	-
Traffic Inspectorate	-
Delfzijl/Eemshaven	
VROM Inspectorate	1
Customs	2
Police	1
Harbour Police	2
Railroad Police	-
Traffic Inspectorate	-

Given the difficulties in identifying appropriate staff numbers, the project questionnaire asked IMPEL members whether they considered that their authority has sufficient capacity to perform the inspection obligations of the Waste Shipment Regulation. The following table summarises some key responses. It can be seen that most countries considered that they did not have sufficient capacity. Estonia addressed its concern in relation to skills and knowledge, addressed later in this Chapter. Belgium's response suggests the Federal Inspectorate is significantly below optimal capacity. Member States such as the Netherlands and the UK (England and Wales) in contrast consider that they have sufficient capacity. Overall, taking these responses with the numbers discussed earlier, capacity, in terms of human resources, is a significant problem.

Member State	Comment
Belgium	Until 2007 there were 10 federal inspectors. Since 2007 there have been 15 federal inspectors. For several years there has been a request to raise the number of Belgian federal inspectors for the control of waste transports to at least 30, in order to cover the minimum of inspection obligations of WSR.
Croatia	No
Czech Republic	CEI inspectors are well-educated with experience, but human resources are always limited
Estonia	No - because of lack of information and knowledge
Hungary	By no means. It is mainly a permitting authority. Enforcement activity is based mainly on data and reports received from the clients
Ireland	No, but through assistance from other local authority enforcement staff, the EPA and joint inspections with Customs officers and police, the National TFS office continues to improve its efficiency and effectiveness in the implementation of the WSR.
FYR Macedonia	Yes, after every year an annual report is prepared and all gaps are noted and for future planning priorities and capacities of the environmental inspectorate are considered.
The Netherlands	Yes. Note that this judgement is based on knowledge available (not necessarily in all cases optimal) and taking into account the view points of the policy department
Romania	National Environmental Guard has reduced inspection capacity because the number of inspectors is small.
Sweden	Only company inspection (industries that have permits).
United Kingdom (England and Wales)	Yes. Tackling illegal waste exports is a key priority for the Environment Agency and all necessary resources have been made available to carry out an effective and credible level of inspections. It must be appreciated that it will never be possible or appropriate to attempt to inspect every

	single waste shipment to and from England and Wales. The key is to ensure there is sufficient capacity to develop an intelligence-led approach and sufficient resources available to act on that intelligence and target suspect shipments for inspection. In the EA's experience inspections targeted at potential points of loading of illegal shipments or at sites potentially receiving illegal shipments from overseas rather than on shipments in transit are a more efficient use of what will always be finite resources.
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An alternative approach to considering inspection staff capacity is to consider how many inspections an inspector could be expected to undertake in a month or a year, etc. In the project questionnaire, IMPEL members were, therefore, asked how many inspections could be undertaken by an individual inspector. The responses are set out below.

Member State	Type of inspection, etc.	Number of inspections per inspector per indicated period
Belgium	Road controls (trucks)	1,400 per year
Belgium	Container inspections in port	250 per year
Croatia	All types of inspection (not just waste shipment)	10 per month
Czech Republic	All types of inspection (not just waste shipment)	40 per year
Hungary	Waste shipment	2 site visits and 1 joint inspection with neighbouring competent authority per year.
The Netherlands	Waste shipment	Each inspection takes around 3 days, but some can take much more
Romania	Waste shipment	48 per year

The results show very considerable variation. For example, the results from Belgium suggest action dedicated to waste shipment inspection. However, the results from Hungary do not mean that the three inspections are of enormous length, but rather that this is potentially the limit available, given other inspection functions. This interaction with other inspection duties is also clear with regard to Croatia and the Czech Republic. Taking the figures overall and the average time for inspection, it should be possible for an inspector to undertake around 40-50 inspections per year.

Ultimately, the difficulty is that inspections are not a uniform undertaking. A random inspection might be undertaken to determine if there is anything immediately suspicious and, if there is nothing obvious, be stopped as random inspection of another container, etc., might be more beneficial. Once a full inspection is undertaken, its length may also vary, although procedures will require significant time input. However, discovery of unknown contents, unsafe conditions, etc., will inevitably lead to increased time requirements. Indeed, the UK Environment Agency in its response stated that it did not think the time for an individual inspection is a relevant consideration in the approach it uses as it does not aim for a specific number of inspections as measuring activity is not 'an effective measure of success – we look to employ a control strategy that delivers a number of outcomes including prevention and disruption of illegal waste shipments'.

It is probably not, therefore, appropriate to consider inspection activity rates that include inspections other than waste shipment inspection in relation to establishing criteria. However, it is important to note that some Member States do consider such inspection activity as a whole. Therefore, the planning of an inspectorate is likely to need to address inspection criteria beyond those developed for waste shipment inspection alone.

The time taken for an inspection will vary depending on the role of the inspectorate. Where Customs have significant expertise, initial checks by them (which may be undertaken relatively quickly) may determine whether there is an issue requiring more detailed inspection by environmental authorities. In such cases environmental inspections are likely to be more time consuming. Where environmental inspectors are more routinely involved in the initial checking, then the average time for inspection is likely to be shorter.

Assessing the efficiency of inspections in France

The Directorate for Pollution and Risk Prevention has established a new Efficiency Programme whose objectives are to improve the collective efficiency of French inspections and to explain better the inspection activity to the population. It builds on points contained in the RMCEI. This programme addresses the following topics:

- Organisation
- Monitoring/National follow-up
- Methodology and know-how
- Training/Certification of Inspectors
- Information Systems

- Communication
- International Involvement.

On monitoring or inspection, specifically, the Directorate prepares a National Yearly Action Plan based on thematic priorities. The Ministry also arranges general inspections of the environmental inspection function in Regional DRIREs. They appoint independent, experienced individuals for this purpose and about five such inspections are conducted every year, so each Regional DRIRE inspectorate is inspected about once every five years on the specific activity of environmental inspection.

8.8 Information for enforcement

Random inspection of containers in a port or of trucks on a road would result in very few discoveries of illegal waste transport. To be effective a Control Strategy or inspection programme needs information – what is the trend in production and transport of different types of waste, which companies and individuals are likely to act in an illegal way, what can learnt from previous inspections, etc. All of the enforcement institutions (inspectorate, police, Customs) gather information. Also other government bodies may have necessary information (e.g. other environmental bodies, tax authorities, etc.). This information needs to be systematised and available in order to be useful. Critically, such information must be shared and, to do this, some compatibility of systems is beneficial.

The following sections in this Chapter provide various examples of information and data sharing between institutions. Harmonised systems are important, as illustrated by the EUDIN example and the shared database in Hamburg in the Boxes below. However, there are information problems in the Member States. For example, WEEE data may not be adequately tracked between source and processing (changing from numbers to weight), allowing for leakage into illegal activity seen in Member States such as the UK. This may be addressed better in the Commission's WEEE Recast Proposal. This issue is beyond the immediate scope of WSR inspections, but illustrates the importance of data within other regulatory regimes supporting effective implementation of the WSR or within an overall Control Strategy. Some institutions may protect their data. For example, in England and Wales Customs works closely with the Environment Agency in enforcing the WSR. However, it does not yet provide the Agency with its shipping declaration database which would assist in identifying illegal transport patterns.

It is also important to note that effective implementation of the WSR does not only benefit from sharing of data between governmental authorities. In the Netherlands and England and Wales, for example, authorities have worked with shipping companies to receive information

from them on who is shipping, when and to what sites their containers are being sent for loading. This is in the interests of shipping agents, for whom waste shipment inspections represent delays and identification of illegal operators can reduce their business risks.

Given the wide variety of database systems, types of information and who holds the information, it is not possible to set detail system-specific criteria arising from Member State practice. However, the principles and approaches from best practice and the high value authorities place on this should be the subject of criteria to help stimulate action in this area where it is still needed.

Better co-ordinated information of notified shipments

The EUDIN initiative constitutes an IT-based system intended to simplify the previous fully paper-based administrative procedure to notify authorities of waste shipments within, into and out of the European Union. The EUDIN system offers the possibility for notifiers and the consignees to enter all legally demanded information into an electronic form for the authorities. All necessary data entered into the database are then examined by the authorities. The initiative was launched and developed as a joint project by the EU Member States Belgium and the Netherlands in the year 2000. Germany and Austria joined the project in 2001.

Information sharing between police and Customs in Hamburg

In Hamburg the police service is allowed to use the custom data base including information on ongoing transports and loads. The police can search for specific product codes (e.g. automobiles, EEE) and is able to initiate targeted controls on transports.

The establishment of a central data base with information on ongoing notification cases is seen as a good information tool for control activities. A database is established at the Federal Environmental Protection Agency which can be used by the concerned authorities using a password. In addition proposals were made to introduce data bases with photographs of significant examples.

Information sharing needs: England and Wales

The Environment Agency has an excellent working relationship with the police, but relations with other relevant bodies, such as customs and immigration, need to be developed. One example of where this could be beneficial is the Customs Handling of Import and Export Freight (CHIEF) system, which records the movement of goods by land, air and sea into and out of the UK. The CHIEF system does not currently alert customs officers to illegal shipments of waste (as such shipments are a low priority for customs officials), even if paperwork for the shipment has been filled out incorrectly. If the Environment Agency could gain access to the CHIEF system, this could be extremely useful for identifying and tracking illegal waste shipments. Customs have, however, agreed to enter some 'ghost profile' waste shipments into the CHIEF system to test how efficient it might be for identifying illegal shipments.

8.9 A control strategy and risk profiling: priorities for enforcement

The physical process of 'inspection' of a vehicle, container or site is important in delivering the objectives of the WSR. However, Member States have stressed the importance of broader control strategies to ensure that illegal waste export is reduced. It is evident from previous research (as noted earlier) and discussions with officials, that there is a significant enforcement 'gap' in most Member States in implementation of the WSR. Therefore, the organisation of enforcement action should determine what needs to be controlled and how it is to be controlled in a strategic way so as to guide the limited resources available for enforcement and achieve the maximum outcomes.

Risk profiling of waste is a key element of a Control Strategy, highlighted by Member States such as Germany, the Netherlands, Poland and the UK. A particular version of a strategic approach is the intelligence-led approach and this is addressed later in this sub-section. Risk profiling builds on the work undertaken within Customs (see earlier), but a Control Strategy also sets out the response to these identified risks. Responses to the project questionnaire indicated that the following elements are important in a Control Strategy:

- What waste is generated?
 - Where is it generated?
 - What is the type(s) of waste?
 - By whom is it generated?
 - How is that waste managed (or is supposed to be managed)?

- What regulatory regimes apply to the waste generation and what objectives/requirements does this impose?
- How is the waste moved?
 - Why is it moved?
 - By whom is it moved?
 - To where is it moved?
 - What regulatory regimes apply to the waste movement and what objectives/requirements does this impose?
- What is the waste destination?
 - What type of site/operator, etc., receives the waste?
 - Where is the waste received?
 - What happens to the waste?
 - What regulatory regimes apply to this waste and what objectives/requirements does this impose?
- Is there a link with other illegal activity?
 - Are the operators/transporters, etc., undertaking other illegal activity?
 - If so, what types of activity?
 - Who is involved in tackling this illegal activity?
- What enforcement response is required?
 - What inspection of other activity is needed?
 - Which organisation should do this?
 - Where and when should this be done?

The following Boxes outline the risk assessment process in the Netherlands and how this has been translated into a detailed list of priorities for waste shipment control.

Effective risk profiling leading to a Control Strategy is needed both because there is an implementation gap that needs to be addressed and because authorities have limited resources that they need to deploy effectively. Risk profiling is also an accepted practice across different authorities and a Control Strategy based on clear information provides a firm basis for co-operative working relationships – one based on fact, not hypothesis.

It is, therefore, important that criteria are developed to assist in the development and use of risk profiling and Control Strategies by the Member State authorities.

Risk assessment in the Netherlands

In the Netherlands the National Waste Plan examined about 80 waste streams, checking each against a series of risk factors. This has to be done every year, taking account, for example, of changing markets in China, demand for raw materials, etc. This assessment includes the risk of illegal export. It also identifies waste streams where there is insufficient knowledge. The 2008 assessment highlighted WEEE and plastics in this regard, so stimulating further investigation. For example, about a third of WEEE in the country arises in the Netherlands, the remainder is transported to it. Therefore, significant control actions are able to be taken up-stream of the WSR port controls under other regulatory regimes.

The inspection strategy development in the Netherlands

To determine the best inspection strategy for e.g. a certain waste stream authorities in the Netherlands examine the following elements:

Element 1

- Clearly define the target group and the rules they have to comply with.

Element 2

- Gather information about the compliance behaviour of the target group.
- The aim is to get an insight into the target group compliance behaviour and the motives for that behaviour.

The following factors may influence the compliance behaviour of the target group:

- The familiarity with and clarity of legislation among the target group.
- The tangible/intangible advantages and disadvantages arising from compliance or non-compliance with the rule(s), expressed in time, money and effort.
- The extent to which the policy and legislation is considered acceptable by the target group.
- The extent to which the target group respects the government's authority.
- The risk, as estimated by the target group, of positive or negative reactions on their behaviour from others than the authorities.
- The risk, as estimated by the target group, of a violation detected by persons or

bodies other than the authorities, being reported to a government body.

- The risk, as estimated by the target group, of an inspection by the authorities.
- The risk, as estimated by the target group, of a violation being detected in an inspection carried out by the authorities.
- The perceived risk of inspection and detection of a violation resulting from being selected for inspection out of a larger population.
- The risk, as estimated by the target group, of a sanction being imposed if an inspection reveals that a rule has been broken.
- The severity and nature of the sanction associated with the violation and additional disadvantages of being sanctioned.

Element 3

- Determining the inspection strategy
- Based on insights on the compliance behaviour the proper inspection strategy can be determined.
- Generally speaking the strategy will depend on the specific tendency of the target group to comply or not to comply and the factors that lead to this tendency.

Priorities for waste shipment control in the Netherlands

On waste shipment the Inspectorate for Housing, Spatial Planning and the Environment has identified the following as its priorities for 2009:

- carrying out targeted enforcement actions for risky waste streams (including action in cooperation with Customs) and acting against illegal situations under the WSR;
- preventing unsafe and non-sustainable processing of waste (dumping) in non-OECD countries;
- confining cross-border circumvention;
- strengthening international cooperation by means of joint actions and inspections, including an exchange of knowledge and information, through IMPEL-TFS;
- setting up cooperation agreements with the authorities in Africa and in Southeast Asia in order to conduct better enforcement for waste streams;
- initiating, directing/conducting a series of international enforcement actions in Europe, aimed at creating a level playing field for waste trading;
- facilitating the forming of a permanent enforcement structure for the WSR in the EU;
- supporting the work of the WSR network in the Netherlands;

- optimising cooperation with WSR enforcement partners;
- strengthening information-driven enforcement and the development of instruments.

An intelligence led approach

An important development in the implementation of the WSR is the development of the intelligence led approach. Elements of this can be seen in a number of Member States, although this has become the principle approach of the enforcement strategy of England and Wales through its Securing Compliant Waste Export Project (see Box below).

The approach changes the thinking of control activity from the inspection of controlled activities to addressing the problems from the point of view of tackling criminal activity. To undertake this approach, the England and Wales Environment Agency has, for example, recruited staff with experience in the police, familiar with organised crime. The approach also requires close co-operation with the police, as those involved with criminal waste activity are often involved in other illegal activities, such as money laundering, drugs, etc. Indeed, it has been noted that criminals may be less careful to hide their illegal waste activities than other activities and, therefore, the police may welcome action on waste shipment controls as this may provide the route to prevent other crimes.

The intelligence led approach requires a changed attitude to individual waste shipment cases. Authorities may, for example, be fully aware of a container of illegal waste being shipped. However, it may not be in the longer-term interest to inspect and prevent this shipment as intelligence is being gathered on the wider illegal activity. This is common in a number of police criminal investigation procedures. Ensuring sufficient intelligence is gathered to take out the entire operation in the future has larger benefits than control of a single container.

The role of inspection changes in the intelligence led approach. It is no longer the primary means for determining that illegal waste movement is taking place. This has generally already been determined. Instead, inspection may be used simply to confirm what is already known and provide the evidence for prosecution. It may also be used to gather further evidence, such as helping to trace sources of waste.

The intelligence led approach is resource intensive. It requires significant staff numbers to gather and process the information, looking for links between individuals, companies, addresses, shipping companies, etc., as well as how this links to other criminal activity. It requires close interaction with police and customs, as well as private operators, such as shipping companies. It also requires a change in attitude of staff in the enforcement institutions.

The intelligence led approach is proving effective, but is still under development. However, where Member States can devote sufficient resources, it is appropriate. It should, however, be noted that while the approach may not yet be possible in all Member States, the principles and elements of it can be applied on occasion. Where systematic intelligence gathering is outwith the capacity of some institutions, intelligence may still be obtained and used.

In relation to the development of inspection criteria, it is important to note the role of the intelligence led approach in effective enforcement of the WSR. In this approach inspection is a tool with a particular purpose. Therefore, it is important that the criteria that are developed are formulated in such a way as to ensure that this approach is allowed to develop. For this reason, it will be seen that a key set of criteria set out later in this report refer to the need for a control strategy to guide inspection (and other enforcement activity). This would include the intelligence led approach. Discussions with officials have indicated that the approach is not compatible with setting particular targets for numbers of inspections, etc.. Inspections will take place more or less frequently, depending upon the state of the criminal investigation. The strategy, therefore, guides the inspection activity.

