

The authorities' control of transboundary waste shipments

Document 3:6 (2022–2023)



To the Storting (Norwegian Parliament)

The Office of the Auditor General hereby presents Document 3:6 (2022–2023) *The authorities' control of transboundary waste shipments*

The document contains the following sections:

- The Office of the Auditor General's conclusions, criticisms, elaboration of conclusions, recommendations, the Minister's response and the Office of the Auditor General's statement to the Minister's response
- Appendix 1: The Office of the Auditor General's letter to the Minister of Climate and Environment
- Appendix 2: The Minister of Climate and Environment's response
- Appendix 3: The Office of the Auditor General's letter to the Minister of Finance
- Appendix 4: The Minister of Finance's response
- Appendix 5: Performance audit report with assessments¹

The Office of the Auditor General, December 8th 2022

For the Board of the Auditors General

Karl Eirik Schjøtt-Pedersen

Auditor General

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¹ The appendices are not translated into English.

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The Office of the Auditor General uses the following terms for criticism, with the following ranking from the most to the least severe:

1. **Highly objectionable** is the Office of the Auditor General's strongest criticism. We use this level of criticism when we find serious weaknesses, flaws, and shortcomings. These can often entail major consequences for individuals or society in general.
2. **Objectionable** we use when we find significant weaknesses, flaws and shortcomings that can often entail moderate to major consequences for individuals or society in general.
3. **Unsatisfactory** we use when we find weaknesses, flaws and shortcomings, but which to a lesser degree will have major direct consequences for individuals or society in general.

1 Introduction

Waste has developed into an international commodity. This is partly because waste can contain valuable materials that can be extracted. Stricter environmental requirements in many countries have led to an increase in the costs of waste management. It is therefore an increasing problem that waste is exported to developing countries with fewer regulations or weaker enforcement of the regulations.

Import and export of waste is mainly regulated by the Waste Shipment Regulation (Regulation (EC) No 1013/2006 and associated amendment legislation), which has been implemented in Norwegian law in Chapter 13 of the Waste Regulations. The purpose of the regulations is to safeguard environmental considerations by ensuring that one country does not export its waste problems to other countries. The regulations stipulate requirements for how the export of waste is to be carried out. The requirements depend, among other things, on the type of waste. The regulations also set requirements for the export of used products.

In Recommendation No. 248 L (2013–2014) to the Storting on amendments to the Pollution Control Act and the Criminal Procedure Act, the Standing Committee on Energy and the Environment stated that the² illegal import and export of waste is a significant environmental problem in many countries and a serious crime that must be combated. In addition, Section 2-6 of the Pollution Control Act states that pollution and waste problems resulting from activity in Norwegian territory shall be counteracted to the same extent irrespective of whether the damage or nuisance arises within or outside Norway.

According to the Director of Public Prosecutions, serious environmental crime should be given high investigative priority.³ In Recommendation No 68 S (2020–2021) to the Storting,⁴ the Standing Committee on Energy and the Environment pointed out that pollution crime has been a priority area since the Director of Public Prosecutions' 1989 pollution circular.

In Norway, the Norwegian Environment Agency is responsible for following up and inspecting the export of waste. This is done with assistance from Norwegian Customs, which is responsible for controlling the movement of goods in and out of the country.

In many cases, export of illegal waste is organized crime. In its threat assessment for 2022, the National Authority for Investigation and Prosecution of Economic and Environmental Crime in Norway writes that the waste management market attracts criminals, and that illegal export appears to be well organized.

There are no precise estimates of the amount of waste exported illegally. The United Nations Environment Programme (UNEP) and Interpol estimate



Requirements for the export of different types of waste

Notifiable waste is all waste that requires an application for a permit from the authorities before it can be exported.

This includes, among other things, all waste intended for final processing, as well as hazardous waste and mixed waste, such as household waste.

It is prohibited to export notifiable waste outside of the OECD.

Green-listed waste is clean, sorted and harmless materials such as metal and paper with low environmental risk. Green-listed waste can only be exported for recycling. Applying to the authorities for approval to export such waste is not required.

