INTERNATIONAL WASTE SHIPMENT BETWEEN THE EU COUNTRIES IN THE CONTEXT OF CRIMINAL LAW

Introduction

Waste is an inseparable part of existence and economic activity. Among the large mass of waste there are also hazardous wastes, which are, regardless of their nature, burdensome for the environment and mankind at every stage of their life cycle, i.e. production, collection, storage, transport, recovery, and disposal, as well as during their circulation (shipment) between different countries. Due to this fact, international shipment of waste is one of the most important issues of international environmental law, and requires special administrative and penal regulations. International waste management is a special type of waste handling based on the

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The aim of this study is to present the issue of international waste shipments between EU countries in the context of criminal law. By analysing this issue, an attempt has been made to respond to this research hypothesis: Are the present criminal-law instruments, in the field of international waste shipments, effective in preventing illegal activities in this area? An analysis of the subject literature, procedures and criminal sanctions on the basis of current EU and Polish legal acts, data of the Supreme Chamber of Control (hereinafter: NIK) and police statistics in the field of illegal waste shipments is the research method used in this study.

Procedures for international shipments of waste between the European Union countries

According to Regulation 1013/2006, there are many procedures in force in the EU, the primary of which are considered to be:
— the procedure of so-called general information requirements,
— the procedure of so-called prior written notification and consent,
— the procedure for so-called intra-EU transfers with transit through third countries.

The first procedure concerns mainly green waste for recovery⁶, and the formal requirement is that the waste shipped must be accompanied by a document (set out in Annex VII of Regulation 1013/2006), signed by the person who arranges the shipment and by the recovery facility or laboratory and by the consignee upon receipt of the waste, and a contract must be concluded between the person who arranges the shipment and the consignee of the waste intended for recovery. This agreement must include an obligation that, if a shipment of waste or its recovery is not completed as intended or if it is illegal, the person who arranges the shipment takes the waste back or ensures its recovery in an alternative way and, if necessary, provides its storage in the meantime⁷. The procedure of prior written notification and consent applies to all waste intended for disposal, waste from the amber list and waste not classified anywhere else but intended for recovery⁸. It contains a number of stages, which include: general notification, obligation to conclude a contract, establishment of a financial guarantee, obligations related to the transfer

⁵ Consolidated text, DzU, 2019, item 1162; hereinafter: u.m.p.o.
⁶ Regulation No. 1013/2006, Article 3(2).
⁷ Ibid., Article 22.
⁸ Ibid., Article 3(1).
of the notification, conditions for granting consent to the shipment, granting consent to the recovery facility — pre-consents, and issuing certificates of recovery. The pre-consent is a consent for the recovery facility, and shall facilitate further notification. However, it should be stated that they do not replace them, nor does the decision to authorise the shipment of waste. On the other hand, the procedure for intra-EU shipments in transit through third countries lays down additional obligations in relation to the preceding procedures, which vary according to the intended method of recovery or disposal. It should be noted that the planned waste shipment can only take place within the valid period of consents expressed by all authorities. The recovery or disposal of waste in relation to a planned shipment must be completed within the first calendar year following receipt of the waste by the facility, unless a shorter period is indicated by the competent authorities.

As regards procedures for the export of waste from the EU to overseas countries or territories, these vary according to the intended waste management. These procedures are designed to determine whether waste is not covered by the export ban. It should be noted that the export of waste for disposal is prohibited. However, in the case of exports of waste for recovery to countries to which Decision C(2001)107/Final of the Council of the Organisation for Economic Cooperation and Development (OECD) modifying Decision C(92)39/Final on the control of transboundary movements of wastes for recovery (hereinafter: Decision C(2001)107/Final OECD) does not apply, a ban on exports of waste classified as hazardous, under Annex V of Regulation 1013/2006, has been introduced. In the case of green waste for recovery, the procedure varies according to the will of the country of destination, which has three possibilities: — an extension of prohibition to all, or only indicated green waste, — a procedure of prior written notification and consent,

10 Regulation No. 1013/2006, Articles 31–32.
12 Regulation No. 1013/2006, Article 40.
14 Regulation No. 1013/2006, Article 36.
15 Ibid., Article 37.
— a complete abandonment of controls in the country of destination.