The Securing Compliant Waste Export Project in England and Wales

The key elements of the project are:

1. Detection and intervention – identifying what is currently happening in terms of illegal waste shipments and creating a ‘control strategy’ to address the problem. The aim is to make an example of major offenders in order to deter others from undertaking illegal shipments. Preventative measures are also being developed, including informing companies/government departments/local authorities etc of the fact that WEEE that they generate is (or may be) being illegally shipped. In many cases this will result in an immediate change of contractor and resolution of the problem. Another preventative measure at the disposal of the Environment Agency is the revocation of licences.
2. Investigations – five former high-ranking police officers are charged with producing files on identified cases of illegal waste shipments which should help to lead to criminal prosecutions (under the Proceeds of Crime Act 2002).
3. Data and information – identifying data that the Environment Agency has and does not have (e.g. on hazardous waste, waste returns, waste flows), working out what information is useful and not useful, and also how available data can best be used.
4. Compliance – changing how the Environment Agency operates, to ensure a successful legacy of the project and application of its findings in the day-to-day work

of the Environment Agency.

5. Policy – looking at roles and responsibilities, including links with Defra (the relevant Ministry), and also identifying necessary changes in policy and legislation to tackle illegal waste shipments.
6. Communications – both internal, ensuring communication with the local area teams of the Environment Agency (the Agency has 8 regions and 24 areas, each of which has an environmental crime team), and external, with shippers of waste, waste producers etc.
7. Intelligence – the project has 10 project officers nationally across England, who undertake ‘footwork’ including actually visiting sites, companies that are suspected of undertaking illegal shipments, etc. The intelligence-led approach is seen as critical to the success of the project – officers are briefed prior to site visits to enable them to concentrate on the key issues and not have to waste time on asking basic questions.

8.10 Inspection planning

One of the main elements of the RMCEI is the requirement for inspection plans, setting out what needs to be controlled and how this is to be undertaken. Planning is a critical element for all types of inspection work and the Member States do adopt plans relating to waste shipment inspection. Planning will be undertaken by the competent authorities at what ever level they are established – national, regional or local – as described earlier.

Planning for inspection, however, is established in different ways. These are characterised, with examples, below:

- A single authority may set out a plan for inspection activity related specifically to waste shipment inspection.
- A single authority may set out a plan for waste regulation, including waste shipment issues. This is not the most common approach, although the planning within VROM in the Netherlands with its National Waste Plan may be so characterised. Having established risk profiles for waste streams, planning for different types of control (including inspection) activity is undertaken and communicated to partner organisations.
- A national authority may plan control activities with other partner organisations relating to waste shipment regulation. This is perhaps best exemplified by the

intelligence-led approach of the England and Wales Environment Agency, where inspection activity is planned within the framework of this broader planning framework.

- An environmental authority may develop an inspection plan for environmental inspections, of which waste shipment inspection is a part. This is commonly the case where inspectors are not dedicated to WSR inspection, but undertake a wide range of inspection functions. An example is the inspection planning of the regions (Voivodships) in Poland, where regional inspection plans are set out addressing priorities and inspection objectives for all environmental inspections for which the region has competence. These aim to follow the RMCEI, but do include inspections under the WSR.
- Planning may be undertaken at the local level as a joint activity by all enforcement bodies. This is perhaps best directed for operations at major ports. An example is Antwerp, where the Federal and Flanders inspectorates (and offices of these), the police and Customs develop a single control plan for the port, which sets out the inspection objectives and control targets for each of the relevant authorities and how co-operation will take place.

While many Member States undertake inspection planning of one type or another, there are problems. For example, Hungary has only developed its first inspection plan (not limited to WSR inspections) in 2009 and Sweden undertakes inspection planning for controlled installations and yearly planning in harbours, but as this requires agreement with the Customs, Police and Coast Guard, the process is reported as 'complicated' and therefore difficult 'to plan on a long term basis'.

Authorities indicated to the project that the following elements were, variously, considered to be essential elements in inspection planning:

- Preliminary risk analysis, taking into account the experiences (risk indicators) of the past.
- Identification of the biggest waste transporters, the expectable time and route (with border crossing points) of their shipments – port profiling.
- Assessment of the frequency of waste shipments, and the amount and characteristics of waste shipped on various roads.
- Information on the shipping agents and shipping lines involved in waste transport internationally.
- Objectives of the inspections.
- Expected output of the inspection work (reports, preparation of follow-up activities).

- Designation of the exact time, place and type of inspections from the information available.
- Taking into account the effective number of inspectors that are available and that are working on the field.
- The budget available for executing these inspections.
- Equipment available for the inspections.
- Human resources, i.e. availability of inspectors and prioritisation according to information provided by customs as well as regarding previous annual reports.
- Setting out the organisation of routine and non-routine inspections. The previous year's inspection results to be used in the planning for the next years inspections.
- The expected number of joint inspections with other Member States.
- Effective cooperation with those that provides data (shipments permitted, detailed information on consents with conditions).
- Importantly, the intelligence and implementation of plans should be reviewed, so aiding the next planning round.

Additional desirable elements of inspection planning highlighted in the project by the Member State authorities included:

- A clear listing/description of the different infractions, referring to the articles and annexes in the Regulation 1013/2006.
- Training of staff, exchanging of experience between different inspection authorities.
- Availability of other competent authorities from the neighbouring countries.
- International Customs Inspections and exchange inspections under IMPEL Enforcement Projects.
- Direct collaboration with transport carrier organisations and inspection teams of competent authorities, e.g. of neighbour countries.
- Collaboration and exchange of experiences with inspection teams of other sectors, e.g. inspection teams of operation permits.

Inspection planning in the Netherlands

In order to be able to use the available manpower efficiently, the Inspectorate for Housing, Spatial Planning and the Environment has developed a compliance strategy. The compliance strategy sets out a number of basic principles for the Inspectorate for Housing, Spatial Planning and the Environment, including the compliance deficit, the reasons for non-compliance, opportunities to cooperate on enforcement, and prioritisation. On the basis of

these principles, all statutory tasks are assessed and classified according to risk in the areas of health, safety, sustainability and social welfare, and the likely compliance deficit. The Inspectorate sets its enforcement priorities each year on the basis of this classification. These priorities essentially only apply to the Inspectorate, but they are also sent to the enforcement partners in the form of a 'letter of priorities'.

Planning in Austria

In Austria there is a yearly plan of waste shipment inspection and control. The political minimum criteria are two or three big waste-related road controls near the borders. The decision making process to determine when to carry out a business control is based on a notification. The yearly plan is the basis of the controls that are carried out, but it is flexible to take account of events to influence the plan in practice and lead to modification. For example, it was discovered in 2008 that batteries 'disappear', so battery producing companies/take-back have been controlled. A similar case has regarded glycerin fibres.

Inspection planning in Poland

The regional authorities undertake annual inspection planning, while the national Chief Inspectorate can lay down certain priorities. This yearly planning is updated monthly according to current needs and events. At times, there is also a focus on certain substances in connection with waste shipment controls: e.g. secondary fuels (refuse-derived fuels) imported into Poland and to be incinerated in cement kilns.

8.11 Procedures for inspection

8.11.1 Introduction

Inspection activity can be broken down into a series of stages and activities. Member States have variously adopted procedures or identified good practice in relation to each of these. This section firstly examines the preparation for an inspection. It then considers whether there is a view on where to inspect and then the procedures for an inspection. It then considers the equipment necessary to support inspection, inspection follow-up and sampling and analysis.

8.11.2 Preparation for an inspection

All inspections require preparation. Where detailed control strategies, such as the intelligence-led approach, are in place, inspections may be prepared for in great detail – many weeks ahead as part of the criminal enforcement process. However, more routine inspection activity also requires preparation. IMPEL members considered that the following are important elements in inspection preparation:

- To be clear of the purpose of the inspection.
- Being informed about information concerning authorised transports.
- Review previous inspection reports relating to the same operator.
- Review any administrative information, e.g. permits, etc., when inspecting a waste company.
- Determining the equipment necessary.
- Ensuring good documentation is available.
- Ensuring good communication and co-operation with other authorities.
- Working with relevant stakeholders such as waste companies, shipping agents and shipping lines to ensure effective co-operation.
- Preliminary study and selection of export documents (port controls).
- Good guidelines (e.g. the correspondents guidelines concerning e-waste).

Planning an inspection in Austria

One type of inspection approach is the so-called co-ordinated controls that are specifically targeted at detection of illegal waste shipments. They are planned in detail by the Federal Ministry of Environment (Lebensministerium, LM) and the Federal Criminal Office (Bundeskriminalamt, BKA). The BKA has one department dealing with “environmental crimes”, among which features illegal waste shipment. The LM and BKA meet several times a year in order to lay down the focus of the upcoming controls, the concrete organization (number of inspectors, equipment) is then co-ordinated with the local authorities. On average, 2-4 focus controls (duration one week) are planned this way a year in different Austrian regions. The controls focus on certain regions (Bundesländer) but the checkpoints vary within the week in order to improve effectiveness (the way of rotation is also determined by the circumstances on site, if it becomes clear that the frequency of trucks decreases as a consequence of the control having become known, the checkpoints are changed). Controls are not only carried out on motorways, federal streets but also on harbours.

Planning for an inspection in France

For the inspection of waste containers a meeting is usually organised with a DRIRE agent/inspector. The opening of the waste container is done in the presence of the “declaring persons” (persons responsible for carrying out the waste shipment). Planning is informed by the development of risk profiles are established on the criteria: field of economic activities (whether they are trading/dealing with waste), countries of destination, low costs, etc.

Triggering inspections in Lower Bavaria

The Regierung of Lower Bavaria is one of eight “governments” that govern parts of Bavaria. Many controls are triggered by hints of any kind, also by press reports. There have been hints that wood which is not subject to the green list of the Waste Shipment Regulation is shipped out of Germany without the obligatory notification procedure. Also the hints given by the authorities of a lower level (see above waste authorities), the police or the Federal Office of Good Transport are of high relevance.

As regards controls triggered by notification procedures, the Regierung takes a closer look at notified materials which are “problematic” as they are inconsistent in their composition such as extracted soil or light fraction that are the output of shredding processes. Another such waste stream is waste soil from contaminated land. The Regierungen concentrate also on certain substances that have become known to be shipped out of Germany illegally, especially WEEE and PCB-containing condensators.

8.11.3 Where to inspect

The most common response from Member States to this question in the project is that inspection should take place where it is most effective, convenient or wherever an offence has been committed. Authorities report that experience is the key to directing inspection location. Importantly, the location of inspections should be directed by the results of Control Strategies and inspection plans. Where illegal activity is best tackled through inspection of a waste processing facility or through containers in a port, this is determined by the strategic approach being undertaken and the information available. In some cases it is necessary for the inspection to be at the border. Waste may be moved legally, but only become illegal as an attempt is made to move it across the border. So, for example, in Ireland officers will track

trucks moving waste, only stopping them at the border for inspection. In Poland there is the use of risk profiles for targeting inspections.

Only where waste is largely in one location (such as being transferred between vessels in a port), is the location of appropriate inspection obviously determined. Belgium noted the following as a particular guide to where to inspect:

- The most preferable way is to control at the origin/beginning of the chain: at the companies where the charge is loaded.
- At the most convenient place: road inspections are difficult, because time for inspection is very limited and one must work in difficult (sometimes dangerous) conditions. But inspection can provide a direct view can be made of the transport documents.
- Port inspections (containers): there is more time to do detailed inspections, but more often difficulties to obtain collaboration of terminal operators and to get the documents.
- Where transport could not be stopped at the point of origin, or during transportation: control at the final destination, but this requires excellent collaboration from the authorities of the destination countries.
- The location of the inspection might also reflect the ability of the inspectorate to act as it wishes without needing co-operation with others (see Box on the UK below).

It is, therefore, probably not appropriate to set out prescriptive criteria that would direct inspections to be undertaken at a particular location. Rather, it is appropriate to require that the Member States have the information and experience to direct inspection activity to ensure that it is at its most effective.

Example of deciding where to inspection: Belgium

In the project questionnaire response, an example was given of a truck stopped along a highway in the south of Belgium, containing used batteries and used tires. No notification or movement documents accompanied the transport. The destination was a quay in the Antwerp sea port and the final destination (according to truck driver) was Morocco. It was impossible to unlock the seals on the spot. So the decision was to make a report and photograph the truck on the spot with all useful information and let the transport continue to Antwerp, where a detailed physical inspection at the quay could be done by the inspectors of that port (including scanning of the container by Customs). The advantage of this approach is that inspection can

be done in a detailed and safe way. This requires good communication between the inspectors doing road inspections and their colleagues working in the ports.

Where to inspect: England and Wales

In the project questionnaire response from the Environment Agency it stated that, in the case of pre-notified shipment made under the prior notification procedures, it concentrates inspections at sites of origin and, in the case of imports, at destination facilities. It has a regulatory role at all sites to and from which notified waste is moved, so it considers that this makes the best use of its inspection resources.

For inspections on shipments that have not been pre-notified, it concentrates inspection at sites of loading. Given the multiple potential points of exit from the UK and rapid transit times from the point of a container being filled to loaded on a ship, it considers this to be the best use of its resources. It also carries out some checks at ports, but this work is given a lower priority.

The Environment Agency maps waste export chains from cradle to grave, building the detail of parties and sites involved from intelligence gathered. This enables it to intervene at the point in the waste chain that most suits the Agency and means that it does not have to rely on other enforcement bodies such as the Customs.

Targeting transport inspections in Germany

The Federal Office of Good Transport (BAG) considers that the most important factors of effective inspection planning is the:

- attribution of responsibilities to inspectors,
- the identification of appropriate checkpoints (e.g. a space which is not too conspicuous and where trucks can be stopped and goods can be off-loaded and unpacked),
- suitable equipment.

In improving the effectiveness of planning, more inspections at night time should be planned as it is the experience of the BAG that more illegal waste shipment is done at night time. In night inspections, additional material (lamps, etc.) is needed and the requirements for the

checkpoint are more demanding. More generally, inspections should take place on most important routes for waste transport and established secret routes.

8.11.4 Undertaking an inspection

Once it has been decided to undertake an inspection and it has been properly prepared for, it is important that the processes of the inspection itself are undertaken in such a way as to determine effectively and efficiently whether the law is being complied with and provide the basis for follow-up to the inspection should non-compliance be detected.

Procedures for undertaking inspections are set out in various contexts. There may be specific guidance relating to waste shipment inspection. There may also be more general guidance on environmental inspection which is intended to encompass waste shipment inspection (such as in Member States where roles are integrated). Such procedures may be set out as internal documents and may be established within wider enforcement policies to guide the intensity of the inspection.

For example, in Germany the German Länder Working Group on Waste Issues (LAGA) has jointly produced the 20 February 2008 'Guidelines for the execution of the Waste Shipment Regulation' (Mitteilung der Bund-/Länderarbeitsgemeinschaft Abfall (LAGA) 25 – Vollzugshilfe zur Verordnung (EG) Nr. 1013/2006 des Europäischen Parlaments und des Rates vom 14. Juni 2006 über die Verbringung von Abfällen (VVA) und zum Abfallverbringungsgesetz vom 19. Juli 2007). This is supported by the 'Anlaufstellen', which provides guidelines for different waste streams. This example is interesting in that it is produced through inter-institutional co-operation.

The procedures that can be followed by an inspector will relate to the powers that they have available to them. It is, therefore, important that these are established in law and this is, indeed, generally the case. The following are typical powers of inspectors:

- Enter every place, with the exception of a dwelling, without the consent of the occupant, taking with him the requisite equipment.
- Gaining entry, if necessary, with the assistance of the police
- Requiring the provision of information
- Requiring inspection of proof of identity
- Requiring inspection of business information and documents

- Making copies
- Seizure of items
- Inspecting and measuring goods and taking samples
- Opening packages
- Taking items away for a short time for the purpose of inspection, measurement or sampling, in exchange for written receipt
- Stopping vehicles or vessels and detaining them for further investigation
- Requiring cooperation

The actions to be taken by inspectors can be summarised as follows:

- They first of all need to determine whether an inspection is safe to proceed with at that time, e.g. with regard to its location on a road, time of day, etc.
- Inspectors need to demonstrate to those they inspect that they have the official standing to undertake such activity, such as showing a badge of authority.
- They need to identify clearly whom they are inspecting, seeking proof of identification.
- They need to examine all of the available documentation. These documents may, inter alia, include:
 - Notification document
 - Movement document
 - Consignment note
 - Weight cards
 - CMR forms
- If the facilities are available (such as at a port), copies of these may be made.
- The inspectors should examine the documentation in detail, determining whether it is of the correct type, is consistent with what was expected or any other relationship with intelligence that may have led to the inspection (if appropriate). At this stage

some of the documentary details may need to be confirmed with the transporter through initial interview.

- Inspectors should record their actions during inspection, such as through paper or electronic means.
- If there is any suspicion of illegal activity (previously known intelligence, risk behaviour, incorrect documentation, etc.), then a physical examination of the cargo/waste is necessary.
- The transport should be opened in a safe manner (with requirements for use of safety equipment, etc.) and examined to the extent that the contents are fully understood. This may involve emptying a container completely to determine that waste is not concealed or that more hazardous waste is not concealed.
- If there is doubt about the legality of the shipment, such as whether the contents are waste, or in relation to the destination, the inspector should check this against background documentation.
- Inspectors shall examine all documentation available relating to the waste shipment being inspected and that that documentation is of the correct type and has been properly completed.
- Sampling of the waste may be required to determine its composition and/or its origin (see below).

If an infringement is detected, then it is necessary to decide what to do next. The enforcement policies of the Member States (see Annex VI) set out in fine detail what is appropriate in each case. Minor infringements may result in a warning, if there is a more serious potential infringement, then different levels of action may be required. The following list provides an example of a hierarchy of action that may be taken according to different circumstances:

1. Allow shipment to continue to original destination. Inform the competent authorities concerned.
2. Stop shipment and hold for further investigation. Inspect and measure goods and take samples if necessary. Hold shipment until the statutory regulations have been complied with, then release.
3. Stop shipment and hold for further investigation. Inspect and measure goods and take samples if necessary.