Used products: Exporting used products for reuse is allowed. If requested by the authorities, the exporter of used products must be able to prove that the objects are not waste.

² Recommendation to Prop. 67 L (2013–2014) (Innst. 248 L (2013–2014))

³ Rundskriv om mål og prioriteringer for straffesaksbehandlingen i 2020.

⁴ Recommendation to Report to the Storting 19 (2019–2020) *Environmental crime* (Innst. 68 S 2020–2021).

that the illegal waste trade and dumping of hazardous waste has a global cost of USD 10–12 billion.⁵ Another UNEP investigation estimates that non-registered and illicit trade in Waste from Electrical and Electronic Equipment (WEEE) costs between USD 12.5 billion and USD 18.8 billion a year.⁶

In recent years, a lot of attention has been paid to WEEE. At the same time, Norwegians are among the greatest consumers of EEE in the world. Electronic equipment exported out of the OECD is exported as used products, but in reality, much of it is waste.

WEEE contains valuable minerals, such as gold, silver and platinum that can be extracted. But this type of waste also contains hazardous materials, which requires that any mineral extraction is done with correct equipment. Improper treatment of WEEE leads to the spread of toxic heavy metals that do not degrade in nature. WEEE that is not handled properly is therefore dangerous to people and the environment.

The investigation was based on the following decisions and prerequisites from the Storting:

- *Act concerning protection against pollution and concerning waste* (Pollution Control Act).
- *Act relating to ship safety and security* (Ship Safety and Security Act).
- *Act on customs duties and movement of goods* (Customs Act).
- *Regulations relating to the recycling of waste* (Waste Regulations).
- Recommendation 68 S (2020–2021) *Recommendation from the Standing Committee on Energy and the Environment on Environmental Crime*.
- Recommendation 248 L (2013–2014) *Recommendation from the Standing Committee on Energy and the Environment on amendments to the Pollution Control Act and the Criminal Procedure Act*.
- Recommendation 232 S (2011–2012) *Recommendation from the Standing Committee on Scrutiny and Constitutional Affairs on the Office of the Auditor General's investigation into the management of hazardous waste*.
- *Regulation (EC) No 1013/2006, with amendment decision*. The EU's Waste Shipment Regulation.
- *The Basel Convention on the control of transboundary movements of hazardous wastes and their disposal*.
- *Regulation (EU) No 1257/2013*. The EU's Ship Recycling Regulation.

The objective of the investigation has been to assess whether the authorities' control of waste exports ensures environmentally sound treatment of waste in line with the Storting's decisions and assumptions. The investigation covers the period 2017–2021.

The report was submitted to the Ministry of Climate and Environment and the Ministry of Finance by letters of 26 August 2022. In letters dated 27 and

⁵ Interpol & UNEP (2016) *The Rise of Environmental Crime*, p. 20.

⁶ UNEP (2015) *Waste crime- Waste risks gaps in meeting the global waste challenge*.

29 September 2022, the ministries provided comments on the report. Most of the comments have been incorporated into the report and this document.

The report, the Board of the Auditors General's cover letter of 26 August 2022 to the ministries that received recommendations and the ministers' responses on 9 November 2022 have been enclosed as appendices. The appendices are not translated into English.

2 Conclusions

Conclusions

- Government sanctions against illegal waste exports are not very dissuasive
- The regulations make it difficult to sanction violations
- The Norwegian Environment Agency cannot document that it carries out a risk-based inspection of the export of waste
- Norwegian Customs has an inaccurate system for selecting shipments to be controlled
- The controls carried out by Norwegian Customs are not well suited to uncovering illegal waste exports
- The Norwegian Environment Agency's preventive work against illegal waste export has several weaknesses

3 Overall assessment

Objectionable



It is objectionable that the authorities' control and inspection work is inadequate, that the risk of detection is low and sanctioning ineffective

4 Elaboration of conclusions

The investigation shows that there are several challenges and weaknesses in the authorities' control of transboundary waste shipments. Control and inspection work is inadequate, the risk of detection is low and sanctioning is ineffective. The identified weaknesses mean that there is a significant risk that waste that can be harmful to health and the environment is exported out of Norway illegally. All in all, The Office of the Auditor General finds this reprehensible.