For exports from the EU of waste intended for recovery to countries to which Decision C(2001)107/Final OECD applies, the procedure applies in principle to all waste from the green\textsuperscript{16} and amber lists\textsuperscript{17}, as well as waste not classified. It does not matter whether it is hazardous waste within the meaning of Annex V of Regulation No 1013/2006. In this case, the procedures specific to shipments within the EU with or without transit through third countries with some additional modifications shall be applied accordingly\textsuperscript{18}. On the other hand, imports to the EU destined for disposal or recovery are generally prohibited\textsuperscript{19}. However, this is not an outright ban, as it only applies to States which are not Parties to the Basel Convention\textsuperscript{20}, and it does not apply to States with which separate bilateral agreements have been concluded with an EU Member State, or to special circumstances (crises, war, etc.). Imports are accordingly subject to the procedures for ‘shipments within the Community with or without transit through third countries’\textsuperscript{21} with some additional modifications, and it is not important whether this applies to countries where OECD Decision C(2001)107/Final is in force or not\textsuperscript{22}.

In Poland, the rules of waste shipments are regulated by the previously mentioned u.m.p.o. (the law act of international waste shipment), which sets out the codes of conduct and the authorities responsible for performing tasks in the field of international waste shipments under Regulation No. 1013/2006, as well as financial penalties for a breach of duties in the field of international waste shipments. The authority responsible for the implementation of the provisions of the abovementioned Regulation, pursuant to Article 3 of the u.m.p.o., is the Chief Inspector of Environmental Protection (hereinafter: GIOŚ), who is the competent in matters concerning: import of waste into the country, export of waste outside the country and transit of waste through the country. The competences of the GIOŚ include, among others, granting permits for international shipments of waste, in particular: import of waste into the country, export of waste out of the country and transit of waste through the country.\textsuperscript{23} It should be noted here that in the permit, GIOŚ also specifies the conditions concerning the manner in which waste recovery or disposal

\begin{itemize}
\item \textsuperscript{16} The green list of waste is set out in Annex III of Regulation No. 1013/2006. Those wastes which are contaminated by other substances are not considered to be green waste.
\item \textsuperscript{17} The amber list of waste is contained in Annex IV of Regulation No. 1013/2006.
\item \textsuperscript{18} Regulation No. 1013/2006, Article 38.
\item \textsuperscript{19} \textit{Ibid.}, Articles 41 and 43.
\item \textsuperscript{21} Regulation No. 1013/2006.
\item \textsuperscript{22} \textit{Ibid.}, Article 45; Radecki W, Jerzmański J, Ustawa..., \textit{op.cit.}, pp. 28–31.
\item \textsuperscript{23} U.m.p.o., Article 4.
\end{itemize}
processes are carried out on the territory of the country, and the way in which these conditions are fulfilled. In addition to the permit for international shipments of waste, the Chief Inspectorate of Environmental Protection also grants an initial permit to the recovery facility in the form of an administrative decision for a specified period, but not longer than 10 years\textsuperscript{24}. A pre-permit may be issued only after receiving information from the authority competent to issue a permit to conduct waste recovery operations, and after the Regional Environmental Protection Inspector (hereinafter: WIOŚ) has checked the functioning of installations and equipment used for recovery. If it is found that there has been a breach of the regulations, in particular those related to environmental protection or waste management, or conditions specified in other decisions, the GIOŚ may withdraw the preliminary permit by way of a decision without compensation\textsuperscript{25}.

**Criminal sanctions for illegal shipments of waste**

Article 50 of Regulation 1013/2006 sets out how to enforce the rules on international shipments of waste within the EU. Member States are required to define rules in their legislation containing penalties for infringements of this Regulation and to take all measures necessary to ensure that they are implemented. The sanctions laid down must therefore be effective, proportional, and act as a deterrent. Inspections of installations and undertakings (in accordance with Article 13 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste\textsuperscript{26}) and spot checks on shipments of waste or on the related recovery or disposal, are important enforcement measures to prevent illegal shipments. Inspections of shipments should take place, in particular:

\begin{itemize}
  \item \textit{(a) at the point of origin, involving the producer, holder or notifier;}
  \item \textit{(b) at the place of destination, involving the consignee or the facility;}
  \item \textit{(c) at the frontiers of the Community;}
  \item \textit{(d) during the shipment within the Community}\textsuperscript{27}.
\end{itemize}

Such checks shall include the inspection of documents, confirmation of identity and, where appropriate, physical inspection of the waste.