4. Stop shipment and hold for further investigation. Inspect and measure goods and take samples if necessary. Only allow shipment to continue after consultation with and with the agreement of the authorities concerned.
5. Stop shipment and hold for further investigation. Inspect and measure goods and take samples if necessary. Arrange for waste to be processed in an environmentally sound manner at the infringer's expense.

A key task that may be required during inspection is the taking of samples for further analysis. While this is the practice in some countries, this is not always the case. For example:

- Croatia reported that, according to regulations, testing of waste is not in the competency of Croatian environmental inspectors. The inspectors are authorised to request testing of the physical and chemical properties of waste via an authorised person.
- In the Czech Republic, all sampling cases require the use of a specialised professional service.

Some Member States (e.g. Luxembourg) reported that they have no experience in this issue and others (e.g. Hungary) considered that visual identification of the waste is sufficient. Sweden commented that sampling and testing would need to be done at the site of origin of the waste, indicating that the practice is not in place for transport inspections.

In contrast, other Member States do undertake sampling and testing. Member States such as Belgium, France, Germany, the Netherlands and the UK state that good sampling procedures should be followed, such as set out under the Basel Convention and certified laboratories should be used. In the Netherlands, for example, VROM has a specific contract with RIVM for this purpose. Sampling may also be undertaken by other bodies, such as Customs and police – independently and in co-operation with the inspectorate. In such cases it is good practice to have agreed procedures (including on budget) for such activity (see Box below for an example).

Overall, there is clearly a gap between Member States with relatively small inspectorates that undertake limited or no sampling and testing of waste and those with larger inspectorates where such activity is undertaken. Importantly, where such activity is undertaken, there is no concern over the quality of the results, including their ability to be used as enforcement evidence. Criteria need to be established to promote good practice in this regard, where it is seen as important to ensure effective enforcement.

A guidance manual in Ireland

The Environmental Enforcement Network in Ireland has developed a guidance manual for use by all enforcement personnel. The overall purpose of the manual is to provide useful and practical guidance on a range of subjects that should assist local authorities in the carrying out of their statutory environmental functions. This guidance has resulted from the activities of the various working groups established by the Network and specialist studies commissioned by the Office of Environmental Enforcement. The manual is divided into five sections to facilitate finding material and adding new material. Section 1 gives some background regarding the structure and priorities of the EEN, and details the functions and relationships between the regulatory bodies in the Network. Section 2 provides guidance on general enforcement topics including evidence gathering, court preparation, complaint handling and RMCEI. Sections 3, 4 and 5 related to specialised guidance concerning waste, water and other enforcement activities respectively.

Draft guidance for inspections in Sweden

The Swedish Environmental Protection Agency has produced drafts of a checklist guidance intended for the inspections on waste shipment performed by the County Administrative Boards and municipalities. For all types of transport, inspectors should record:

- Date of inspection, name and contact details of those being inspected.
- Reporting under 2001 Swedish Waste Act
- Export hazardous/non-hazardous waste?
- Selling or handing over waste to a broker?

Where it is identified that export is illegal, for each waste type transported illegally, the following questions need to be answered:

- When the transport took place?
- Amounts involved?
- Who was the transporter?
- Who is the recipient?

- Contact details?

- Had the waste been treated by an installation?

The checklist and guidance provide further requirements on the authorities for recording waste movements in different circumstances. After the inspection the inspector always ought to complete an inspection report. In case measures are required these should be in the form of requirements or prohibitions.

Procedures between Customs and Inspectorate in Croatia

In the project questionnaire response, an example was given that, if during customs supervision at the border crossing or at the customs office, an employee of the Customs Administration establishes that there is reasonable doubt that the goods listed in the accompanying document do not correspond to the type of goods contained in the shipment, or that there is suspicion of illegal movement of waste, the employee immediately informed the department for inspectional supervision of the competent regional unit of the Ministry and detain the disputable shipment until the arrival of the inspector to establish the facts.

Sampling, the inspectorate and the police in the Netherlands

The National Police Services Agency will take samples for prosecution/criminal proceedings or indicative purposes as part of the supervision maintained over compliance with waste legislation (Environmental Management Act-Regulation 1013/2006). The National Police Services Agency will ensure that certificated samplers are used for this purpose. If sampling and analysis are necessary for a criminal investigation being conducted independently by the National Police Services Agency, the costs that are incurred in this respect will not be charged to the VROM Inspectorate.

If a case is being dealt with in co-operation with or on the instructions of the VROM Inspectorate, the sampling will take place in consultation with the Inspectorate. The VROM Inspectorate will set the parameters to be examined, choose the laboratory that can best examine the sample and provide the report. The VROM Inspectorate will bear the costs of these activities. The same applies to indicative samples taken as part of the supervisory task of the National Police Services Agency to obtain a better picture of compliance with waste legislation. For this purpose, the parties will agree arrangements beforehand about the nature

of the waste streams for which sampling is useful.

In these cases, the National Police Services Agency will contact the National Notification and Information Desk of the VROM Inspectorate prior to sampling in order to submit for assessment the specific waste stream and the parameters to be analysed.

The VROM Inspectorate will indicate in good time when the budget available for the National Police Services Agency for performance of analyses has almost been used up. Each year there will be an evaluation of the results of sampling and analysis. Each year the budget will be set for the analyses to be performed.

8.11.5 Inspection equipment

Inspectors require the right equipment to carry out their inspections. This equipment can be divided into four types:

- Equipment necessary to protect the safety of the inspector and those around them.
- Equipment necessary to gain access and/or examine the object being inspected.
- Equipment necessary to undertake inspection administration.
- Equipment necessary to take and store samples for subsequent analysis.

Member State inspectors are required to follow strict health and safety procedures. This includes, where appropriate, wearing protective clothing and using analysers to assess the atmosphere of containers prior to entry. Such requirements are often set out in health and safety legislation and it is appropriate that inspection criteria require that these obligations are adhered to.

The equipment for accessing the object for inspection varies between the Member States. An important and valued type of equipment is scanners that enable containers, etc., to be viewed without opening. The Customs in Rotterdam has such a scanner and these are also found in other authorities (see the Box example from France). Scanners are not only a means of 'inspection', they enable checks to be made much more quickly than is possible through opening and searching a container (especially as illegal waste, for example, may be hidden at the back). Scanners are expensive and are likely only to be appropriate where there is significant traffic that Customs wishes to assess. It is also important to note that Customs use scanners for other purposes (e.g. detecting false cavities, illegal immigration, etc.), so that their availability for use in assessing containers for waste export may be limited.

Otherwise, the equipment reported by the Member States is similar – where access cannot be gained through co-operation of the operator, cutters may be needed, torches, places to store unloaded material, etc.

The inspection is an administrative process, with inspectors required to record their findings. Some may do this in written form, others electronically, with possession of a lap-top, or similar, at the inspection. To support the inspection, inspectors may need access to significant information. For example, it may not be obvious if a particular cargo destined for a particular country is illegal waste. Unless an inspector has a deep knowledge of the subject (and noting that some Member States report skills gaps and some inspectors only undertake WSR inspections a minority of the time), this can be problematic. To go away and research the answer adds time to the inspection, reducing staff availability and taking up space in port or at the border, etc. It is, therefore, common for inspectors to have information with them. In the Netherlands, for example, all inspectors (from the different authorities) are issued with a USB stick containing all of the necessary legal, administrative and technical information necessary to perform and support an inspection.

Sampling of waste may be required on occasion. This may be necessary to provide evidence for subsequent enforcement action and/or to analyse to determine its composition, etc. Equipment necessary to do this is often standardised, with a range of storage containers for safe storage and transport. In most cases sampling is relatively straightforward. However, some waste may be hazardous or simply unpleasant. For example, where mixed municipal waste is being examined, it is important for equipment to be available to take representative samples not only on the surface of the waste.

Inspection equipment of the Customs in France

French Customs have a range of high-tech equipment available for targeting and carrying out inspections. The detection equipment includes particle detectors, mobile scanning vehicles, density meters, X-ray machines for containers and customs/safety inspections of hold luggage, and radioactivity detectors.

8.11.6 Inspection follow-up

Following an inspection, it is usual that a report of the inspection is made. The report records the place, date, time of inspection, the name of the inspector(s) and those inspected, the details of findings and any infringements related to those findings, together with supporting information. In the project, Luxembourg reported that elements of good-practice for follow-up activities are:

- To define what needs to be done after the inspection, and by when.
- To make a clear, complete report and hand it to all individuals concerned.
- To draw conclusions from inspection results.
- To take decisions based on inspection conclusions and implement the decisions.

An inspection report is an important legal document, which may be used as the basis for administrative or criminal sanctions and has, therefore, to be accurately completed. An example of key parts of a standard report from the Netherlands is provided in the Box below.

Producing a report is only part of the process. A number of inspection authorities have enforcement policies setting out in detail the administrative or criminal responses that are expected to be taken in response to different offences under the WSR. Examples are provided in Annex VI for England and Wales and the Netherlands. These guide the work of the inspector, who will contribute their expert findings and evidence to any proceedings. The WSR requires that effective penalties are in place to ensure implementation of the Regulation. However, details of enforcement procedures are largely one step beyond the setting of criteria for inspection itself.

A further important follow-up point stressed by some Member States (e.g. Belgium, the Czech Republic) is the need for the inspection reports to be placed on a database and for them to be shared with other authorities. Such reports form important intelligence to guide future inspection. If an environmental inspector uncovers illegal waste activity through inspection, then placing the results on a database may, for example, alert Customs when the company sends another container.

There is, therefore, good practice in inspection follow-up in the Member States that is appropriate to develop as criteria within this study.

Netherlands: Extract of an Official Report of Findings

Investigation [object of investigation]

Reporting Officers

I, the undersigned, [name], serving with the Inspectorate for Housing, Spatial Planning and the Environment [region], stationed at [place], also special investigation officer, with BOA commission no. [number], state as follows:

Background

[background to the investigation, legal authority to act]

Stopping

On [date] I stopped the suspect and asked him for his identity details. He gave his name as ...

Suspect 1

Name, Address, Place.

Information checked against an extract from the commercial register at the Chamber of Commerce and Industries for Utrecht and surrounding areas.

Identity checked by means of a valid Dutch passport in his name bearing number [number], containing a passport photograph which is a good likeness of the suspect.

Details of infringement:

Date committed: [date]
Time committed: [time]
Place committed: [place]
Municipality: [municipality]
Location: [location]

Suspected of the following infringements:

[description of elements of the infringement and the articles/sections infringed]

Punishable by virtue of

Section [section] of the Economic Offences Act

Inspection

Record observed offences and circumstances from own observations.

Description of elements of offence.

Description who the suspect(s) is (are) and why they are suspects.

[seizure etc..]

State the actions undertaken by the investigation officer

- seizure
- arrest(s), arraignment etc.
- demand information
- deploy third parties (Intelligence and Investigation Service (IOD), police, enforcers, supervisory bodies etc.)
- contact Public Prosecution Service

Official report of interview

The signed official report of interview of suspect [suspect's name] is appended to this official report (see Annex [number])

[Alternative] Statement of suspect/Statement of witness

After I, Reporting Officer [name], had informed the suspect of the offence of which he was suspected and having informed him that he was not obliged to answer, he stated the following:

Receipt

We, the Reporting Officers, have retained the said documents, with the suspect [suspect's name]'s permission, to make copies of them. I, Reporting Officer [reporting officer's name], gave the suspect [suspect's name] a receipt for the documents.

Summary

To summarise, the following infringements were committed:

[brief summary of the detected offences; do not draw any conclusions]

Note by Reporting Officers

[any notes by Reporting Officer(s)]

Follow-up by Customs in the Czech Republic

Where there is a detection or suspicion of breach of the obligations concerning cross-border shipments of waste the customs authorities submit without delay an application to the High state supervision and CEI to initiate administrative proceedings. The documentation shall include:

- A cover letter, in which the office briefly states the reasons for filing the complaint.
- Protocol.
- A confirmation of receipt of the deposit (if deposit has been saved).
- The photo and any other relevant information, such as the inspection results.

8.12 Co-operation between enforcement bodies

Co-operation between authorities is a critically important element in effective waste shipment inspection – co-operation between national inspectorates and customs or police and co-operation between national and sub-national inspectorates.

Co-operation can be carried out at various levels:

- At the strategic level, such as to undertake risk profiling of waste activities.
- At the process level, such as sharing of information and intelligence.
- At the operational level, such as undertaking joint inspections.

Views from officials in the Member States indicate that all types of co-operation are critically important.

The following Boxes provide a range of examples of co-operative activity. Overall, most Member States view the working relationships as good, although this has been difficult to judge. There are occasional known problems (as noted in England and Wales relating to database sharing with Customs – see earlier section). Where environmental authorities have been able to enhance working relationships with Customs and police this is probably particularly seen positively where the environmental authorities have limited resources.

It is seen as good practice that co-operative working relationships include the signing of formal agreements between authorities, such as Memoranda of Understanding. For example, in Poland there is a signed agreement for better cooperation between road inspectorate,

customs, border guards and environmental inspectors in terms of mutual support, information exchange and joint training. This has resulted in well established cooperation on central and regional level. The Annex on the Netherlands provides examples of Memoranda of Understanding signed between the VROM Inspectorate and the Customs and police, respectively. Such Memoranda of Understanding (or supporting documents to them) should set out the following:

- The purpose of the MoU.
- Who is agreeing the MoU and overseeing its implementation (e.g. Chief Executives of the institutions).
- The goals of each institution in relation to waste shipment controls.
- The legal powers and duties available to each institution.
- A statement of how each institution will exercise those powers and duties with regard to waste shipment controls.
- Agreed joint working relationships (see below).
- Information exchange procedures (see below).
- Points of contact.
- Process for review of the MoU, including regular review meetings at a high level.
- Period of validity

Given the importance of co-operative working relationships, it is, therefore, appropriate that criteria are developed to ensure not only that these occur, but that they occur efficiently and are directed to effective enforcement of the WSR.

Co-operation in the Netherlands

In the Netherlands Inspections are carried out in cooperation with:

- the Dutch National Police Services Force (Korps Landelijke Politiediensten - KLPD)
- the Dutch Transport and Water Management Inspectorate (Inspectie Verkeer en Waterstaat - RVI)
- The Dutch Regional Police Force

- Dutch Customs
- Dutch Provinces

Cooperation between the relevant organisations is formalised in an agreement and brought into practice via joint inspections. The VROM-Inspectorate gives support to customs and police officers. In simple cases Customs and Police carry out criminal enforcement actions themselves; in other cases they contact the VROM-Inspectorate and hand the case over to them. Administrative enforcement actions are always taken by the VROM Inspectorate. The VROM Inspectorate cooperates with environmental specialists within customs, the police and the Traffic Inspectorate of the Ministry of Traffic and Waterworks, exchanging information on a case-by-case basis.

Co-operation in France

The authorities responsible for the control and inspection of waste shipments in France include the DRIREs, Customs, Military Police, and the OCLAESP. In terms of co-operation and co-ordination between the different authorities, a meeting was held between the different agents involved before the WSR came into force for information and knowledge exchange. In addition, joint action is undertaken at borders and ports (both sea and river ports). Expertise consultation is carried out if there is any doubt on the contents of a specific container of waste. Finally, all government agencies are alerted of the identification of companies and waste producers responsible for and who have a record of waste shipment violations.

Enforcement network in Ireland

The Environmental Enforcement Network (EEN) was created in 2004 to provide a vehicle for public bodies involved in environmental protection and regulation to work together to achieve more consistent and effective enforcement of environmental legislation. The main bodies in the network are:

- EPA's Office of Environmental Enforcement (OEE)
- Local Authorities
- Government Departments

- Gardaí and some specific Garda units including Criminal Assets Bureau

A working group under the Network was set up to deal with illegal waste movements out of the Republic of Ireland. This working group uses the combined skills of the local authorities, the EPA, government departments, An Garda Síochána, the National Bureau of Criminal Investigations, and the Environment and Heritage Service in Northern Ireland to identify the issues that need to be tackled in relation to TFS and to work together towards better enforcement. Some of the achievements of the enforcement network to date:

- Improved communication on topics and issues.
- Increased coordination of enforcement activity on both sides of the Border leading to a major reduction in the illegal trafficking of waste from the Republic of Ireland to Northern Ireland.
- Crackdown on individuals suspected of involvement in illegal trafficking of waste to Northern Ireland.
- Reduction in illegal trafficking of waste to mainland Europe and beyond through tightening up of procedures for controlling the transfrontier shipment of waste abroad, stepping up of inspections at ports and increased involvement by local authorities in international coordinated inspections of waste loads.
- Quantification of the scale of illegal waste activity in Ireland.
- Greater awareness by manufacturers and distributors of packaged products about their obligations to reduce, reuse and recycle packaging through increased enforcement effort.
- Capacity building and knowledge management has been enhanced through training.

Co-operation in Lower Bavaria

Co-operation between the police, Customs and the Federal Office of Good Transport is very important. The Regierung has carried out different training seminars with each the police, customs and the Federal Office of Good Transport. Once or twice a year there is a common meeting with all the concerned parties to debate the most important cases of waste shipment and control techniques.

Germany – co-operation between transport police and environment

When the Federal Office of Good Transport (BAG) or the police, as control authority, has discovered suspicious goods that could be waste without the necessary documents, the waste shipment authority is contacted to inspect the goods identified. The immediate contact to the waste authorities is often important to find out if the good in question is waste. There is the possibility to call waste authorities to the control site for analytical assistance. If the control is done outside usual office times, pictures are taken and sent to the authority on the day following the control for comment.

In order to promote good co-operation between the BAG and the waste shipment authorities, the internal BAG personnel conduct guidelines include provisions on contact and collaboration of BAG personnel with representatives of other authorities.