4.1 Government sanctions against illegal waste exports are not very dissuasive

The Waste Shipment Regulation states that the authorities' penalties of illegal waste exports must be effective, proportionate and dissuasive.

However, the investigation shows that the authorities do not sanction illegal waste exports to any great extent. In the years 2017–2021, the Norwegian Environment Agency reported eight cases of illegal waste exports to the police. Most of these cases are based on controls by Norwegian Customs. In the opinion of the Office of the Auditor General, eight reports over a five-year period seems low, and not a good deterrent. The Office of the Auditor General would like to point out that waste crime is a widespread problem and that the Norwegian Environment Agency does not have the legal authority to impose other sanctions, see item 4.2.1.

The Office of the Auditor General believes that one reason for the low use of sanctions is the weaknesses in the control work carried out by the Norwegian Environment Agency and Norwegian Customs. The consequence is that the dissuasive effect is weakened.

4.1.1 Narrow control priorities affect risk of detection

One of the factors that affect the risk of detection is the control priorities that the Norwegian Environment Agency provides to Norwegian Customs. Since

2021, the Norwegian Environment Agency has asked Norwegian Customs to exclusively prioritise controls of WEEE at the waste area. The main reasons for prioritising WEEE are the environmental and health risks associated with this waste, and the extent of this type of export. In addition, it is easier to conclude that a WEEE shipment is actually waste because the regulations in this area stipulate clearer requirements.

While there has been a clear prioritization of WEEE, the investigation shows that the risk of detection is very low for other types of waste. In the years 2017–2021, only three incidents involving waste types other than WEEE were reported.

The investigation shows that Norwegian shipments of waste types other than those the Norwegian Environment Agency asks Norwegian Customs to prioritise are stopped abroad. This applies, for instance, to car tyres, end-of-



Requirements when exporting used EEE

The regulations require that exported EEE must be functionally tested before export. The functional test must be documented in a protocol. If there is no protocol, the product is considered waste.

life vehicles and car parts and impregnated wood, which has been stopped in Sweden, and textile waste, which has been stopped in Poland.

Although there may be good reasons to prioritise WEEE, the Office of the Auditor General believes that controls that are targeted at one specific waste type, which is also exported by people and businesses outside the formal waste industry, can affect the disuasive effect in the area as a whole. In the opinion of the Office of the Auditor General, the control is not well suited to deter regulatory violations other than the illegal export of WEEE.

4.1.2 The Norwegian Environment Agency does not investigate possible serious violations for further follow-up and potential reporting

The Norwegian Environment Agency is meant to prevent, detect and, if possible, contribute to remedying violations of environmental legislation.⁷ As part of this, the Agency shall establish a basis for deciding whether to report circumstances they discover to the prosecuting authority.

The investigation shows that in many cases the Norwegian Environment Agency does not investigate cases sufficiently for these to be reported. Such insufficient investigation applies both to Norwegian illegal waste shipments that are stopped abroad, and many of the violations that Norwegian Customs discovers during its controls.

In the period 2018–2021, authorities in other countries stopped 72 waste shipments from Norway. Although several of these cases involved potentially serious regulatory violations, none were reported. The Norwegian Environment Agency can carry out its own inspection of the shipment once it is returned to Norway, if they consider the matter to be serious. Such an inspection may provide objective evidence that makes it possible to report the matter. During the period in question, the Norwegian Environment Agency carried out no such inspections.

The investigation also shows that in many cases, the Norwegian Environment Agency does not investigate violations that are detected in Norwegian Customs' controls. Norwegian Customs discovers several attempts at illegal waste exports, and the most common reaction is that the export is denied. The investigation shows that Norwegian Customs denied exports in at least 45 cases in the period 2020–2022, and that the Norwegian Environment Agency followed up 8 of the cases. The 37 cases that the Norwegian Environment Agency did not follow up concerned, among other things, the alleged illegal export of assumed end-of-life vehicles, car parts and WEEE.