In Poland, control over the international shipment of waste is carried out by the Customs Service, Border Guard and Road Transport Inspection authorities as well as regional environmental protection inspectors\textsuperscript{28}. Control procedures, already mentioned above, are also defined in Regulation 1013/2006, which essentially takes into account the route, type of waste and intended use of it. In the case of waste shipments, the legislator has introduced many prohibitions. In general, trade in waste (except transit)

\textsuperscript{24} Ibid., Article 13.
\textsuperscript{25} Ibid., Article 17; Garczyński W, Praktyczne..., op. cit., pp. 142–143.
\textsuperscript{26} OJ UE L 114 of 2006, p. 9; hereinafter: Directive 2006/12/EC on waste.
\textsuperscript{27} Regulation No. 1013/2006, Article 50.
\textsuperscript{28} U.m.p.o., Article 3.
with countries that are not Parties to the Basel Convention is prohibited. Furthermore, in some cases, there is a ban on shipments of waste for disposal or recovery. If a shipment of waste is notified for disposal, the competent authorities of destination and dispatch may, within 30 days following the transmission of the acknowledgement by the competent authority of destination, raise objections to the shipment based on one or more of the arguments set out in Article 11(1)(a) to (j) of Regulation No 1013/2006, one of which is that the planned shipment or disposal would not be in accordance with measures taken to implement the principles of proximity, priority for recovery and self-sufficiency in accordance with Directive 2006/12/EC on waste.

The next argument concerns planned shipments or disposal of waste that do not comply with national regulations on environmental protection, public order, public safety or health protection. In addition, such an objection is possible in the following cases:

— the notifier or the consignee has previously been held accountable for illegal shipments or other infringements of environmental legislation,
— the notifier or the facility has repeatedly failed to fulfil their obligations to keep adequate records of the management of shipped waste on previous shipments (Articles 15 and 16 Regulation No. 1013/2006),
— a Member State intends to make use of the authorisation defined in Article 4(1) of the Basel Convention and to prohibit the import of hazardous waste or waste listed in Annex II to that Convention,
— the planned shipment or disposal is contrary to obligations resulting from international agreements concluded by the Member State(s) concerned or the EU,
— the planned shipment or disposal does not comply with Directive 2006/12/EC due to its incompatibility with the principle of self-sufficiency at the community and national level, the principle of proximity, or the provision of shipments in accordance with waste management plans. In addition, it also concerns the non-application of the best available techniques (Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control) to undertakings with an integrated permit for mixed municipal waste collected from households (waste code 20 03 01), as well as in the case of waste management not in accordance with the applicable environmental protection standards defined in EU legislation on waste disposal operations. In the case of a ban on sending waste for recovery, similar rules apply as for waste destined for disposal.

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30 Directive 2006/12/EC on waste, Article 5.
31 Ibid., Article 7.
Article 2(35) of Regulation No 1013/2006 defines illegal shipments of waste as shipments that have taken place:
— without it being notified to all competent authorities concerned, in accordance with this Regulation,
— without the consent of the competent authorities concerned, in accordance with this Regulation,
— where the consent of the competent authorities concerned has been obtained
— as a result of forgery, misleading or fraud,
— in a way which does not comply with the notification document or shipping documents,
— in a way which results in recovery or disposal in contravention of community or international rules,
— in breach of Articles 34, 36, 39, 40, 41 and 43 of the regulation
— in accordance with Article 3(2) and (4) of the Regulation, for which it is stated that: ‘the waste being discovered not to be listed in Annexes III, IIIA or IIIB, or non-compliance with Article 3(4), or the shipment [is carried out] in a way which is not specified materially in the document set out in Annex VII [of the Regulation].

In Poland, criminal sanctions for illegal waste shipments as minor offences are regulated by the provisions of Articles 31 and 32 of the Act on International shipment of waste and administrative fines. Anyone who,

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34 Regulation No. 1013/2006 imposes the following prohibitions on international shipments of waste: exports of waste to third countries with the exception of European Free Trade Association countries (Article 34), exports from the Community of the categories of hazardous waste listed in Annex V of the Regulation destined for recovery in countries to which Decision C(2001)107/Final OECD does not apply (Article 36), exports of waste to the Antarctic (Article 39), exports of waste to overseas countries or territories (Article 40), imports, with the exception of shipments from a country Party to the Basel Convention or an Agreement country or from other areas during situations of crisis or war (Article 41), imports, with the exception of shipments from countries to which Decision C(2001)107/Final OECD applies, countries Party to the Basel Convention or an Agreement country or from other areas during situations of crisis or war (Article 43).