Co-operation between authorities in the Czech Republic

There is formal and informal co-operation between the authorities enforcing the WSR in the Czech Republic – the Ministry of the Environment, Czech Environmental Inspection (CEI), Customs and the Police. Such co-operation is required under the law on waste. As a result various actions have been taken, including:

- A written agreement on co-operation.
- Establishment of an ad hoc working group of the Ministry of the Environment, CEI, Customs and police.
- Undertaking joint training.

Co-operation between authorities in Poland

Poland has instituted a Waste Shipment Expert Panel. This panel has one expert from each regional inspectorate that has been designated as having discretion over waste shipment as well as representatives from the Chief Inspectorate of Environmental Inspection. Also representatives from Customs take part in these meetings. At these meetings, the most complicated cases of waste shipment are discussed. It was deemed very important that the

same participants take part in every meeting.

There is a memorandum of understanding between the different authorities, e.g. the custom services and the Chief Inspectorate of Environmental Inspection/regional inspectorates laying down minimum standards of the co-operations, e.g. what minimum quality information given by the Chief Inspectorate should have or what the maximum reaction time should be. Regional memoranda are signed on a regional level which go more into detail but take up at least the standard as the national memorandum.

Challenges for co-operation within the England and Wales Environment Agency

Communication and cooperation between environmental crime teams in the different Environment Agency regions and areas is not optimised. Lack of communication can result in illegal shipments going undetected, or useful information not being passed on. One example was that parallel investigations were being undertaken in the North-West, South-West and Thames regions without each region having knowledge of the other investigations. As illegal waste shipment operations are very frequently national operations, or at least connected in some way with similar operations in other parts of the country, this can result in only a small part of the problem being tackled. A 'big picture' national approach is needed to identify the key actors to remove from the shipment chain to have the maximum possible impact. The aim is therefore to move towards an intelligence-led approach, which represents somewhat of a culture change for the Environment Agency.

8.13 Transboundary co-operation

Article 50 of the WSR specifically highlights the potential for co-operation of authorities between Member States in inspection and enforcement of waste shipment requirements. Much waste moves across borders and this presents a major problem for enforcement bodies. Waste arriving by road, train, river or sea at ports for final departure from the EU may have lost much of the information for the downstream Member State authority to make informed inspection choices. A particular domestic company in the Netherlands might raise suspicions and trigger inspection in Rotterdam. Illegal waste from a company in the UK known for its illegal activity might not, however, trigger inspection in Rotterdam.

Member State authorities have stressed the importance of improved transboundary co-operation, seeking to track waste, reduce port-hopping, etc. Examples are given below for Ireland and the Netherlands, which have resulted in better enforcement. Other examples in

this Chapter highlight co-operation in other areas, such as police co-operation between Austria, Bavaria and the Czech Republic, tracking particular vehicles. Criteria to support such activity should be developed.

While such co-operation is good practice, there is a question over the full sharing of data. The databases developed by national enforcement bodies (and in best practice cases shared between authorities in the Member State) contain information that might be problematic to share outside the country. Clearly, such sharing of data would enhance enforcement and enable better targeting of inspections. This should be promoted, but it is perhaps too controversial to propose criteria to address this. However, the sharing of such information could be examined bilaterally and by the Commission and within IMPEL TFS.

It is also important to stress that transboundary co-operation with third countries is also beneficial. It is, perhaps, beyond the expectations of some smaller Member States to established detailed collaboration with China or India on waste, nor might those countries welcome multiple collaborative working with all 27 Member States (and other OECD countries). However, larger Member States have developed working relationships, such as the UK and the Netherlands. The latter has signed Memoranda of Understanding with Ghana, China and India, a copy of the former being in the Annex to this report. Intelligence gathered in these countries is important to authorities in identifying criminals within the Member State. The exact nature of such relationships to support inspection is difficult to prescribe and is a developing area. However, it is appropriate to consider a criterion that Member States should explore the benefits of closer working agreements with third country authorities.

Transboundary co-operation: Ireland and the UK

A working group under the Irish Environmental Enforcement Network (see above) was set up to deal with illegal waste movements out of the Republic of Ireland. This working group uses the combined skills of the local authorities, the EPA, government departments, An Garda Síochána, the National Bureau of Criminal Investigations, and the, then, Environment and Heritage Service in Northern Ireland to identify the issues that need to be tackled in relation to TFS and to work together towards better enforcement.

Joint operations are also important. For example, a swoop on a number of waste facilities and warehouses was conducted in December 2004, which involved over 20 inspectors from the EPA and over 40 Gardai. Ten facilities were raided at the same time that day with additional co-ordinated raids conducted in Northern Ireland and Scotland.

Transboundary co-operation: the Netherlands

VROM has different levels of co-operative working with other Member States. With Belgium and Germany, co-operation is at the level of individual inspectors, but there is close co-operation, e.g. helping to track waste diverted to Antwerp and Hamburg and so reduce port-hopping. There is also a specific project examining waste movement along the Rhine. As considerable quantities of waste are shipped from the UK, a formal Memorandum of Understanding (set out in the Annex) has been agreed with the England and Wales Environment Agency. The Netherlands has also sought to work closely with authorities in third countries, such as Ghana, China and India.

8.14 Skills and training

Staff may be recruited with particular skills, but it will be important that authorities have training programmes to enhance the competence of new and existing staff. Member States indicated a range of skills that may be required of new inspection staff:

- Technical knowledge (examples given included graduate in mechanical engineering, chemical technology, food biotechnology, natural science and mathematics, agriculture, pharmaceutical-biochemistry, medicine, veterinary medicine, forestry, geology and mining and occupational safety).
- Legal knowledge.
- A number of years experience (e.g. five, ten).
- Foreign language skills.
- Assertiveness, objectivity, punctuality, perseverance, team spirit.

The project questionnaire to IMPEL TFS members asked for views on what particular skills are required of staff and what training should cover. The issues included:

- Legal training in the WSR, related waste legislation and other related legislation affecting transboundary activity.
- Understanding waste generation, transport and its environmental impacts.
- The documentation necessary for waste shipment and other customs declaration.
- The information systems for tracking waste generation and movement.

- The administrative procedures for undertaking an inspection.
- The processes for opening, checking and assessment of waste shipments.
- The procedures for taking samples, transporting and processing them.
- Compiling reports on inspections.
- The procedures for compiling evidence necessary for prosecution, etc.
- Court procedures, role of an expert witness, etc.
- Health and safety procedures.

There are various reasons for training:

- Staff need to understand the procedures and processes of the authority in which they work.
- They need to understand, as far as is necessary, the roles, etc., of other authorities.
- They need to understand the legal basis for their work, including changes to this (as happened with the adoption of the revised WSR in 2006).
- They need to understand the technical issues underlying waste transport, such as identifying what is 'waste'.
- They need skills to contribute and use integrated databases, etc.

This is not an exhaustive list and each element includes many specific points that require training (e.g. how to complete an inspection report, how to take samples, how to give evidence in court, etc.).

Authorities undertake various forms of training. The following Boxes provide examples of training courses and programmes in various Member States. Formal training is, however, only one aspect to ensure there are sufficient skills and knowledge. Among the key elements highlighted in these Boxes and in discussions with officials is the need for meetings, mentoring, etc. – informal processes to ensure staff are up to date with developments. One function, for example, of the Waste Shipment Expert Panel in Poland is to ensure all participants are aware of key developments and (given there are representatives from each region) to pass this information on to their regional colleagues.

It is important that training needs are assessed. An example is given for the Netherlands in the Box below, where there is an annual assessment of the duties of staff against their skills leading to the identification of training needs. This is best practice that should be undertaken in all environmental enforcement authorities.

A key part of training is for authorities to assist each other in training programmes. This is exemplified in the Netherlands. The VROM Inspectorate staff are trained in the police academy. The Inspectorate has, in its turn, trained Customs officers. The latter have sufficient competence that, in Rotterdam, Customs organises its own training on WSR inspection, for which the Inspectorate provides material as necessary.

Finally, a number of Member States stressed the value of exchange programmes and joint actions within IMPEL TFS. As described above this is an important contributor to transboundary co-operation. However, it is also a training tool. This is valued.

It is, therefore, important that training (in various forms) is undertaken by competent authority staff. Training programmes and procedures should be established to achieve this, as is common in many Member States. However, lack of sufficient skills is a problem in some cases (as noted in the response from Estonia earlier concerning capacity). Therefore, it is important that criteria are established to ensure that sufficient training is undertaken. Also, as previously noted, specific criteria are appropriate in relation to EU level activities to enhance the sharing of skills. It is also important that criteria are set out to ensure high quality staff recruitment takes place (as suggested by the Member States) to provide the base for which further specialist knowledge can be given in training.

Integrated training programme in Ireland

Training and guidance notes have been developed by the working groups and by the Office of Environmental Enforcement priority studies:

- A training programme for the investigation of unauthorised waste activities was delivered to nominated staff from each local authority.
- A training programme covering basic inspection skills is being developed under the RMCEI working group.
- Training has also taken place in relation to Waste Permits and Waste Collection Permits. It is planned that this training will take place towards the end of 2005.
- TFS Manual to assist local authorities ensure compliance with relevant regulations.

Training new recruits in France

New entrants to the DRIRE, and those transferring or returning to the Environment Division from other Divisions, are given a Foundation Training Course before being allowed to carry out regulatory activities on their own authority. This comprises two separate weeks of training with an interval of three months between them, during which time practical, field training is given under the supervision of an experienced inspector. The first week comprises training on legal, governmental and administrative aspects together with instruction on the major principles of inspection and associated matters. The second week addresses the specific environmental issues, such waste management and control.

Training for recruits in Sweden

When recruiting personnel, the authorities have regard to the actual tasks the inspector will have to undertake, and what competences the relevant team already possesses. Successful applicants are usually university graduates and have the necessary qualifications. A County Administrative Board has a training plan in place for new members of staff that includes:

- Several training courses, including an obligatory five-day course on the Administrative Code.
- Mentorship.
- Weekly staff meetings on new developments.

Assessing training needs in the Netherlands

The team leader in the Inspectorate and the team staff member will meet to discuss the working programme for the next year and skills and competencies needed to carry it out in a proper way. This programme will set out specific details of the tasks the team member will undertake to meet his or her contribution to the team work programme, also in accordance with the budgets available. The team member will draw up the working programme for the next year and his or her Personal Development Plan for the coming year and the four subsequent years which staff will then agree with the team leader. In the yearly meeting there are discussions on whether further training is needed.

Training for Customs in Hamburg

Training is provided under the umbrella of the Ministry of Finance to the custom service staff, e.g. by specially developed trainings courses covering the whole topic of waste including legislation, practical examples and examples for inspections (e.g. by a one week training course).

8.15 The changing situation

At the conclusion of this Chapter on the Member States, it is important to stress that the situation in many Member States is not static. There are clearly developments that have been highlighted in the above sections. Changes are further highlighted in the following table which summarises key points from IMPEL members asked in the project questionnaire about proposed changes regard WSR inspection. These comments are not systematic and are merely included to illustrate that there is active consideration of change. For this reason, it would be useful to adopt criteria on waste shipment inspection to help guide such change.

Country	Planned changes
Belgium	More collaboration with customs for port inspections, based on risk analysis to enable a better selection of illegal waste streams. More focus on WEEE; Stimulate more interaction between the teams for road inspections (in the southern part of Belgium) and the teams controlling the waste streams in the ports (in the northern part of Belgium). Modification of the national legislation in order to enable an effective prosecution policy in cases of flagrant infractions (enlargement of competences of inspectors, for instance: the competence of stopping trucks during road inspections).
Croatia	Draft changes of Regulation on supervision of transboundary movement of waste are currently in process
Czech Republic	CEI would like to strengthen inspection competence of Police (penalties, support of other authorities performing waste shipment inspections)
Estonia	Joint inspections with Tax and Customs Board
Hungary	Regular inspections at border crossing points and on the site of waste producers/holders from 2009
Ireland	Changes are being implemented as described above

Luxembourg	No changes planned
FYR Macedonia	Start joint TFS inspection with the Environmental Inspection from Serbia
The Netherlands	No changes planned
Romania	Common trainings with other related authorities such as Customs, police and inspections from neighbouring countries. Strengthening the cooperation between inspecting authorities from neighbouring countries
Sweden	No planned changes, but it is desirable to set up a small group to work nationally and continuously with the Regulation and who also organises and plans inspections together with other authorities.
United Kingdom	The Environment Agency of England and Wales stated that it is seeking to incorporate further checks aimed at assessing compliance with international waste shipment controls and at identifying risks of non compliance into every routine inspection it carries out at the facilities it issues permits to. It is developing its intelligence-led approach which is increasingly moving inspections 'upstream' to sites where waste destined for export is handled or generated rather than focusing on inspection at Ports.

9 RECOMMENDATIONS ON DEVELOPING CRITERIA

9.1 Introduction: the role of criteria

The previous Chapter has summarised a wide range of structures, practices and processes in the Member States to support inspection under the WSR. Some Member States have explicitly stated that they have insufficient capacity to undertake effective waste shipment inspection. However, there are many examples of good practice. However, some of these practices may be less effective than at first glance – it is good, for example, to have detailed data sharing, but it is worth little if there are not enough inspectors to follow-up on the information received.

As a result it is important that criteria are developed from the best practice identified in the Member States to support effective capacity and processes for inspection. The previous Chapter made some preliminary conclusions relating to where particular criteria may be appropriate. This will be developed further in this Chapter, with wider consideration on the context of criteria. The following Chapter reaches conclusions on the appropriateness of individual criteria.

Earlier Chapters also highlighted the importance of inspection criteria under other regimes, such as the development of stronger inspection requirements under the WEEE Directive. However, the RMCEI is still the broadest and most detailed foundation in the EU for inspection criteria and its review assists in stimulating the development of criteria for WSR inspection.

Before proceeding further, it is also worth considering what criteria for WSR inspection are for. They would perform various functions:

- They could act as institutional and process 'standards' for authorities to respond to and measure themselves against.
- They act as a driver for change, e.g. allowing authorities to argue for resources from a stronger base.
- They can be reported on and monitored, by national authorities and the European Commission – helping to stimulate change.
- They form a basis for expectation of performance by authorities in neighbouring Member States, improving co-operation and enhancing their function as a driver for change.

9.2 The RMCEI as a starting point

A useful starting point in considering the development of criteria is the RMCEI, not least because it forms a common point of departure for the Commission, Member States and stakeholders on the subject. The RMCEI sets out a number of criteria based on experience of inspection of industrial installations. These relate to inspection planning, inspection type (routine, unannounced and in response to complaints/events) and inspection frequency as well as specific inspection processes such as reporting following individual inspections. Inspections under the WSR share some of the same elements as those covered by the RMCEI, but there are important differences which need to be considered in developing criteria.

The WSR makes clear that it is expected that inspections should take place (as appropriate) at any point in the waste shipment process – from point of origin, means of transit, point of departure, etc. Thus criteria for the appropriate location of inspection are important in a way that is not an issue for industrial inspections.

Most industrial activities are relatively stable in their operation – performing the same activity day after day. Therefore, an inspector not only knows what to expect when visiting the site, but an individual inspector builds up useful experience to enhance inspection efficiency with repeated visits. This is not largely the case with waste shipments. While waste transit facilities themselves will become familiar to inspectors, the waste being inspected may (but not always) vary from that previously inspected. Thus usually the 'object' being inspected is effectively new on each occasion. Of course, inspectors will build relationships with individual waste operators as their industrial counterparts do with industrial operators, but the level of detailed prior knowledge is not available.

While there are occasions where industrial inspectors need to co-operate with other authorities on inspection activities (e.g. in relation to accident prevention management), the need for inter-agency co-operation is generally far more acute for waste shipment inspection. This is particularly so in working with Customs or police authorities which are the authority most likely in some Member States to uncover unauthorised waste shipments. Therefore, it is expected that criteria for such co-operation should be a core element of an effective waste shipment inspection regime.

The number of waste shipments (including illegal activities) varies significantly between Member States and varies year on year. This presents a challenge in inspection planning. Although there is some predictability in the system, unexpected levels of shipments may cause problems. Therefore, although criteria need to be established for inspection planning, the details of what should be included within such plans require some flexibility.

A further difference between waste shipments and industrial regulation is that waste shipment activity is only a part of waste management activity taking place in a Member State. Indeed, the volumes involved in waste shipment are relatively small compared to waste management as a whole. Other types of waste management (including internal transit and disposal) require their own inspection processes, including verification of waste types, waste testing, detection of illegal activity, etc. Therefore, inspectors involved in implementing the WSR may either be in a dedicated authority or part of a wider waste management authority and, in either case, can theoretically draw upon the wider waste management capacity within a Member State. This suggests that there is potential flexibility in capacity available to implement the WSR and criteria might be developed to reflect this.

Industrial and waste shipment inspections can both involve the taking of physical samples for analysis. However, because of their transboundary nature, there is a need for consistency in such analysis so that recipient (or transit) countries have confidence in the results. Therefore, there is a need for criteria for protocols for waste testing.

Communication is a critical element of effective waste shipment management. Inspectors need to communicate their intentions to operators and communicate the results of inspections. In this respect there is a similarity with industrial inspections and criteria/protocols are developed, such as on the timeliness of production of inspection reports. However, for waste shipment there are additional important communication elements. Inspection activity must be fully and officially communicated with other relevant authorities, such as the customs, to allow these authorities to perform their legal obligations. Also results of inspections may also need to be communicated to authorities of countries receiving the waste. Additional criteria are, therefore, required in this regard.

9.3 Appropriate level of detail

The above discussion indicates that the level of detail that could be set out in criteria for effective waste inspections is likely to vary according to the different elements of waste inspection. For example, it is probable that a number of detailed elements can be set out for what should be included within an inspection report that would be appropriate in all cases. However, criteria for what should be undertaken on each inspection need to be flexible or be 'as appropriate' according to the individual circumstances. A similar division can be seen within the process of inspection planning. Authorities should produce inspection plans – setting out a work plan based on available resources and expected work load. However, unpredictability in that work load means that some criteria for inspection planning have to take this into account.