When the vast majority of cases that are denied export are not followed up by the Norwegian Environment Agency, the violations will not result in any sanction. In addition, there is no assurance that the waste is handled

⁷ Letter from the Ministry of Climate and Environment to the Office of the Auditor General, 27 September 2022.

properly later on. There is also nothing to prevent the exporter from attempting to export the shipment again.

The Office of the Auditor General is of the view that it is problematic that uncovered violations, which may be serious, have few consequences and are rarely subject to further follow-up by the supervisory authorities.

4.1.3 The Norwegian Environment Agency does not receive sufficient information about individuals and businesses that repeatedly violate the regulations

Repeated violations of the regulations are considered an aggravating circumstance under sentencing. This entails that the Norwegian Environment Agency should monitor whether those who are denied export by Norwegian Customs later violates the regulations.

In 2021, the Norwegian Environment Agency designed a reporting scheme whereby Norwegian Customs would continuously report on waste controls performed. The scheme makes it possible to create a complete overview of any regulars. However, Norwegian Customs has not registered any control activity since May 2021. The Norwegian Environment Agency states that it possesses information about possible repeat offenders from other sources, but is still missing complete information from Norwegian Customs.

As a consequence of missing registration, the Norwegian Environment Agency may lack information about repeat offenders. This impedes the Agency's ability to account for past violations and tighten sanctions against possible repeat offenders.

4.2 The regulations make it difficult to sanction violations

4.2.1 The Norwegian Environment Agency is still not authorised to impose administrative fines

Reporting to the prosecuting authority is currently the Norwegian Environment Agency's only sanction measure. In 2014, the Ministry of Climate and Environment asked the Norwegian Environment Agency to investigate the Agency's need to impose administrative fines in its areas of responsibility. The Norwegian Environment Agency pointed out that the consequences of this sanction not being available are that the penal provisions for many types of offences appear as empty threats.⁸ In Prop. 77 L (2018–2019), the Ministry of Climate and Environment submitted a proposal to introduce administrative fines. In the proposition, the Ministry pointed out that the ordinary criminal justice system, in the Ministry's view, does not cover the need for sanctions. In considering the proposal, the committee stressed the importance of the bill having a generally dissuasive effect. The police and prosecuting authority would follow up the most serious

⁸ The Norwegian Environment Agency (2017) *Proposal to introduce violation fees and increase the penalties in the Pollution Control Act, the Product Control Act and the Nature Diversity Act.*

offences, while administrative fines may be levied in other cases; see Recommendation 322 L (2018–2019).

Since July 2019, the Ministry of Climate and Environment has had the authority under the Pollution Control Act and the Product Control Act to determine regulations on the levying of administrative fines.⁹ The fee has not yet been introduced, however, and the Office of the Auditor General considers the total time spent to be disproportionately long.

The fact that the Norwegian Environment Agency still cannot levy administrative fines for violations means that several types of regulatory violations are not sanctioned. These regulatory violations apply to cases that need to be sanctioned, but that are not suitable for criminal prosecution. In the opinion of the Office of the Auditor General, the absence of a violation fee weakens the dissuasive effect in this area.

4.2.2 An unclear definition of waste makes it difficult to conclude in criminal law that waste regulations have been violated

Waste is defined as objects or substances that someone has discarded, intends to discard, or is obliged to discard. The Norwegian Environment Agency says in interviews that the concept of waste is difficult to apply in criminal law. This is partly because it is difficult to distinguish precisely between green-listed waste and notifiable waste, and between waste and product.

It has to a greater extent been possible to draw a clear line between used EEE and WEEE, with requirements for testing, documentation and protection of products when exported. This means that the burden of proof on whether EEE is products and not waste lies primarily with the exporter.

4.2.3 It is easy to circumvent regulations against illegal ship-breaking

The majority of ships in the world are scrapped in Bangladesh, India and Pakistan. These are countries without systems in place to handle waste responsibly. The widespread practice has major environmental and health risks and is therefore illegal.

Nevertheless, the scrapping of European ships in non-OECD countries is still a widespread practice. 75 per cent of the ship tonnage of European owners scrapped in 2021 was scrapped in these countries. In the period 2017–2021, the Office of the Auditor General also saw examples of ships linked with Norway through ownership or flag history being scrapped in South Asia.