35 Article 3(2) of Regulation No 1013/2006 refers to general information requirements for shipments of the following wastes destined for recovery if the quantity of waste shipped exceeds 20 kg: (Wastes listed in Annex III or IIIB of the Regulation, mixtures not classified under one single entry in Annex III of the Regulation or consisting of two or more wastes listed in that Annex, if the composition of those mixtures does not impede their environmentally sound recovery and those mixtures are listed in Annex IIIA of the Regulation. Article 3(4) of the Regulation concerns, on the other hand, the conditions under which shipments of waste are explicitly destined for laboratory tests to assess the physical or chemical characteristics of that waste or to determine whether it is suitable for recovery or disposal and which are not subject to the procedure of prior written notification and consent. The amount of waste exempted, when explicitly destined for laboratory testing, shall correspond to the minimum quantity reasonably necessary to carry out such a test in a specific case and shall not exceed 25 kg.
contrary to their obligation, fails to comply with a decision ordering that waste imported into the country be sent back to the country of dispatch or to specify the manner in which the waste is to be disposed of on the territory of the country, faces a penalty of arrest or fine. In turn, a fine is imposed on a natural person or an organisational unit participating in an international shipment of waste who/which, contrary to the obligation, does not submit documents or information required in an international shipment of waste to the relevant authorities. This concerns the consignee of waste imported illegally without notification and the shipper of waste without notification if such notification is required under Article 3 of Regulation No 1013/2006. In addition, a financial penalty may also be imposed in cases of unintentional shipment of waste:
— without the consent of the competent authorities concerned,
— where the consent of the competent authorities concerned has been obtained through forgery, misleading or fraud,
— in a way which is not in accordance with the way specified in the notification document for transboundary movements of waste referred to in Annex IA to Regulation No. 1013/2006, or in the movement document for transboundary movements of waste referred to in Annex IB to Regulation No. 1013/2006.
In such cases, the financial penalty shall range from PLN 50,000 to 300,000.

In addition, the WIOS may impose, by way of a decision, a financial penalty ranging from PLN 25,000 to 150,000 on a consignee of illegally imported waste who has not complied with the provision referred to in Article 27(4) of the Act on Waste Management.

Poland has reported many cases of illegal international waste shipments. In the years 2008-2011, the Main Inspectorate of Environmental Protection received 588 reports of suspected illegal international shipments of waste, and a total of 383 cases of such activities were found, which involved the export, import and transit of waste. The problem is a serious one because it also concerns hazardous waste. As for the exports of such waste, seven waste exports with a total weight of 260.8 Mg and imports of 6.2 Mg were recorded in 2008, and 11.14 Mg (imports) in 2009, in 2010 — 282 Mg (exports) and 17 Mg (imports), 2011 — 161.55 Mg (exports) and 20,645.28 Mg (imports). Out of the abovementioned cases of illegal international shipments of waste, thanks to regional environmental inspectors, 36 such cases were revealed in 2008, 30 in 2009, 26 in 2010 and 20 in 2011. All cases of illegal shipments of waste were violations referred to in Article 2(35)(a-b-d-f) of Regulation No. 1013/2006, concerning the transport of waste effected: without notification, in a way which is not specified materially in the notification or movement documents, in a manner other than that specified in the information on the shipment, without consent of the competent authorities concerned, against the prohibition

of export of waste for disposal or import for disposal and recovery to/from certain countries or territories. During the period under review, the customs authorities revealed 144 cases indicating illegal international shipments of 30,626.37 Mg of waste, including in 2008 — 32 cases with a total of 485.04 Mg, 2009 — 27 cases with a total weight of 23,706.02 Mg, 2010 — 37 cases with a total weight of 976.28 Mg, 2011 — 48 cases with a total weight of 5,458.99 Mg. In the period under review, the Main Inspectorate of Environmental Protection (GIOŚ) processed 588 reports on suspicion of illegal international shipment of waste and, pursuant to Article 25(1) of the Act on the Environment Protection, issued a total of 280 provisions in which it called for the implementation of the procedures set out in Article 24 of Regulation No. 1013/2006 defining the treatment of waste in the case of finding an illegal international shipment. These provisions concerned 6,752.07 Mg of waste, including in 2008 — 104 provisions with regard to 4,699.57 Mg, 2009 — 71 provisions with regard to 241.58 Mg, 2010 — 37 provisions with regard to 1,594.84 Mg, 2011 — 68 provisions with regard to 216.08 Mg of waste. As a result of the ineffective expiry of the deadline specified in the abovementioned provisions, the Main Inspectorate of Environmental Protection issued 81 administrative decisions specifying the method of managing illegally shipped waste. In the audited period, regional environmental inspectors issued a total of 149 decisions imposing fines for breach of these obligations, which amounted to PLN 8,893,500, including 22 administrative decisions imposing fines totalling PLN 1,122,500 in 2008, 43 decisions imposing fines which in total came to PLN 3,112,500 in 2009, 54 decisions imposing fines amounting to PLN 2,880,500 in 2010, and 30 decisions imposing fines totalling PLN 1,778,000 in 2011.