9.4 Legal setting

The legal context for which criteria are established is important. The WSR Article 50 has, in effect, already started the process for legally binding criteria in this regard. It is inevitable that there will be divergent views of the appropriateness of the use of EU law in prescribing further inspection requirements. However, irrespective of this, the promotion of inspection criteria is likely to require the use of a range of different instruments.

There is a hierarchy of five types of appropriate instruments:

1. *Legally binding.* Certain criteria could be included in an amendment to the WSR or in a separate Regulation or Directive which are binding on the Member States. To include such criteria in such an instrument, it will be necessary to be certain that they are correct and unlikely to become outdated. For example, it may be appropriate to include a requirement that inspectors present a copy of the inspection report to the operator, but it would not be appropriate to prescribe the format of the report (given developments in electronic communication). It will be beneficial to discuss with the Commission the character of likely criteria that could (theoretically rather than politically) be included in binding legislation.
2. *Legally binding Decision.* There is a separate legally binding instrument that could be used – the Decision. This could be appropriate in setting obligations with respect to protocols to be used for waste testing. However, this is a very specific option with limited scope.
3. *Recommendation.* Criteria could be established in a Recommendation similar to the RMCEI – indeed they could be added to a revision to the RMCEI if this were to be adopted. Given the non-binding nature of a Recommendation, the criteria set out in it can be more detailed and cover more issues than would be appropriate in a legally binding instrument. However, such criteria remain non-binding, although establishing them in a Recommendation will enable the Commission to monitor implementation in the Member States.
4. *Guidance.* Criteria can also be set out in guidance published by the Commission. Guidance places very limited pressure on the MS – although with transfrontier waste shipments it may be useful in helping with ‘peer pressure’. A major advantage of guidance is that it is readily updated and can explore issues of flexibility and nuances of interpretation in a way not available in a legal instrument (including in a Recommendation).
5. *Sharing best practice.* The Commission and/or IMPEL can continue to share best practice on waste inspection. Reports of best practice can focus on criteria set out in any of the above instruments and explore new approaches, elaboration of detail, etc.

The instruments are not mutually exclusive (although it is unlikely that it would be appropriate to adopt both a legally binding instrument and a Recommendation). Indeed, they are mostly mutually supportive. A requirement for 'waste shipment inspection planning' can be made legally binding. The Commission can support this with guidance on what is considered to be good waste shipment inspection planning and the Commission or IMPEL can further support this with a report on innovative processes for waste shipment inspection planning. The appropriateness of the legal setting is considered further later in this report. However, at this stage it is important to specify criteria are more appropriate in some legal/advice settings than others. For example, it may be appropriate to state in a Directive that Member States' authorities should produce an inspection plan. It is probably unnecessary to place a criterion that says that inspectors should wear protective gloves – but this may be appropriate in general guidance.

9.5 Recommendations for issues to be the subject of criteria

At this stage it is important to consider what issues concerning waste shipment inspection would benefit from the development of criteria. The previous Chapter has highlighted a range of capacity issues and process requirements for inspection. We consider that it is not appropriate to seek to prescribe particular administrative structures which perform inspections – these reflect the constitutional, administrative and cultural contexts of the Member States. What is important is that such structures work. As a result, the following areas have been identified as recommended for the development of criteria:

- The need for sufficient capacity in the competent authorities effectively to enforce the WSR – this is clearly an area of concern in some Member States and has to be addressed.
- The importance of an overall Control Strategy for enforcement – inspection is only effective within the wider enforcement strategy and, therefore, criteria should be developed to take this into account.
- The problems of insufficient information are highlighted in some cases, as well as best practice in waste stream assessment and criminal profiling. Therefore, criteria should be established to ensure that authorities have sufficient understanding of illegal waste movement to direct enforcement activity.
- Linked to the above point, is a specific benefit of risk profiling of waste activity – this has driven action in a number of Member States. Therefore, this should be the subject of criteria.
- Specific intelligence gathering on criminal activity has also been important for effective enforcement. It is appropriate, therefore, to consider criteria in this area also.

- Inspection planning is important. It has been highlighted in many Member States and in the RMCEI, although there are different approaches to this in the Member States. It is important, therefore, that criteria are set out for inspection planning, addressing the particular context of the WSR.
- Linked to the need for an inspection plan, is the need to review that plan. Criteria are required for this also.
- The RMCEI and IMPEL have highlighted the difference between an inspection plan and an inspection programme. The RMCEI does not contain criteria for the latter. However, it is worth considering such criteria as future developments for programming might be important.
- Inspections require effective procedures. This is particularly the case with waste shipments involving a range of issues and authorities. It is, therefore, important that criteria are described which ensure effective procedures. These should be specifically established for the preparation of an inspection, how it is undertaken and how it is followed-up. Each are critical steps that should be highlighted.
- Specifically within inspections, it is important that sampling of waste is undertaken to high standards. Criteria should be separately described for this process.
- Analysis of samples needs to be undertaken by high standard and high quality facilities. To ensure this is the case, criteria can be set out.
- The actions and processes (such as planning) of inspections should be undertaken in a transparent way, consistent with withholding information necessary for successful completion of criminal enforcement. Therefore, criteria can be described to assist this.
- Effective inspection requires an effective inspectorate (or other appropriate institution). Therefore, criteria can be established to deliver effective and quality management.
- Even with effective management, resources are needed. Therefore, it may be appropriate for criteria to ensure a sufficient budget for an inspection authority.
- The quality of staff is also critical to an effective inspectorate. The Member States have adopted a range of standards and criteria for competence and recruitment regarding skills, etc. Therefore, criteria can be established on this issue.
- Linked to recruitment standards is that of training and ensure staff skills are maintained and enhanced. This is also stressed by many Member States. Therefore, criteria should be described for this issue also.

- This study has highlighted the importance of co-operative working. Effective enforcement of the WSR requires close working relationships, between enforcement institutions in the Member States, between institutions in different Member States and with key stakeholders. There is significant best practice in this regard. For this reason, criteria should be described for each of these categories of relationships.
- Finally, Member States have indicated strongly that they value the activities that are undertaken at EU level, such as through IMPEL TFS. These enhance knowledge, share best practice and build relationships. However, participation in such activities can be improved. Specific criteria for such activity should, therefore, be set out.

It is concluded, therefore, that criteria should be set out for all of these different aspects underlying effective waste shipment inspection. The following Chapter sets out proposed criteria for each of these issues, discussing the choices made.

10 CRITERIA FOR EFFECTIVE WASTE SHIPMENT INSPECTION

10.1 Introduction

This Chapter sets out the key product of this study – proposals for criteria to assist the effectiveness of competent authorities responsible for waste shipment inspection. The criteria set out here are based on a number of findings in the study:

- Criteria relating to waste shipment inspection that are already used by a Member State.
- Practice in the Member States that can be re-interpreted as criteria.
- Criteria relating to waste shipment inspection developed at international level.
- Criteria concerning environmental inspection that can be interpreted for the purposes of waste shipment inspection.
- Other conclusions relating to the practice and problems identified during the study.

It is important to stress that, during discussions with Member State representatives, many recognised the value of developing criteria. They see a need to increase effective enforcement of the WSR in their Member State and/or neighbouring Member States and the establishment of criteria that must be applied and monitored is an effective way to achieve this.

However, there was also concern that criteria might be established at EU level which, in some way, force a competent authority to take action which is not considered to be the most effective approach to addressing waste shipment enforcement. The criteria must allow for innovative development of an intelligence-led approach, for example, as well as for development of more sophisticated approaches within ports. The criteria set out below have been produced with the aim of stimulating innovative control strategies and actions while at the same time setting some basic minimum standards. To allow for flexibility in approach, it is not possible, for example, to set some numerical criteria (e.g. number of inspectors per thousand waste shipments, etc.). However, in such cases the importance of targets or objectives is still recognised, so there are criteria where Member States are asked to define these objectives themselves and that the basis for these is made explicit.

The criteria follow a logical order, although criteria set out in different contexts relate to each other. Under different headings there may be similar criteria set out. It was felt important to highlight all of the necessary criteria under each heading rather than avoid duplication and expect cross-referencing by the reader. This is particularly important as criteria under some headings may be taken forward at EU level and those under others might not be, so it is

important to avoid gaps. In some cases alternative criteria are set out and it is for the European Commission and others to determine which might be appropriate.

The criteria are set out under a series of headings. These are themselves expressed in the form of criteria, but the main criteria are those listed under each heading. Each set of criteria is introduced by a short discussion which explains the background to their presentation. This discussion may make reference to waste shipment problems to be addressed, legal contexts, etc., highlighting why the criteria have been chosen (and occasionally why some have not). The criteria themselves are set out in Boxes under each heading for ease of reference. Each of the criteria is numbered, with consecutive numbering throughout the Chapter. This allows easy reference to any one of the criteria.

This Chapter does not provide any suggestion as to how the criteria should be used, such as whether they should be in EU law, etc. A brief consideration of this issue is provided in the next Chapter.

10.2 Overarching criteria

While this Chapter sets out many specific criteria for effective waste shipment inspection, it is important to begin by setting out some overarching criteria. These are key, broad criteria that would be appropriate if a *de minimis* approach to setting criteria is taken forward at EU level. However, they would probably not be necessary if more detailed criteria are established at EU level. These criteria set out the key minimum criteria that must be applied.

Overarching criteria for effective waste shipment enforcement

1. Member States shall ensure that competent authorities responsible for inspection obligations under the WSR have sufficient capacity to ensure effective enforcement of the Regulation.
2. Member States shall ensure that a Control Strategy is produced setting out the risks arising from different waste streams and types of illegal activity and the actions to be taken by enforcement bodies to tackle these.
3. Member States shall ensure that an inspection plan is produced setting out the priorities for inspection activity, the reasons for these and how it will be implemented and reviewed.
4. Member States shall ensure that the inspection teams and staff are of a high quality through effective recruitment and training.

10.3 Member states shall ensure that competent authorities have sufficient capacity to ensure effective enforcement of the WSR

Competent authorities require sufficient capacity to fulfil their responsibilities in ensuring effective enforcement of the WSR. This report has shown that it is difficult to set precise figures on the number of inspectors that should be required in different circumstances. In particular this is due to variations in the Member States on:

- The amount of waste shipment activity that requires inspection.
- The accuracy of understanding of the level of illegal waste shipment activity.
- Differences in the approaches taken in the Member States.
- The amount of inspection activity that individual inspectors can undertake.
- The role of staff in different institutions (e.g. the Customs).
- The degree to which inspectors are involved in other activities (e.g. other types of inspection, non-inspection work, management, etc.).
- The need for a range of specialisms not available in individual staff.

Even if there was a common understanding of the illegal waste shipment problem and that similar enforcement approaches were undertaken between Member States, it is clear that there is not agreement on the number of inspections that an inspector can undertake per year. The time taken for an inspection will vary depending on the role of the inspectorate. Where Customs have significant expertise, initial checks by them (which may be undertaken relatively quickly) may determine whether there is an issue requiring more detailed inspection by environmental authorities. In such cases environmental inspections are likely to be more time consuming. Where environmental inspectors are more routinely involved in the initial checking, then the average time for inspection is likely to be shorter.

It might be suggested that inspection activity could be guided according to the number of notified waste shipments. While it may be necessary occasionally to check notified shipments to ensure that they are what the documentation states that they are, Member States do not use this figure as a guide for inspection activity. Figures suggest that notified shipments may represent a small proportion of all de facto waste shipments, i.e. they may be overshadowed by illegal activity, and there is no obvious relationship between the two by which the illegal problem can be estimated. Indeed, in some cases inspection of notified shipments may be rare as more efficient systems are adopted to address illegal activity.

Making a wider judgement on the size of the Inspectorate is difficult. Data from the Member States is difficult sometimes to interpret. In particular, in a number of authorities inspectors responsible for waste shipment inspection undertake other inspection tasks, whether they are in a national or local authority. In a few cases there are staff dedicated to waste shipment

inspection work. This may range from 1-2 staff (even at national level) to up to 30 in the Member States with the largest waste shipment volumes. However, it not possible to set a number as a criterion.

For these reasons, the criteria set out below initially require Member States to have sufficient capacity. They then require Member States to state explicitly how this is determined and there are criteria with options on how this might be based. While not setting criteria for capacity on a numerical basis, these criteria should, however, allow for a more transparent understanding of the level of capacity which will enable stakeholders within a Member State and the European Commission to make assessments on whether the competent authorities' capacities are likely to be sufficient.

Criteria for effective capacity of competent authorities for waste shipment enforcement

5. Member states shall ensure that competent authorities have sufficient capacity (staff and resources) to ensure effective enforcement of the WSR.
6. Member States shall state explicitly the basis upon which the capacity of the competent authorities is determined.
7. Member States shall seek the views of stakeholders on whether they consider the capacity of the competent authorities to be sufficient.
8. Member States shall determine the number of inspectors and other staff required based on a formalised risk analysis of illegal waste shipment activity within the Member State.
9. Coastal Member States shall ensure that the capacity of the competent authorities is proportionate to the number of major ports in the country.
10. Member States shall undertake analysis of production of key types of waste (including WEEE and municipal solid waste) and ensure that changes in waste production result in changes to the capacity of the competent authorities.

10.4 Member States shall have an effective control strategy to ensure implementation of the WSR

The understanding and control of illegal waste shipment is complex. Tracking illegal operators, identifying illegal shipments, ensuring effective roles for inspectorates, customs and police, etc. – all are essential to address the growing illegal waste shipment problem. Later in this Chapter are criteria concerning inspection planning. However, a strategic approach must be at a higher level than the activities of one institution. There is a need for a control strategy for the country as a whole. This involves the bringing together of information on risk profiles for different waste streams, the roles of different enforcement authorities and the development of new approaches for those authorities together and individually to improve enforcement. The Control Strategy should be developed using the following criteria.

Criteria for an effective Control Strategy

11. Member States shall ensure that they have an effective Control Strategy to address illegal waste movements addressing all relevant issues and institutions in the Member State.
12. Member States shall ensure that the Control Strategy draws on, and feeds into, the plans required under of EU waste law, such as the Directive on Waste and the Packaging Waste Directive.
13. Member States shall ensure that the Control Strategy contains the following assessments of the nature of the illegal waste problem:
 - What waste is generated?
 - Where is it generated?
 - What is the type(s) of waste?
 - By whom is it generated?
 - How is that waste managed (or is supposed to be managed)?
 - What regulatory regimes apply to the waste generation and what objectives/requirements does this impose?
 - Which are the main waste streams subject to shipments to and from the Member State's territory? At least five separate waste streams shall be identified.
 - How is the waste moved?
 - Why is it moved?
 - By whom is it moved?
 - To where is it moved?
 - What regulatory regimes apply to the waste movement and what

objectives/requirements does this impose?

- What is the waste destination?
 - What type of site/operator, etc., receives the waste?
 - Where is the waste received?
 - What happens to the waste?
 - What regulatory regimes apply to this waste and what objectives/requirements does this impose?
- Is there a link with other illegal activity?
 - Are the operators/transporters, etc., undertaking other illegal activity?
 - If so, what types of activity?
 - Who is involved in tackling this illegal activity?

14. Member States shall ensure that the Control Strategy is supported by sufficient information gathered and analysed on the following:

- Are data on waste collected, reported and verified at each stage?
- Are there issues on data integration between stages (e.g. from 'numbers' to 'weight', change in type of waste, etc.)?
- Are those collecting and reporting information reliable?
- What are the implications of any data gaps?
- Can any information gaps be filled?

15. Member States shall ensure that the Control Strategy identifies the key regulatory control functions and how these are used to address illegal waste movement, including:

- Who regulates (permits and inspects) the site based waste activities?
- Who regulates the waste transport activities?
- Who is responsible for checking waste transfer across frontiers?

16. Member States shall ensure that the Control Strategy identifies the necessary changes that are required to improve implementation of the WSR, including:

- How can the problems generating illegal waste shipment be tackled at source?
- What improvements to waste regulation can deliver waste shipment outcomes?
- What can be learnt from assessment of other criminal activity to enhance detection and enforcement?
- What structural changes may be required to deliver this?
- Which institutions are involved and how should they co-operate?
- What information changes may be required to deliver this?

- What procedures need to change to deliver this?

17. Member States shall ensure that the Control Strategy is monitored and reviewed, including the following elements:

- Are indicators on inspection activity positive?
- Is understanding of illegal waste shipment activity improving?
- Is illegal waste shipment activity being reduced?
- Are changes to the control strategy to address these issues proposed?

18. Member States shall ensure that the conclusions of the Control Strategy are used in inspection planning.

19. Member States shall ensure that the conclusions of the Control Strategy are used as the basis for the development of co-operative working relationships between relevant competent authorities.

10.5 Member States shall ensure that they have sufficient understanding of illegal waste movement to meet the enforcement requirements of the WSR

The capacity requirements for waste shipment control institutions depend upon the amount of control activity that is required. This in turn is related to the degree to which transboundary movement of waste and compliance with the WSR is a problem. That is, how much illegal activity there is. This presents a measurement problem for authorities. Unlike stationary activities subject to inspection, there is no list of activities which guides the inspection work load. By definition, illegal activity is not advertised. Member States must, therefore, seek means to determine the amount of illegally transported waste – both in quantity and number of movements.

To undertake such an assessment, it is necessary to have accurate data on all relevant waste streams throughout their lifecycle. For example, there should be accurate data on WEEE collection and processing, so that divergence into illegal activity can not only be identified, but also quantified. Similarly, accurate data on municipal waste production, sorting, processing and movement is needed. Such information not only allows an estimation to be made of divergence into illegal activity, but also can guide authorities to where enforcement activity is required.