The illegal transboundary shipment of waste is also an offence within the meaning of Article 3(c) of Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (Text with EEA relevance). According to that provision, a shipment of waste is a criminal offence if that operation falls within the scope of Article 2(35) of Regulation No 1013/2006 and is carried out in significant quantities, whether in a single shipment or in several shipments which appear to be linked. Thus, an illegal shipment of waste is considered a criminal offence provided that it is carried out in significant quantities, which is, however, an undefined agreed value, as is the case for other indications of environmental offences, e.g. significant damage to the environment, significant deterioration of water, soil, etc. In Poland, the crime of illegal transboundary shipments

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38 OJ UE L 328 of 2008, p. 28.
of waste was included in the Act of 6 June 1997 — Penal Code\textsuperscript{40}, namely: ‘Whoever, contrary to regulations, stores, processes, recovers, disposes of or transports waste or substances in such conditions or in a way that may endanger human life or health or cause substantial deterioration in the quality of water, air or land surface or destruction in the plant or animal world, shall be subject to a penalty of imprisonment from 3 months to 5 years’\textsuperscript{41}. It is worth noting here that this penalty is imposed on anyone who, contrary to the regulations, imports waste from abroad or exports waste abroad\textsuperscript{42}, as well as anyone who, without the required notification or permit or contrary to its conditions, imports or exports hazardous waste from abroad\textsuperscript{43}. These acts shall be subject to imprisonment for a term of between 6 months and 8 years. However, if the perpetrator of these acts is acting unintentionally, they shall be subject to a fine, restriction of liberty or imprisonment for up to 2 years\textsuperscript{44}. The criminal-law nature of the offence under Article 183 of the Penal Code is the prohibited trade in waste or substances harmful for the environment. Thus, the legislator punishes illegal activity consisting in cross-border shipment of hazardous waste without the required notification or permit, or contrary to the provisions and conditions set out in the previously analysed legal acts\textsuperscript{45}.

In the years 2008–2011, regional environmental protection inspectors, pursuant to Article 304(2) of the Act of 6 June 1997 — The Code of Criminal Procedure, notified the public prosecutor’s offices of 106 cases involving perpetration of the act specified in Article 183(4) and (5) of the Code of Criminal Procedure. During the abovementioned period, the Customs authorities sent 156 notifications to public prosecutor’s offices, informing them about an offence specified in the abovementioned regulations having been committed. With reference to 40 notifications (formulated in 2010–2011), the prosecutor ordered the Customs Service to conduct an investigation. In the years 2008–2010, the Border Guard authorities initiated cases concerning crimes under Article 183 of the Criminal Code. In 2011, the number of investigations, prosecutions and investigative activities was 80, with 14 investigations concerning crimes under Article 183(4) of the Code of Criminal Procedure\textsuperscript{46}.

To give a more complete picture of the extent and dynamics of crimes under Article 183 of the Criminal Code, police statistics should also

\textsuperscript{40} Consolidated text, DzU, 2019, item 1950.
\textsuperscript{41} Ibid., Article 183(1).
\textsuperscript{42} Ibid., Article 183(4).
\textsuperscript{43} Ibid., Article 183(5).
\textsuperscript{44} Ibid., Article 183(6).
\textsuperscript{46} NIK, Departament Środowiska, Informacja..., op. cit., pp. 46–47.
be mentioned. It should be noted that the number of acts of illegal international shipments of waste defined in paragraphs 4 and 5 of the above-mentioned provision has not been singled out from these data. Nevertheless, this number seems to be insignificant, which may also be proven by a review of available case law. Therefore, the structure of the offences in this area requires more detail and in-depth analysis.

In 2010–2017, the Police initiated 1432 proceedings, of which 402 were found to involve the commission of a crime of inadequate handling of waste. The perpetrators were detected in 261 cases, which indicates that the effectiveness of police performance in detecting crimes under Article 183 of the Penal Code reached 64.6%. The largest number (249) of instituted proceedings concerning crimes under Article 183 of the Code of Criminal Procedure was recorded in 2017, and the smallest number (99) in 2011. On average 179 proceedings were instituted annually. The largest number of crimes found (75) was recorded in 2013, and the smallest number (35) in 2011. In these years, the biggest number of detected crimes (53) and the smallest number of crimes (26) were also recorded, respectively. The highest effectiveness in detecting perpetrators was recorded by the Police in 2011, while the lowest effectiveness in detecting perpetrators took place in 2012, which was only 53.5%.

<table>
<thead>
<tr>
<th>Year</th>
<th>Instituted proceedings</th>
<th>Revealed crimes</th>
<th>Detected crimes</th>
<th>Crime detection rate in percents</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>191</td>
<td>52</td>
<td>36</td>
<td>69.2</td>
</tr>
<tr>
<td>2011</td>
<td>99</td>
<td>35</td>
<td>26</td>
<td>74.3</td>
</tr>
<tr>
<td>2012</td>
<td>172</td>
<td>42</td>
<td>23</td>
<td>53.5</td>
</tr>
<tr>
<td>2013</td>
<td>150</td>
<td>75</td>
<td>53</td>
<td>70.7</td>
</tr>
<tr>
<td>2014</td>
<td>172</td>
<td>56</td>
<td>32</td>
<td>57.1</td>
</tr>
<tr>
<td>2015</td>
<td>175</td>
<td>43</td>
<td>31</td>
<td>72.1</td>
</tr>
<tr>
<td>2016</td>
<td>224</td>
<td>48</td>
<td>32</td>
<td>65.3</td>
</tr>
<tr>
<td>2017</td>
<td>249</td>
<td>51</td>
<td>28</td>
<td>54.9</td>
</tr>
</tbody>
</table>

Source: data from the National Police Headquarters

Following the analysis of the 8-year period covered by the statistics, it should be noted that in 2017, the number of instituted proceedings

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increased by 23.3% in comparison with 2010, while the number of offences revealed and detected decreased. The changes amounted to 1.9% and 28.6%, respectively, in comparison with 2010. The detection rate in relation to 2010 came to 26%. It may be observed that in the period of 2010–2017, a significant increase in the number of instituted proceedings was accompanied by a noticeable decrease in the number of revealed and detected proceedings (Table 1).

As it results from the data mentioned above, crimes against the environment, in particular under Article 183 of the Code of Criminal Procedure, are both insignificant in terms of numbers, and the effectiveness of detecting perpetrators of such acts is not high, and is deteriorating from year to year. However, improving the effectiveness in this respect would require many changes in many areas — both legal, mental, and educational one.

Apart from analysing police statistics, a few words should be devoted to judicial statistics. In the years 2010–2017, the number of convictions for acts specified in Article 183 of the Penal Code constituted a significant percentage in relation to the total number of convictions for crimes against the environment under Chapter XXII of the Penal Code. The total number of convictions for offences under the said chapter was 371, including Article 183 of the Penal Code. In the discussed period, an average of 46 convictions for offences against the environment and 30 convictions for offences under Article 183 of the Penal Code were recorded annually. The most numerous group among all convictions for crimes specified in Chapter XXII of the Penal Code were convictions under Article 183 of the Penal Code. (65%).

<table>
<thead>
<tr>
<th>Year</th>
<th>For environmental offences under Chapter XXII of the Penal Code</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>in total</td>
<td>including the Article 183 of Polish Penal Code</td>
<td>number</td>
</tr>
<tr>
<td>2010</td>
<td>72</td>
<td>44</td>
<td>61.1</td>
</tr>
<tr>
<td>2011</td>
<td>59</td>
<td>39</td>
<td>66.1</td>
</tr>
<tr>
<td>2012</td>
<td>30</td>
<td>23</td>
<td>76.7</td>
</tr>
<tr>
<td>2013</td>
<td>46</td>
<td>32</td>
<td>69.6</td>
</tr>
<tr>
<td>2014</td>
<td>28</td>
<td>18</td>
<td>64.3</td>
</tr>
<tr>
<td>2015</td>
<td>49</td>
<td>27</td>
<td>55.1</td>
</tr>
<tr>
<td>2016</td>
<td>53</td>
<td>33</td>
<td>62.3</td>
</tr>
<tr>
<td>2017</td>
<td>34</td>
<td>23</td>
<td>67.6</td>
</tr>
</tbody>
</table>