Collection of such data is the basis for effective waste shipment controls. However, to be effective, the data require effective management and distribution. Waste production data, for example, may be overseen by the inspectorate (or another competent authority), but this is

unlikely to be by waste shipment inspection staff themselves. Rather such data need to be used by waste shipment staff.

The data required for effective control may be distributed between authorities. Authorities responsible for waste management planning have important data. Customs authorities will have detailed shipping databases that may be essential to assessing activities by operators known to be involved in illegal activity. Similarly, environmental inspectorates will have information that could assist Customs in its routine checking of shipments. A similar situation relates to interaction with the police.

Information relating to illegal waste activity is further supported within risk profiling and assessment and through intelligence on illegal criminal activity more generally. Separate criteria for these areas are set out in the following sections.

Therefore, the following criteria can be proposed.

Criteria to ensure effective understanding of illegal waste activity

20. The Inspectorate shall have robust systems for recording, analysis and presentation of waste data, including waste movement and shipment data.
21. The data system(s) used shall include all results of inspection activity and be stored in a way that allows for improved compliance control decision making.
22. Data systems of the different authorities (e.g. permitting authorities) shall be shared to the extent that this would be beneficial for improving the enforcement of waste shipment controls.

10.6 Member States shall ensure that they undertake risk profiling and risk analysis of waste streams that may result in illegal waste shipment

An important part of understanding the threat of illegal waste shipment and the proportionate inspection response that is required is to undertake risk profiling or risk assessments of particular waste streams. Risk assessment, as seen in this report, is an important part of different aspects of waste management activity in some Member States and risk-based inspection is common. Also risk profiling for a range of threats (not only environmental) is promoted within Customs activity more generally as described earlier in the work of the World Customs Organisation. The risk profile includes the identification of the strategic, operational and tactical context of waste shipment control:

- The strategic approach identifies areas of significant risk and reduces activity in areas of minor risk.
- Operational risk management is included which assesses whether the level of control is sufficient to address the assessed risk.
- Tactical risk assessment can be included which takes into account the day to day decisions by officers – are procedures in place to allow for individual decision making to address risks as they arise?

Therefore, it is appropriate that there are specific criteria developed in this area.

Criteria for risk profiling and risk assessment

23. Member States shall ensure that risk profiles and risk assessments are undertaken for each waste stream that poses a potential risk for failure to comply with the WSR.
24. Member States shall ensure that authorities take account of the results of risk assessments in the development of Control Strategies, inspection planning and development of inspection programmes.
25. The risk profile shall include an in depth assessment of the risks arising from waste shipment activity and the strengths and weaknesses of the control system.
26. The risk profile shall include an assessment of the likelihood of illegal waste shipment and its consequences.
27. The risk profile shall include a prioritisation of risks – helping to determine where control activity should be targeted.

10.7 Member States shall ensure that they undertake an assessment of criminal activity contributing to illegal waste shipment

Illegal waste shipment may be linked to organised crime. In such cases it is important to gather intelligence on the activities of the individuals and organisations involved to understand the extent of their activities, their links to others and potential best approaches to taking enforcement action to tackle the criminal activity as a whole. Such intelligence gathering is likely to require police involvement and may cover financial/tax assessments, interaction with other types of criminal activity (e.g. money laundering), etc.

Criteria for the assessment of criminal activity contributing to illegal waste shipment

28. Member States shall assess how far organised criminal activity is contributing to illegal waste shipment.

29. Inspectorates shall adopt close working relationships with the police to ensure the fullest gathering of information and the ability to link illegal waste shipment activity with other forms of criminal activity.

30. Member States shall ensure that enforcement activity with organised crime is organised so as to maximise the prevention of the criminal activity as a whole.

31. Member States shall ensure that information concerning criminal activity is used in the development of Control Strategies, inspection planning and development of inspection programmes.

10.8 Member States shall have an effective inspection plan covering all aspects of waste shipment inspection

Inspection planning is a critical foundation for effective work of any inspectorate. It was noted earlier in this report that planning for waste shipment inspection activity can take place in various contexts, such as:

- A plan by the waste shipment inspection section of the inspectorate.
- A plan for all environmental inspections, including those addressing waste shipment.
- A plan for a particular location (e.g. a port) including the functions on the inspectorate, customs, etc.

Given the different structures, situations and working relationships in the Member States, a variety of different planning approaches is appropriate. However, it is important that the plans act as an effective tool to guide the work on waste shipment inspection, seeking to achieve enhanced levels of enforcement and based on risk assessments of illegal waste shipment activity. Criteria for environmental inspection plans have been set out in the Recommendation for Minimum Criteria for Environmental Inspections and it is appropriate to harmonise criteria for effective waste shipment inspection with these where possible, although tailored to the specific requirements of waste shipment inspection.

Criteria for waste shipment inspection planning

32. Member shall ensure that the authorities for waste shipment inspection shall have an annual plan or plans for inspections, established at national, regional or local levels, covering all the territory of the Member State and all the relevant aspects of waste shipment control. These plans shall be formally adopted by the inspectorate or, where relevant, a higher authority.
33. Member States shall ensure that inspections are carried out in the way envisaged by the inspection plan.
34. Member States shall ensure that the plans, once adopted, shall be notified to the European Commission.
35. Where plans for waste shipment inspection are contained within wider planning documents, Member States shall ensure that the key criteria regarding waste shipment inspection are explicitly addressed throughout the plan.
36. The inspection plan shall cover a defined geographical area and outline the context in which the inspecting authority performs its inspections, taking into account in particular the following criteria:
- The inspecting authorities' objectives and targets, their statutory tasks and competences, specific inspection obligations in national or EC legislation it has to comply with and the environmental policies it has to implement.
 - The inspection authorities' resources in terms of finances and personnel.
 - An assessment of the risks and workload regarding waste shipment control.
37. The inspection plan shall describe the priorities that have been assigned on the basis of the waste shipment risk profile and other criteria for waste shipment control that the inspecting authority is competent to perform. It shall also indicate the information and methods used to assess these criteria. Information which an inspecting authority shall use in this respect, are:
- Identification of the biggest waste transporters, the expectable time and route (with border crossing points) of their shipments.
 - Assessment of the frequency of waste shipments, and the amount and characteristics of waste shipped on various roads.
 - Characteristics of the waste.
 - Countries of destination (and the risks there).
 - The market (prices).

- Criminal actors.
- Risk analysis, taking into account the experiences (risk indicators) of the past.
- Results of previous inspections and reports of monitoring.
- Estimated time needed for inspections.

38. The inspection plan shall provide for and outline the procedures for non-routine environmental inspections.

39. The inspection plan shall describe the coordination between the different inspecting authorities and other authorities making use of inspection outcomes, where relevant.

40. The inspection plan shall be available to the public according to Directive 2003/4/EC.

41. The inspecting authority shall ensure the proper and timely execution of the inspection plan and determine as appropriate the frequency of waste shipment inspections.

42. The inspecting authority shall ensure that the execution of the inspection plan is monitored and the plan is reviewed, and revised as necessary.

10.9 Member States shall undertake an effective review of the inspection plan

It is important for the inspection plan to remain up to date in order for the inspectorate to tackle the issues that it will face. Implementation of an inspection plan may identify shortcomings, potential efficiency gaps, etc., that should be addressed. Changes may take place in illegal waste activity that need to be addressed. There may also be changes to the law or the institutions affecting the inspectorate's work. Resources available may change. For these reasons, it is necessary that the inspection plan shall be reviewed according to the following criteria.

Criteria for review of waste shipment inspection plans

43. Member States shall ensure that the inspection plan(s) is reviewed following completion of its implementation.

44. Member States shall undertake a preliminary review three months before the end of period of an inspection plan to inform development of the subsequent plan.

45. Member States shall ensure a full review of the inspection plan(s) is undertaken within three months of the end of the plan period.
46. Member States shall ensure that the review identifies how far each element of the plan has been implemented and how far each goal has been achieved or not.
47. Member States shall ensure that the review identifies the strengths and weaknesses in the enforcement activity of the inspection authority.
48. Member States shall ensure that the review addresses changes in the risks of illegal waste shipment and changes in the legal and institutional context.
49. Member States shall ensure that the review includes recommendations to address gaps in the implementation of the plan and recommendations on how to address any changed external circumstances.

10.10 Member States shall ensure that they have an effective inspection programme

As noted earlier in this report, there is a distinction between an inspection plan and an inspection programme. The inspection plan is a public document. However, inspectorates need effective operational planning. This may include statements on where and when to inspect, investigative strategies and processes to tackle particular illegal operators, etc. Such a document cannot be public, but it is critical in ensuring the effective working of inspectors. Given that the inspection programme is an operational tool, it has to be flexible and adapt to changing circumstances. It is possible to set out broad programme goals on, for example, an annual basis. However, some Member States undertake programme consideration at a weekly level. A hierarchical approach is possible, with the inspection plan, broad operational inspection programmes and more detailed short-term programmes forming a coherent operational strategy. The criteria for inspection programmes are set out below.

Criteria for a waste shipment inspection programme

50. Member States shall ensure that they adopt inspection programmes. These may be set for different operational areas and timescales and must form an effective tool to direct inspection activity.
51. Inspection programmes shall address the following elements:
 - Specifications for different types of inspection.

- The role of different types of surveillance/intelligence gathering operations.
- Accurate estimation of the average time that is needed for one inspection (preparation – inspection itself – follow up)
- Risk analysis, taking into account the experiences (risk indicators) of the past.
- Information requirements for inspection.
- The budget available for executing these inspections.
- The expected number of joint inspections with other Member States.
- Human resources i.e. availability of inspectors and prioritisation according to information provided by customs as well as regarding previous annual reports.
- Assessment of the number of expected inspections.
- Assessment of changes in legislation, available capacity of handling waste, the supply of waste, developments in recycling markets and prices.
- Procedures for effective cooperation with other competent authorities (see associated criteria).
- Assessments on the frequency of waste shipments, and the amount and characteristics of waste shipped.
- The expected time, place and type of inspections from the information available.
- Procedures for direct collaboration with transport carrier organisations.
- The previous year inspections results to be used in the planning for the next years inspections.
- Expected output of the inspection work (reports, preparation of follow-up activities);
- Equipment available for the inspections.
- Training objectives of staff, exchanging of experience between different inspection authorities (see separate criteria).

52. Inspection programmes shall be communicated only where necessary, such as to other enforcement institutions.

10.11 Member States shall ensure effective procedures are followed for the preparation of an inspection

The effectiveness of any activity is enhanced by its level of preparation. This is particularly so with waste shipment inspection. Given the limited resources of many inspectorates and the scale of illegal waste movement, it is important that each inspection is as efficient as possible, with the greatest likelihood of identifying illegal activity. Therefore, the information base

leading to inspection must be robust and co-operative working with other institutions needs to be clearly identified. Each inspection will follow particular administrative and physical procedures (see following section) and, therefore, an inspector must prepare for these.

Criteria for preparation for a waste shipment inspection

53. The key inspector(s) (and other staff) to be involved in the inspection shall be clearly identified.
54. The inspector(s) shall be informed of the type of inspection to be undertaken and any specific procedures that shall be followed.
55. The inspector(s) shall be clear about the location, time, etc., of the inspection.
56. Any specific health and safety issues shall be assessed and, based on this, specific risk reduction actions may need to be taken.
57. Where appropriate all of the necessary information shall be gathered – background information, intelligence, customs declaration, compliance history, etc. and administrative forms and reporting documents prepared.
58. Any special equipment requirements shall be identified and checked that the equipment is available.
59. There shall be clear identification of the needs for interaction with other competent authorities and how this shall be taken forward – before, during or after the inspection.

10.12 Member States shall ensure effective procedures are followed for undertaking an inspection

Inspections need to follow specified procedures. Some of these may be required by law (e.g. concerning health and safety), others may be good practice. The principle reasons for ensuring that the correct procedures are followed are:

- The correct administrative procedures are followed so that it is clear that an inspection is officially made.
- Following effective procedures ensures that all relevant issues are considered and potential illegal activity is not missed.

- Using the correct procedures will ensure that evidence is gathered in a way that can be used in subsequent enforcement action.
- Recording inspection activity correctly allows for easy exchange of information on it.
- Any physical tests or analyses are undertaken correctly so the results are accurate.
- Correct procedures ensure the health and safety of those undertaking the inspection and those around them.

Procedures can be set out in varying levels of detail from very broad requirements to step by step guides to undertaking inspection activity. The criteria set out below take a middle path between these. It is also important to recognise the varying context for inspections, such as port or road, and the facilities available, such as the presence of a container scanner. Also a suitable site has to be identified where the control can be carried out, for example allowing trucks to pull over and unload on the street curb without endangering traffic. Therefore, the criteria have to address this variation.

The WSR states that inspection is appropriate at any point from the origin of the waste, its transport and transfer through to its movement across the Member State frontier. It is, therefore, appropriate to consider if there are criteria concerning where and when to inspect. However, discussions held with staff of authorities suggest that it is difficult to establish specific criteria relating to the location of an inspection. In general it is suggested that effective inspection undertaken early in the waste chain is beneficial. However, in some locations there is often only one opportunity to inspect (such as where waste enters a port from another Member State prior to transfer outside the EU in order to prove that the shipment is intended for export). Where and when to inspect is part of an overall control strategy. Based on the information within that strategy decisions may be made to delay inspection to gather more intelligence, to move up or down the waste transfer chain depending on circumstances, etc. Specific types of inspection activity are also established in other contexts, such as documentation inspection and functionality testing in the WEEE Recast Proposal.

Criteria for undertaking a waste shipment inspection

60. Member States shall ensure that procedures for undertaking waste shipment inspection are adopted.

61. Member States shall ensure that those undertaking inspections follow the adopted procedures.

62. Where necessary, if inspectors undertake inspections in collaboration with colleagues

from other competent authorities or from other Member States, they shall follow any agreed procedures between them.

63. Member States shall ensure that inspections are undertaken at the time and place most suitable to deliver effective enforcement results consistent with the Control Strategy and inspection plan.
64. Inspectors shall ensure that they demonstrate to those they inspect that they have the official standing to undertake such activity.
65. Inspectors shall ensure that they record their actions during inspection, such as through paper or electronic means.
66. Inspectors shall ensure that they have sufficient supporting documentation and reference material (e.g. procedural handbooks, guides to waste streams, etc.) with them or available in order to make effective decisions during inspection.
67. Inspectors shall examine all documentation available relating to the waste shipment being inspected and that that documentation is of the correct type and has been properly completed.
68. Documents relating to the shipment of used EEE, its re-use and demonstrating its functionality shall be inspected according to the requirements in Annex I of the WEEE Recast Proposal.
69. Where necessary inspectors shall interview those transporting the waste.
70. Inspectors shall undertake a physical examination of the contents of the container/transport, etc. and determine whether it matches the description in the documentation.
71. Functionality testing of used EEE subject to shipment shall be undertaken following the requirements set out in Annex I of the WEEE Recast Proposal.
72. Inspectors shall ensure that the container/transport is thoroughly examined, ensuring that illegal waste is not hidden behind, below, etc., items that are otherwise acceptable. Examination may be by physical examination or other means such as scanning.
73. Inspectors shall ensure that the waste or items declared as not being waste are

checked with regard to its properties, including functionality.

74. Inspectors shall check the functionality of items declared as not being waste to determine whether they are waste.
75. Inspectors shall undertake sampling of waste, where further investigation is required, proportional to the amount of waste transported.
76. The Inspectors shall ensure that, where necessary, waste samples are analysed.
77. Analysis of waste should be undertaken according to international standardised procedures where these are available.
78. In all documentation checks and physical examination inspectors shall ensure that their actions, and recording of those actions, are rigorous and follow the necessary standards for collection of evidence for subsequent enforcement action.
79. In all of their actions inspectors shall follow relevant national and EU requirements concerning worker protection and health and safety.
80. In undertaking their inspections, inspectors shall ensure that their actions do not endanger the safety of others.

10.13 Member States shall ensure effective procedures are followed for the follow-up to an inspection

The follow-up to an inspection is critical to its success. The results of an inspection should be properly recorded, including the results of any subsequent analysis or investigation. It is important that the results of an inspection are communicated to the owner/operator of the waste and, where appropriate, the shipping/transport company. A record of EEE/WEEE functionality testing should also be fixed to the consignment as described in the respective Correspondents' Guidelines and WEEE Recast Proposal. Results shall also be communicated between the relevant enforcement authorities and, where necessary to authorities in other Member States or third countries. Information/data from inspection activity should inform further inspections/investigations and, therefore, need to be stored and analysed within the information systems of the enforcement authorities.

Where illegal activity is detected, the inspector is likely to take enforcement action, such as seeking the imposition of penalties. Therefore, as with the inspection itself, it is important that

the follow-up procedures are robust and follow conditions necessary for actions such as prosecution.

Criteria for preparation for follow-up to a waste shipment inspection

81. Inspectorates shall clearly define what needs to be done after the inspection, and by when.
82. Inspectors shall produce a clear, complete report of the inspection (and on subsequent work) and hand it to all individuals concerned.
83. For EEE/WEEE a record of the functionality testing should be fixed to the consignment containing the information set out in Annex I to the WEEE Recast Proposal.
84. Inspectors shall draw clear conclusions from inspection results.
85. Inspectorates shall take decisions based on inspection conclusions and implement the decisions.
86. In cases where illegal activity is detected, inspectorates (with appropriate prosecution bodies where necessary) shall take prompt action.
87. Procedures for non-compliance enforcement shall be established appropriate to the national legal and administrative context.
88. Inspectorates shall ensure that inspection staff are fully trained in the preparation and presentation of evidence from inspections so as to support administrative and criminal enforcement action.
89. Inspectorates shall either have within their staff, or they shall have access to, legal expertise to support any follow-up enforcement activity.
90. A system of penalties shall be in place depending on the severity of the illegal activity.
91. The findings of inspection activity shall be put into a database (e.g. for evaluation, trends in compliance and the update of risk profiles and for inter-institutional sharing of information).
92. The lessons learned from inspections shall be shared with colleagues to help better

target further inspections.