Source: author’s own study based on: Ministry of Justice data
It should be noted that the number of persons convicted of crimes under Article 183 of the Penal Code in relation to the total number of convictions for crimes against the environment was the highest in the years 2012–2013, and amounted to 76.7% and 69.6% respectively, while the lowest in 2015 and reached 55.1%. From 2010 to 2012, the number of legally binding convictions for acts defined in Article 183 of the Penal Code showed a downward trend. In 2010, the number of convicted persons amounted to 44%, in 2011 it decreased by 11.4% to 39%, and in 2012 it further decreased by 47.7% to 23% (in comparison with 2010). A similar trend was observed in the rate of convictions for other crimes under Chapter XXII of the Penal Code. In 2012, 30 perpetrators were convicted, i.e. 42 less than in 2010 (a decrease by as much as 58.3%). In 2013, both the number of convictions for crimes under this chapter and under Article 183 of the Penal Code in relation to 2012 showed an upward trend to 46 (by 53.3%) and 32 (by 39.1%) respectively. In 2014, there was again a significant decrease in convictions in relation to the previous year to 28 and 18 convictions. In subsequent years, there was a systematic increase in convictions for environmental crimes, i.e. from 28 in 2014 to 53 in 2016. (increase by 89.3%). An increase in convictions also occurred for the offence under Article 183 of the Penal Code from 18 in 2014 to 33 in 2016 (increase by 83.3%). In 2017, on the other hand, there was a clear decrease to 23 and 34 convictions respectively (Table 2).

As can be seen from the presented data, the number of convictions for crimes under Article 183 of the Penal Code does not remain at a constant level, because after a clear decrease until 2012, in subsequent years (except for 2014 and 2017) there was a systematic increase. This is a socially beneficial symptom, and the causes of this phenomenon may be seen, among others, in actions taken to prevent this type of crime.

Taking into account the type and amount of penalties imposed on the perpetrators of crimes under Article 183 of the Penal Code, it should be pointed out that in 2010–2017, courts of general jurisdiction convicted 239 perpetrators (on the basis of the said provision). A total of 156 perpetrators were sentenced to imprisonment. Suspended prison sentences were passed in case of 146 perpetrators. The percentage of this group of convicted persons amounted to 93.6% of total imprisonment sentences and 61.1% of total sentences imposed under Article 183 of the Penal Code. The highest percentage of conditional suspensions in this period was recorded in 2014 was 83.3%, while the lowest percentage was recorded in 2017, 26.1% of all sentences. In the case of 10 sentences, automatic imprisonment was imposed. The proportion of this group of sentences in 2010–2017 amounted to 6.4% of the total number of imprisonment sentences for crimes under Article 183 of the Penal Code, while in relation to the total number of sentences, this percentage constituted only 4.2%.
### Table 3
Types of penalties imposed by courts of general jurisdiction for the offence under Article 183 of the Penal Code in 2010 - 2017

<table>
<thead>
<tr>
<th>Year</th>
<th>solely-imposed fine</th>
<th>restriction of liberty</th>
<th>automatic deprivation of liberty (imprisonment)</th>
<th>suspended prison sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>10</td>
<td>—</td>
<td>—</td>
<td>34</td>
</tr>
<tr>
<td>2011</td>
<td>7</td>
<td>—</td>
<td>2</td>
<td>30</td>
</tr>
<tr>
<td>2012</td>
<td>6</td>
<td>—</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>2013</td>
<td>9</td>
<td>1</td>
<td>3</td>
<td>19</td>
</tr>
<tr>
<td>2014</td>
<td>3</td>
<td>—</td>
<td>—</td>
<td>15</td>
</tr>
<tr>
<td>2015</td>
<td>11</td>
<td>1</td>
<td>1</td>
<td>14</td>
</tr>
<tr>
<td>2016</td>
<td>20</td>
<td>—</td>
<td>—</td>
<td>13</td>
</tr>
<tr>
<td>2017</td>
<td>13</td>
<td>2</td>
<td>2</td>
<td>6</td>
</tr>
</tbody>
</table>