93. The results of inspection activity shall be collated and used to inform the development of future inspection plans and programmes.

10.14 Member States shall ensure that inspectorates adopt a sampling plan for the taking of samples during an inspection

The collection of samples during an inspection may be necessary either to allow for further analysis to clarify the nature of the waste or to be used as evidence to support enforcement action. The proper selection and preparation of sampling equipment, methods of sample collection, types of analyses required, site contamination control, chain of custody and storage of evidence are critical to a successful investigation and prosecution. To fulfil this responsibility an inspector must have adequate knowledge of accepted sampling protocols and analytical methods approved by local, state or national agencies.

Criteria for a sampling plan

94. Member States shall ensure that a sampling plan is adopted for the taking of samples during waste shipment inspections.
95. The sampling plan shall include:
- Sampling tools, equipment and processes.
 - The safety requirements for staff taking samples.
 - Protocols to ensure the representativeness of samples.
 - Procedures for recording/documentation of samples and the evidence that samples were taken.
 - Procedures to ensure sampling is consistent with subsequent analytical requirements.

10.15 Member States shall ensure that laboratory facilities and procedures are of a high quality to support inspection actions

In some cases it is necessary for samples of waste to be analysed to determine their composition, etc. To do this requires Member States to have the laboratory analytical facilities available. It is important that the analyses are undertaken according to rigorous internationally recognised protocols and that they meet any other national requirements that are necessary for the use of the results in subsequent enforcement (including legal) action.

Criteria to ensure the quality of laboratory facilities

96. Member States shall ensure that there are sufficient laboratory facilities available to support waste shipment inspection actions.
97. Member States shall ensure that laboratories operate with high quality equipment and to high quality procedures, meeting international standards. This includes effective quality assurance, accreditation and certification.
98. Inspectorate staff shall be familiar with analytical processes to be able to ensure samples are taken correctly and results can be interpreted to inform enforcement actions.

10.16 Member States shall ensure that relevant aspects of waste shipment inspection activity are transparent

An effective inspectorate has to be transparent with regard to its strategic approach and aspects of its operations. Clearly, in addressing illegal activity like waste shipment, there are good reasons for ensuring certain information is not communicated so as not to undermine current and future enforcement actions. However, inspection plans and control strategies should be communicated in order to demonstrate that the inspectorate is taking waste shipment issues seriously. However, detailed inspection programmes should not be made public (given that these could pre-warn suspects). There is also a need to communicate plans, etc., to other authorities and other Member States to help raise co-operative working. Finally, successful operations should be publicised in order to enhance their deterrence value.

Criteria for transparency of waste shipment inspection

99. Member States shall ensure that inspection plans are made appropriate and that the requirements of Directive 2003/4/EC are met.
100. Member States shall ensure that inspection reports are made available to relevant stakeholders, including the public.
101. Member State authorities shall communicate inspection plans, their review and inspection reports to other relevant authorities in the Member State.
102. Member State authorities shall communicate inspection plans, their review

and inspection reports to other relevant authorities in other Member States.

103. Member States shall publicise major control activity successes to the media, etc.

10.17 Member States shall ensure that the inspectorate responsible for waste shipment inspection operates in an effective way

Effective waste shipment inspection depends upon an effective inspectorate. Member States do not have separate inspectorates dedicated to waste shipment inspection. Therefore, criteria for an effective inspectorate necessarily address the institution as a whole. Criteria for an effective inspectorate have been developed by IMPEL and these are interpreted below in the context of the objectives of waste shipment inspection.

Criteria for an effective inspectorate

104. An inspectorate shall have a clear vision as to its purpose and objectives, guiding staff and acting as a strategic communication tool to stakeholders.
105. An inspectorate shall have a strategy with broad goals and specific actions to be taken to achieve these. In the context of waste shipment inspection, these shall address the other specific sets of criteria set out here.
106. An inspectorate shall have visible and able leadership and effective management in order to deliver the goals and ensure issues are addressed as they arise.
107. There shall be a clear structure in the inspectorate ensuring lines of communication relating to waste shipment inspection planning and operation, management, etc., are fully understood inside and outside the institution.
108. Waste shipment inspectors shall have a clear work programme, the implementation of which is monitored.
109. The inspectorate shall have adequate systems in place to ensure the delivery of specific waste shipment inspection activities and management actions.
110. An inspectorate shall ensure that its structure, direction, resource allocation, etc., are directed by environmental issues, including the changing situation with regard to waste shipment issues.

111. The inspectorate shall have a clear organisation plan allowing for effective delivery of enforcement of the WSR.
112. The inspectorate shall have clear staff development plans to enhance capacity for waste shipment inspection – for institutional and individual capacity development.
113. The tasks and duties of individual staff relating to waste shipment inspection shall be clearly defined.
114. Staff turnover in the inspectorate shall not be above a level which inhibits its effective operation.

10.18 Member States shall ensure that the inspectorate has sufficient budget to deliver its obligations regarding enforcement of the WSR

The environmental inspectorate, customs, police and other relevant institutions need sufficient resources to undertake their activities related to waste shipment inspection. In all cases, the resources allocated towards waste shipment inspection are part of a larger organisational budget.

However, it is important that sufficient resources are made available within the inspectorate, customs and police to all effective waste shipment enforcement to take place.

Criteria for a sufficient budget for the inspectorate

115. The institutional budget assessment shall identify clearly the resource requirements necessary to undertake its actions related to enforcement of waste shipment controls.
116. The budget shall take account of the level of waste shipment problems in the country.
117. The budget shall ensure adequate staff numbers and time for inspection activity to address the identified waste shipment problems.
118. There shall be sufficient budget allocated to address the training requirements of staff.
119. There shall be sufficient budget allocated to allow for support activities, such as data and information management systems and research and development.

10.19 Member States shall ensure that the inspectorates have high quality staff

It is important for inspectorates to have staff of high quality in order to deliver the challenges of enforcement of the WSR. The sets of criteria in the two following sections address the issues of staff recruitment and of training, where the specialist competence of staff is considered. However, there are further preconditions concerning the nature of the inspectorate and the staff themselves which contribute to high quality staff capacity. It is, therefore, important to establish criteria related to these issues.

Criteria establishing the basis for high quality inspectorate staff

120. The salaries of inspectors shall be comparable with related professions within the country to ensure good staff are recruited and retained.

121. Inspectors shall operate with independence from political and commercial interference – they shall act independently to implement their legal duties and powers.

122. Inspectors shall act in a responsible and professional way.

123. Inspectors shall be motivated to ensure the waste shipment problems are uncovered and to work within difficult circumstances.

10.20 Member States shall ensure that staff in authorities responsible for inspection under the Waste Shipment Regulation shall have the necessary competence

For authorities (environmental, Customs, police, etc.) to undertake their inspection and control functions under the WSR effectively, it is necessary that their staff have sufficient competence. This is a specific aspect of institutional capacity beyond that of a determination of staff numbers, etc. Staff must have sufficient technical, legal, administrative and other skills to do their work. The criteria in this section are for the competence for the institutions (or team in an institution) as a whole. Naturally, the range of skills, etc., would be distributed across individual staff. The criteria set out here can be viewed as criteria of the 'state' of an institution. To achieve these 'state' objectives, it is necessary for institutions to have effective recruitment and training processes. These form the basis of 'process' criteria set out in the following two sections.

Criteria to ensure the competence of inspectorate staff

124. Member States shall ensure that inspectorates responsible for enforcing the WSR shall have staff with sufficient competence to allow for the effective implementation of the enforcement functions.
125. Member States shall undertake a review of the necessary competencies for staff in institutions responsible for enforcing the WSR and identify how gaps in competencies are to be filled.
126. Member States shall ensure that there is sufficient competence in the institutions responsible for enforcing the WSR in the following areas:
- Administrative skills for the assessment of waste shipment documentation, inspection reporting, following pre-determined procedures, etc.
 - Technical skills for the assessment of individual waste stream threats (e.g. determining whether something is waste).
 - Skills in criminal investigations.
 - Sufficient forensic skills to undertake sampling of waste.
 - Analytical skills to analyse the waste sampled.
 - Legal skills necessary to proceed with enforcement action.
 - Data management skills to store and interrogate data (including from other relevant institutions).
 - Language skills for transboundary communication.
 - Information technology skills.
 - Communication skills to communicate with industry, present enforcement action to the public and provide evidence in a court of law.
 - Management skills to ensure a high quality and effective inspectorate, including planning skills.
127. Member states shall identify where the necessary competencies shall be located within and between the institutions responsible for enforcing the WSR.
128. Where staff with the necessary skills (e.g. legal) are not fully deployed on WSR enforcement, Member States shall ensure that institutions clarify the responsibilities of these staff with respect to implementation of the WSR.
129. Where competencies of individual staff are spread between institutions (e.g. environmental inspectorate, police, etc.), Member States shall ensure that there is sufficient collaboration between institutions that there is an availability of these

competencies amongst the institutions as needed for the effective enforcement of the WSR.

10.21 Member States shall ensure that inspectorates recruit staff of high quality

The effective working of the Inspectorate will depend upon the quality of the staff it recruits. New staff bring skills and knowledge with them and it is appropriate to establish criteria for the recruitment process. As noted earlier, Member States indicated a range of skills that may be required of new staff – technical, legal, experience, foreign language skills and personality requirements.

However, it is not possible to set criteria for individual specialist skills, given that inspectors may form part of a team and it is the overall skill base of the team that is important. In such cases new recruits may fill a skills gap (legal, technical, etc), as appropriate. Importantly, there is also a stress on the appropriate personality for the role of an inspector. Staff have to deal with illegal activity, may address issues at short notice, etc. Therefore, the personality skills to driver forward inspection work and act in difficult situations is an important part of the recruitment assessment process.

Criteria for the recruitment of staff to inspectorates

130. New staff shall be graduates.
131. New staff shall have specialist knowledge appropriate for the position to be filled – technical or legal.
132. New staff shall have previous work experience in an appropriate field.
133. New staff shall have the language skills necessary to process transboundary information and work with neighbouring countries.
134. New staff shall have the appropriate personality attributes to the job.

10.22 Member States shall ensure that staff in inspectorates receive training to ensure the maintenance of the quality waste shipment enforcement

Inspectors require training – when they join the inspectorate and to remain up to date with developments that affect the efficiency and effectiveness of their work. It is important to note that while some Member States have indicated a range of training activities, others have stated that no training takes place. This has the potential to undermine long-term inspection capacity. Training can be considered in two ways:

- The issues that inspectors require training in.
- What methods and/or frequency of training are appropriate.

The study has noted a range of different issues that Member State authorities have considered in relation to training of inspectors, including the technical, legal, operational and institutional skills and knowledge necessary for their work.

The frequency and length of training vary between the Member States, with some having specific regular courses and some being on an ad hoc basis. Sufficient training time needs to be made available to new staff. It is also important to stress the lessons learned by training between competent authorities, which helps in co-operative working and more efficient sharing of work loads.

The type of training required will depend upon the type of control strategy adopted by the authorities in the Member State. Other factors are also important:

- The range of skills required by environmental inspectors may vary depending on how far they are able to draw upon other expertise within and outside of their institution. For example, experts in different waste streams may be accessible for particular cases.
- The division of tasks between authorities will vary. For example, customs officers may routinely call in environmental inspectors if they discover anything suspicious (leaving the environmental inspector to determine if a shipment is illegal, for example). Alternatively, customs officers might have the skills to make such an assessment on their own. The skills required in the two cases are quite different.

The division of tasks and skills may vary between Member States and between authorities. However, criteria can still be established on the basis that the skills are needed.

The methods used to provide such training will vary. Where inspectors responsible for waste shipment inspection are part of a larger environmental inspectorate and, particularly, where waste shipment inspection forms only part of their work, it is likely that new staff will undertake a general inspection course. Similarly, new customs officers will undertake a general course addressing their range of duties for which waste shipment inspection might form a small part.

It is not, therefore, possible to indicate how intense training should be. Although some Member States have indicated the intensity of training undertaken, it is not clear if this is for waste shipment inspection alone. Ultimately, it is not the length of training that is important, but whether all of the above issues/skills have been communicated.

However, it is appropriate to undertake specific training on waste shipment inspection itself. This presents different challenges across the Member States. Large Member States with a core of waste shipment inspectors are able to organise training using inspectorate staff that are not only skilled inspectors, but also have experience in training. In small Member States (or small regions), the number of inspectors may be so small that this wealth of expertise is not available. It is, therefore, important to note the stress that a number of Member States have given to training or exchange of experience within IMPEL/INECE. This provides the opportunity to learn from others. This is good practice, although it is difficult to define criteria for such activity.

It is, however, appropriate to set a criterion that requires the training plan to identify how training needs are to be addressed. This may be through a dedicated course or through bilateral exchange, etc.

Another important practice highlighted by the Member States is the use of practical examples and on the job training. Waste shipment inspection activity varies from case to case and, therefore, it is important to include practical examples in desk-based training and to extend the training to working alongside experienced inspectors in the field.

Inspectors also require training throughout their careers. Clearly, as any of the above core training elements change (new regulations, changes to court procedures, etc.), then training may be required. It is also important to ensure that training is provided as systems change, e.g. documentation and information management processes. Authorities may also undertake radical changes to how they address waste shipment issues. This may require detailed communication of new issues and ways of working to experienced staff. Therefore, it is important that training plans include actions to be taken to update skills as circumstances change.

It is, therefore, appropriate that the following criteria are established.

Criteria for the training of staff

135. Each competent authority responsible for waste shipment enforcement shall undertake a training needs assessment and shall develop a training plan.

These shall include:

- A statement of the skills necessary fully to implement the WSR (taking account of control strategies, etc.).
- A statement of the range of skills necessary in each of the responsible institutions.

- An audit of current skills.
 - An assessment of how changes in the future will need to be addressed.
 - A training plan to address skills gaps and an ongoing training plan for future changes.
136. The subjects that shall be considered for inclusion the training plan shall include:
- Legal training in the WSR, related waste legislation and other related legislation affecting transboundary activity.
 - Understanding waste generation, transport and its environmental impacts.
 - The documentation necessary for waste shipment and other customs declaration.
 - The information systems for tracking waste generation and movement.
 - The administrative procedures for undertaking an inspection.
 - The processes for opening, checking and assessment of waste shipments.
 - The procedures for taking samples, transporting and processing them.
 - Compiling reports on inspections.
 - The procedures for compiling evidence necessary for prosecution, etc.
 - Court procedures, role of an expert witness, etc.
 - Health and safety procedures.
137. Training shall include practical case examples of good and poor practice in waste shipment enforcement.
138. Training shall include practical experience of real inspection and other enforcement activities.
139. Training shall include practical experience of working with other competent authorities responsible for waste shipment enforcement and other staff responsible for other regulatory regimes (particular concerning waste management) so as to gain a wider understanding of working practices.
140. The length of training and shall be determined based on the training needs assessment.
141. New staff shall receive sufficient training on technical, legal and operational skills to enable them to work effectively.
142. Competent Authorities in a Member State responsible for waste shipment regulation shall review the potential for joint training and mutual training by staff

from one authority in another.

143. Training on new developments, including further intelligence on waste shipment issues, shall be undertaken on an annual basis.

144. Authorities shall ensure that relevant staff take part in EU level actions to enhance their skills and knowledge (see separate criteria).

10.23 Member States shall ensure that waste shipment inspection activities are undertaken to a high quality

The management, planning and activities of inspection authorities should be of high quality. Addressing illegal waste activity is challenging and requires a high quality approach by authorities. Inspection processes have to be of high quality, not least because processes of evidence gathering, analysis and recording may be presented in judicial proceedings. Stakeholders need to have confidence in a quality inspectorate and other institutions in the Member State and in other Member States need to have confidence in the quality of the actions of the inspectorate. Criteria related to quality are set out within other appropriate contexts in this Chapter. However, given the importance of the issues, it is considered necessary to present a coherent set of criteria regarding quality.

Criteria for the quality of waste shipment inspection activity

145. Member States shall ensure that the staff of its competent authorities for implementation of the WSR are of high quality.

146. Member States shall ensure that the procedures and planning processes of the competent authorities for implementation of the WSR meet recognised quality management standards, such as ISO 9000.

147. Member States shall ensure that, where these exist, all analytical procedures undertaken to support inspection work follow recognised international standards.

148. Member States shall ensure that the data collection and management processes to support waste shipment inspection activity meet high standards of verification and processing.

149. Member States shall ensure that all equipment used in waste inspection activity meets international requirements and is correctly calibrated.

150. Member States shall ensure that all evidence gathered during inspection is of a very high standard sufficient to pass the rigor of challenge in a court of law.

151. Member States shall ensure that review of inspection plans, working practices, etc., explicitly assesses the quality of those activities, including seeking views from stakeholders on this issue.

152. Member States shall ensure that processes are in place to ensure the quality of the inspectorate and its individual staff is maintained and, where necessary, enhanced.

10.24 Member States shall ensure effective co-operation within the competent authority responsible for waste shipment inspection

It should also be noted that issues of collaboration may arise within the waste shipment inspection authority. This may include:

- Regulation of other key issues necessary for effective waste shipment control (e.g. other waste control functions).
- Other units responsible for waste shipment inspection in other parts of the country (e.g. in different ports).

Criteria for such co-operation are set out based on the objective of improving waste shipment enforcement. There are likely to be other objectives concerning co-operative relationships between staff within inspectorates, but these are outside of the scope of this report.

Criteria for co-operation within an inspectorate

153. Based on the Control Strategy and risk profiles of waste streams, Member States inspectorates shall identify the key inspection staff in different areas of its work which address waste and control issues identified therein.