Source: Author’s own study based on: Ministry of Justice data

The largest number of convictions among this group of 10 were sentences from 6 months to 1 year of imprisonment (60%). Subsequent sentences included sentences to 2 years of imprisonment (20%), and from 4 months to 5 months imprisonment (10%). In one case, the punishment was over 2 years and under 3 years imprisonment (10%). The data presented above shows that in relation to four perpetrators, the penalty of restriction of liberty was imposed — it was imposed in the years 2013, 2015 and 2017, and their percentage, in relation to the total number of sentences in those years was, respectively: 3.1%, 3.7% and 8.7%. In the remaining years (2010–2012, 2014, 2016), the penalty of restriction of liberty was not imposed by the courts. Moreover, in 79 cases, the courts limited themselves only to the application of a fine. The number of those sentenced to fines amounted to 33.1% of the total number of convicted persons. The highest percentage of fines was recorded in 2017 (56.5%) and 2016 (60.6%), while the lowest was in 2014 (16.7%), 2011 (17.9%), and 2012 (0.12%). As for the court-imposed fines, they most often ranged from PLN 2,000 to PLN 5,000 (24 cases). A significant percentage of fines ranged from PLN 1,500 to PLN 2,000. (18 cases). In relation to the total number of fines, the proportion was 30.4% and 22.8%. In four cases, the amount of the fine was insignificant, as it did not exceed PLN 500 (5.1%). On the basis of the data presented, it may be concluded that penalties imposed by common courts in the years 2010–2017 for crimes specified in Article 183 of the Penal Code were quite lenient. The most common penalty applied to the perpetrators of these crimes was a fine, and while deciding to impose imprisonment, the court usually suspended its execution (Table 3).
Summary

In conclusion, it should be stated that the procedure of prior notification and consent, and the procedure of general information obligations, which serve primarily to control shipments of waste within the community, are of fundamental importance in international shipments of waste, as defined in Regulation No. 1013/2006. All other procedures constitute its modification. These procedures also regulate very important issues concerning, among others, the ban on mixing waste, exchange of information and access to data, collection of waste in the case of failure to fulfil obligations, or illegal trade in waste. Compliance with these procedures is very important for public safety and environmental protection. A system of criminal sanctions (offences and administrative fines, and to a lower extent offences under Article 183 (4) and (5) of the Criminal Code) is helpful in this case. The regulations on financial penalties make it possible to quickly and effectively impose sanctions for illegal activities and violations of conditions related to the implementation of international shipments of waste. In response to the research hypothesis put forward about the effectiveness of criminal law instruments in preventing illegal waste shipments, it should be stated that the analysis of statistical data developed by the NIK and the Police indicates that in Poland the importance of the problem is quite serious, especially with regard to hazardous waste, which poses a high risk to man and the environment. As regards crimes against the environment under Article 183 of the Criminal Code concerning illegal handling of waste, including its shipment, it should be stated that the number of police investigations is rather small. The situation is similar as regards the effectiveness of detecting perpetrators of these acts, which is deteriorating from year to year. Since 2015, a systematic increase in the number of convictions for the crime under Article 183 of the Criminal Code has been observed. However, the penalties imposed by common courts have been quite lenient, taking into account that the most common criminal sanction against the perpetrators of these crimes has been a fine, while in the case of imprisonment, the court usually has suspended its execution. In view of the above, it should be concluded that the system of criminal law instruments is not very effective in preventing illegal shipment of waste, which may also indicate the need to develop a system of border controls, ensure more effective execution of administrative procedures in the area of waste trade, as well as to enhance wider cooperation between EU countries.

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sanctions, crime, criminal law

Summary: This article shows the basic European Union and national regu-
lations with regard to international shipments of waste, such as the Resolu-
tion No. 1013/2006 and the Act of 2007 on international shipments of waste
in Poland. Procedures which may decrease the negative influence of waste
on the environment, especially during shipments of hazardous waste, play
an important role in this area. For the observance of these procedures, the
penal sanction system is useful because it prevents illegal activities in this
area. However, an analysis of the statistics of the Supreme Chamber of Con-
trol and Police shows that the effectiveness of criminal instruments is not
very high. This is evidenced by the low percentage of proceedings under
Article 183 of the Penal Code as well as by the poor detection of offenders,
and despite the increase in the number of convictions imposed by courts
of general jurisdiction, criminal penalties are too lenient.