154. Inspectorates shall take measures to ensure the effective co-ordination of their different regulatory activities to optimise outcomes for waste shipment regulation.

155. Staff involved in waste shipment inspection in different regions or branches of an inspectorate shall ensure that they elaborate joined-up planning, information sharing and working practices.

156. Inspectorates shall review the co-operative working relationships within and

between regulatory regimes and assess whether these are leading to improved enforcement of the WSR.

10.25 Member States shall ensure effective co-operation between competent authorities necessary to deliver enforcement of the WSR

A critical aspect of waste shipment control that is different to other types of environmental inspection is that the control system is typically divided between governmental institutions and, therefore, effective control strategies and day to day working require close collaboration between those institutions. These institutions include:

- The main environmental inspectorate responsible for waste shipment inspection.
- Customs.
- Police – in some cases different police forces.
- Other environmental inspectorates (regional, national, etc.)
- Inspectorates/authorities in other Member States
- Inspectorates/authorities in third countries.

It is considered good practice for competent authorities to agree a Memorandum of Understanding which sets out the goals and actions delivering effective working relationships. MoUs are adopted (signed) by the Heads of the institutions concerned and, therefore, carry a strong managerial message for implementation by staff.

An MoU can identify the need for further development of joint action, such as joint planning. The 'level' of the joint planning may vary. Some institutions may be bound (e.g. by law) to develop their own plans and, therefore, there may be constraints on fully integrated joint planning. However, this does not prevent aspects of those plans relevant to waste shipment control being brought together from each institution in a coherent document, nor, conversely, results of a joint approach being fed into the wider planning of each institution.

Further joint actions are also required, therefore criteria are set out regarding joint inspections and data sharing.

Even with a well formulated MoU and a joint plan, effective collaboration between institutions is only ultimately realised at the operational level. Individual staff in each institution must be familiar with each other's role, trust each other and harmonise their approaches to act as a coherent control system. It is, therefore, appropriate for the competent authorities to review the joint working practices that they have agreed to and address any issues that may arise from such a review.

Criteria for co-operation between competent authorities

157. Competent authorities within a Member State responsible for enforcement of the WSR shall agree a formal Memorandum of Understanding (or similar) which includes the following:

- The purpose of the MoU.
- Who is agreeing the MoU and overseeing its implementation (e.g. Chief Executives of the institutions).
- The goals of each institution in relation to waste shipment controls.
- The legal powers and duties available to each institution.
- A statement of how each institution will exercise those powers and duties with regard to waste shipment controls.
- Agreed joint working relationships (see below).
- Information exchange procedures (see below).
- Points of contact.
- Process for review of the MoU, including regular review meetings at a high level.
- Period of validity.

158. The MoU shall set out the joint working relationships and practices.

159. The MoU shall include a commitment to strategic approaches (e.g. joint planning) and operational interaction (e.g. joint inspection).

160. Competent authorities within a Member State responsible for enforcement of the WSR shall adopt joint planning processes. Criteria for effective waste shipment inspection planning are outlined elsewhere and will not be repeated here. However, key elements of joint planning that shall be included are:

- There is a joint agreement on the problems regarding waste shipment control.
- The plan has a specified lifespan.
- Control priorities are set out.
- The specific roles of the institutions are clearly defined.
- The specific roles of individuals are set out, including the roles of senior management where issues between institutions arise.
- Processes for initiating control action are defined – how and by whom.
- Information sharing procedures are specified.
- Key points of contact for operational interaction are defined.

161. Competent authorities within a Member State responsible for enforcement of the WSR shall undertake joint investigations and inspections related to waste shipment enforcement.
162. Competent authorities within a Member State responsible for enforcement of the WSR shall ensure that there is sufficient sharing of data and information to enable each authority to undertake its work on waste shipment enforcement effectively.
163. Member States shall create a hazardous waste task force that may be composed of representatives from Customs (agents, inspectors, trade information specialists), environmental agencies, police agencies at national, regional and local levels, persons with hazardous waste regulatory and prosecution backgrounds, and others with relevant information on or authority over waste shipments.
164. Member States shall ensure that each competent authority reviews the joint working practices with other competent authorities to assess how joint procedures and actions are being taken forward and staff attitudes to co-operation. Any problems relating to co-operation shall be identified and recommendations made to address these.
165. Member State authorities shall endeavour to reach formal agreements with authorities in other countries where these may assist in helping to enforce waste shipment controls.
166. The lessons learnt and information gathered by individuals taking part in EU level actions shall be communicated to others in the Competent Authorities in their Member State and, where relevant, recommendations made concerning issues relating to enforcement of the WSR in that Member State based on these lessons/information.

10.26 Member States shall adopt measures to inform and involve stakeholders in enforcement activity

Some cases of illegal traffic are due to lack of information and for this reason a key strategy for prevention will be awareness raising campaigns. This might include activities such as training courses, seminars, advertising, information papers and guidance documents targeted at those involved in the import and export of hazardous waste. However, where illegal movement of waste is deliberate, then it is important to ensure that actions taken by the different competent authorities are publicised in order to increase their deterrence effect with others.

Criteria to promote waste shipment enforcement action

167. Member States shall adopt a communications and promotions strategy to promote waste shipment control actions.
168. The communications and promotions strategy shall address the following:
- Assessment of how far illegal waste shipment is due to lack of information or understanding by operators.
 - Identification of the most effective potential mechanisms for dissemination of information.
 - A media strategy to promote successful enforcement actions.
 - Identification of resources, including any skilled communications staff, necessary to take forward the strategy.
169. Member States shall ensure that the communications and promotions strategy is reviewed with particular reference to its effectiveness and that recommendations for improvements are implemented.

10.27 Member State authorities shall participate in EU and International level actions

Member States have highlighted the value that they place on various waste shipment inspection activities undertaken at EU level, such as joint inspections through IMPEL. These improve understanding of different Member State practices, improve co-operative transboundary working relationships and provide knowledge enhancement (training). For this reason, the following criteria can be established.

Criteria for participation in EU level actions

170. Member States shall identify which authorities should participate in EU level actions on waste shipment inspections.
171. At least one authority from each Member State shall participate in at least two EU level actions each year.
172. Relevant Member State authorities shall participate in the activities of the INECE Seaport Network.
173. Customs authorities shall participate in initiatives by the World Customs

Organisation and Green Customs Network to support enforcement of waste shipment controls.

174. Police shall participate in initiatives by Interpol to support enforcement of waste shipment controls.

11 CENTRALISING THE CRITERIA AND ROLE OF THE COMMISSION

11.1 Introduction

Having set out possible criteria to enhance the enforcement of the WSR it is important to consider the following question:

- At what level should these criteria be established or set out?
- What is the potential and role for the European Commission in monitoring their implementation?

This Chapter will address these issues.

Before considering these questions, however, it is important to revisit part of the background to this study. Criteria for inspection in other regimes are already established in EU law and the EU Recommendation for Minimum Criteria for Environmental Inspection (RCMEI) as well as the WEEE Directive (with proposals regarding inspection) are currently under review or are being considered by the EU legislative institutions. Therefore, answering the two questions set out above must take account of such developments. This context is, therefore, taken into account in the following discussions.

11.2 The level at which criteria can be established: the EU

Member States have a strong interest in the effective enforcement of the WSR by other Member States. Waste is moved within the EU prior to being shipped to third countries and authorities in the Member States at the point of departure for the EU may be at a disadvantage due to poor enforcement by the Member State from which the waste came. Similarly, enforcement activity within a Member State may result in those involved in illegal activity reducing their use of ports in that Member State and transferring waste by road to ports in other Member States where enforcement is less effective. The EU as a whole needs to reduce its environmental burden on third countries from illegal waste shipments, but its ability to do this is only as strong as its weakest link.

It is, therefore, appropriate for criteria for waste shipment inspection to be established at EU level. This allows the European Commission (and others) to assess progress in the implementation of the criteria and for Member State authorities to understand more fully the strengths and weaknesses of other Member State authorities that they have to work with – all helping to drive up the totality of the capacity of, and effective activity of, the waste shipment enforcement regime of the EU as a whole.

It is also clear that there are significant capacity gaps in many Member States. These may reflect low resourcing, low prioritisation of waste shipment regulation or problems with particular institutions. Criteria established at EU level can, therefore, act as an important driver to help overcome these problems, supporting the efforts of waste shipment inspection staff.

Criteria can be set out at EU level in various ways. Principally these are:

- As 'hard' law, such as in a Directive or Regulation.
- As a Recommendation, which is not binding on the Member States, but which may contain reporting obligations.
- As guidance.

Hard law has many attractions, not least that the obligations are binding on the Member States and are, therefore, a strong driver for action that has the weight of potential sanctions behind them. This may be desirable given the improvements in the waste shipment enforcement regimes that are required.

For a Directive or Regulation to be used, the criteria have to be clearly universally appropriate and they need to be clear and precise. Criteria that contain qualifications or caveats may be less suitable as they potentially allow far too much interpretation in transposition and implementation. A Regulation is directly applicable, while a Directive is technically binding as to its ends not its means. It could be argued, therefore, that where criteria can be established that are absolutely precise, a Regulation is possible, but if interpretation is needed, a Directive is more appropriate.

A Recommendation is not binding. However, it is the most familiar legal form for Member States for criteria for environmental inspection. As stated earlier, however, implementation of the RMCEI has been poor in some cases. Some Member States have made advances because of the RMCEI and it has helped stimulate debate on the criteria and on Member State practice within, for example, IMPEL. The European Commission is currently considering the outcome of the review of the RMCEI and its future. However, it has clearly concluded that some inspection requirements need to be embedded in hard law (as seen in the IPPC and WEEE Recast Proposals). The status and content of a revised RMCEI are yet to be determined.

It is, however, worth noting the concern of some IMPEL members to what they see as a potential fragmentation of inspection obligations by inclusion of inspection requirements in individual Directives, as opposed to the integrated approach of the RMCEI.

Having said this, there are sufficient characteristics of waste shipment inspection that distinguish their planning and practice from other types of environmental inspection and, therefore, a specific legal instrument (or section of an instrument) on waste shipment inspection is appropriate. This is not to ignore the conclusion reached in this report of the need for an effective control strategy (including inspection activity under other regulatory regimes) and that waste shipment inspection and its planning may be institutionally linked in the Member States to other environmental inspection regimes. However, an instrument directed at criteria for waste shipment inspection can both strive to set challenging objectives relating to waste shipment control while at the same time allow the Member States the flexibility to integrate waste shipment inspection with other environmental inspection activity particularly where this helps deliver the objectives of the WSR.

The third approach the European Commission could use to set out criteria is through the use of guidance. This instrument is not binding and not subject to reporting obligations. It is probably not, therefore, an appropriate approach for pushing forward enhancement of waste shipment inspection capacity in the Member States. However, guidance is likely to be important to support any other chosen instrument as it is able to address criteria which are less precise, to provide interpretation and support specific criteria with case examples. It can also discuss specific issues, such as integration with other environmental inspection regimes or interpretation within an intelligence-led approach.

It is not for the authors of this report to indicate whether the European Commission should adopt a Directive, Regulation, Guidance, etc. Nor is it appropriate for the authors to indicate that a particular criterion should be in a Directive, etc. Some criteria are clear, specific and robust enough that they could be legally required of the Member States. Others include those that require interpretation, etc., and may be appropriate for guidance.

At a high level, we consider that the main categories of criteria set out in the previous Chapter are robust enough for a legal foundation in a Directive or a Recommendation. These are set out in the Box below. The specific criteria set out in each category in the previous Chapter may be most appropriate in guidance, although some may be robust enough for legal foundation. This is a matter for the Commission Services and subsequently by the EU institutions.

- Member states shall ensure that competent authorities have sufficient capacity to ensure effective enforcement of the WSR
- Member States shall have an effective control strategy to ensure implementation of the WSR
- Member States shall ensure that they have sufficient understanding of illegal waste movement to meet the enforcement requirements of the WSR
- Member States shall ensure that they undertake risk profiling and risk analysis of waste streams that may result in illegal waste shipment
- Member States shall ensure that they undertake an assessment of criminal activity contributing to illegal waste shipment
- Member States shall have an effective inspection plan covering all aspects of waste shipment inspection
- Member States shall undertake an effective review of the inspection plan
- Member States shall ensure that they have an effective inspection programme
- Member States shall ensure effective procedures are followed for the preparation of an inspection
- Member States shall ensure effective procedures are followed for undertaking an inspection
- Member States shall ensure effective procedures are followed for the follow-up to an inspection
- Member States shall ensure that inspectorates adopt a sampling plan for the taking of samples during an inspection
- Member States shall ensure that laboratory facilities and procedures are of a high quality to support inspection actions
- Member States shall ensure that relevant aspects of waste shipment inspection activity are transparent
- Member States shall ensure that the inspectorate responsible for waste shipment inspection operates in an effective way
- Member States shall ensure that the inspectorate has sufficient budget to deliver its obligations regarding enforcement of the WSR
- Member States shall ensure that the inspectorates have high quality staff
- Member States shall ensure that staff in authorities responsible for inspection under the WSR shall have the necessary competence
- Member States shall ensure that inspectorates recruit staff of high quality
- Member States shall ensure that staff in inspectorates receive training to ensure the maintenance of the quality waste shipment enforcement
- Member States shall ensure that waste shipment inspection activities are undertaken

to a high quality

- Member States shall ensure effective co-operation within the competent authority responsible for waste shipment inspection
- Member States shall ensure effective co-operation between competent authorities necessary to deliver enforcement of the WSR
- Member States shall adopt measures to inform and involve stakeholders in enforcement activity
- Member State authorities shall participate in EU and International level actions

11.3 The level at which criteria can be established: the Member States

The work undertaken here on criteria is directed to the European Commission. However, we would like to stress that its value is not only at the EU level. The criteria are also of value at the Member State (and sub-national) level. Some of the criteria set out here may, for one reason or another, be useful but are not subsequently taken forward at EU level. Also some of the main criteria may be taken forward at EU level, but not some of the supporting criteria. This report stresses the importance of developing a control strategy, of inspection planning, etc., in the Member State and the criteria set out here can be useful for that purpose. Some of these could be used directly in Member State plans and guidance to ensure inspectorate units operate to an expected quality. Others can guide the work of individual inspectors. Furthermore, criteria could be re-interpreted as questions or a check-list to challenge the approach to waste shipment control, the quality of risk assessments, co-operative working, etc.

Finally, the criteria can also be used where there is concern that sub-national institutions with competence for waste shipment inspection are not effective. National law, guidance, etc., can set out criteria that such authorities are expected to meet. Exactly how this could be done and how appropriate this is would depend upon the constitutional, legal and administrative context of each Member State.

Ultimately, how the criteria might be used by the Member States is their decision. However, it is to be hoped that the criteria can help to stimulate action in the many cases where there are significant capacity gaps.

11.4 Use of the criteria by others

It is also appropriate briefly to consider the potential use of the criteria by others. Within the EU IMPEL could consider the interpretation of the criteria and undertake studies, discussions, workshops, etc., on the implementation of specific criteria, whether individual criteria are robust, whether changing circumstances require new or altered criteria, etc. It could also

consider whether some of the criteria, and how they are implemented, could be used as the basis for the Member State authorities to understand better how other Member States' authorities work and the strengths and weaknesses of those authorities.

The criteria could also be considered in other contexts, such as within the Basel Convention. The Convention has already produced detailed guidance in some areas, but the criteria might assist its work on capacity enhancement, at least in a modified form.

Finally, the criteria have been developed with regard to waste shipment inspection. The work has drawn on inspection criteria from other regulatory regimes and it should be noted that the nature of the criteria developed here may have a value in helping to set criteria or capacity development guidance in other regimes or areas, whether by the EU, OECD or other contexts.

11.5 Monitoring and Review by the European Commission

Setting out criteria at EU level has a limited value if their implementation is not monitored by the European Commission. If criteria are set out in a Directive, Regulation or Recommendation, it is usual to require that the Member States report periodically on their implementation. Some of the criteria themselves, e.g. concerning production of inspection plans, also include a requirement to report to the European Commission. However, many criteria do not have a direct 'product' to be 'seen' and able to be sent to the European Commission. Therefore, it is appropriate to require reporting on implementation of all of the criteria set out in a legal instrument.

It is important that the reporting from the Member States is as useful as possible in helping the European Commission to understand how the criteria are used and their consequences for capacity development. This is important to help the European Commission to address any inadequacies in the criteria in a subsequent review and to understand better the progress in the Member States in achieving the objectives of the WSR.

Therefore, it is appropriate to request the following in Member State reports:

1. For each authority competent for implementation of the WSR (i.e. not only the environmental inspectorate) details on how each of the criteria have been addressed.
2. To summarise from (1) above, for each authority, the criteria that have been met.
3. To summarise from (1) above, for each authority, the criteria that have not been met.
4. To include inspection plans for all the country.
5. To include risk assessments for each authority demonstrating how criteria have been applied.

6. To include control strategies for each authority demonstrating how criteria have been applied.
7. The Member States to report on any concerns it has over the nature or implementation of any specific criteria with recommendations for improvement where appropriate.

It is not clear what the periodicity of reporting should be. Given the level of detail required in the reports, such reporting cannot be too frequent. However, it may be appropriate to request an early report to assess initial progress, even if full implementation can only be expected for subsequent reports.

If properly reported, this information should provide the European Commission with detailed understanding about the usefulness and implementation of each of the criteria and highlight Member States that are slow to act.

The information would also provide a sound basis for review of the criteria. It is too soon to suggest when a review is appropriate. An initial screen should be done after receipt of the first Member State reports, but whether a full-blown review would be needed would depend upon the results. A review could also be triggered by other circumstances, e.g. a need for a radical change to the WSR, changes in the nature or scale of the illegal waste shipment problem, etc. It is, however, to be hoped that the criteria to be established will be robust enough to help guide the Member States for some considerable time.