⁹ Recommendation 322 L (2018–2019) and Prop. 77 L (2018–2019).

There are two EU/EEA regulations that regulate where ships can be recycled: the Waste Shipment Regulation and the Ship Recycling Regulation. Ships flying member state flags (EU/EEA) shall, with certain exceptions, be scrapped at EU-approved shipyards. Ships which the owner intends to scrap are to be regarded as notifiable waste. Ships that fall outside the Ship Recycling Regulation are therefore regulated by the Waste Shipment Regulation. Exporting a ship to be scrapped out of the OECD is therefore prohibited.

The investigation shows that the regulations are easy to circumvent. The ship owner can change the flag to a flag state outside the EU/EEA before the ship is exported, so as not to be covered by the Ship Recycling Regulation. The Waste Shipment Regulation has not been violated if the export for scrapping takes place from a port outside the EU/EEA, and it is difficult to prove that a ship became waste while it was in Norway. This limits the authorities' possibilities for sanctions in this area.

In recent years, there has been a decline in the number of ships with Norwegian links that have been scrapped outside the OECD.¹⁰ According to the Norwegian Maritime Authority, reasons for this could include the fact that the authorities reported the attempt to export the ship "Harrier" for illegal scrapping in Pakistan in 2017, the introduction of the Ship Recycling Regulation in 2018 and a change of attitude in the shipping world.

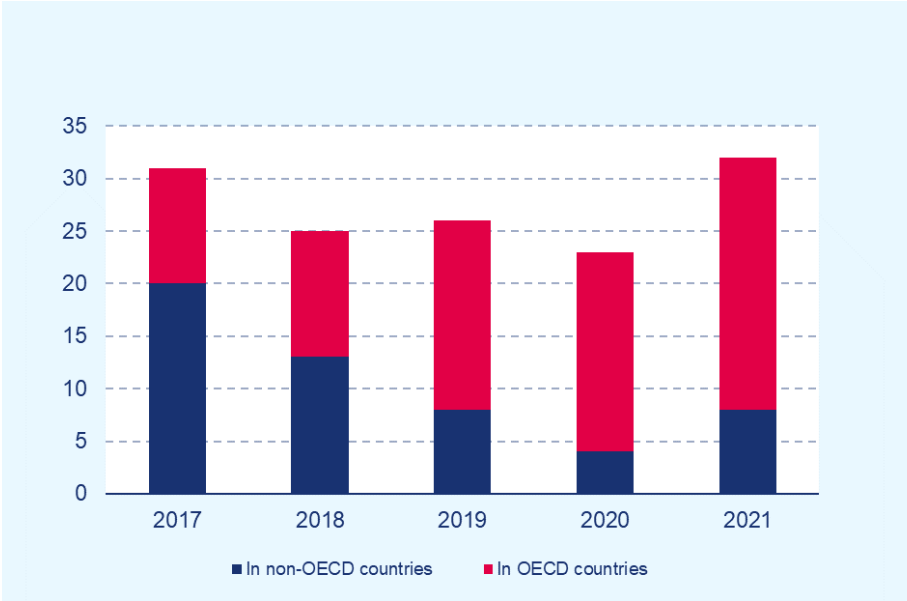


The "Harrier" case

In 2017, Norwegian authorities discovered an attempt to sail the ship Harrier from Norway to Pakistan with the intention of scrapping it. Since the attempt was discovered while the ship still was in Norway, the voyage was a violation of the Waste Shipment Regulation.

The case was reported, and the controlling company and the former shipowner were convicted. The "Harrier" case was the first time the Waste Shipment Regulation was used to prosecute operators attempting to scrap ships in developing countries.

Figure 1 Where Norwegian-linked ships are scrapped



Source: NGO Shipbreaking Forum

Since it is easy to circumvent the regulations, it is important for public interest reasons to sanction those cases where regulatory violations can be detected. The Office of the Auditor General therefore appreciates that the Norwegian Environment Agency, cooperating agencies and the National Authority for Investigation and Prosecution of Economic and Environmental Crime prioritised spending resources on reporting and investigating the

¹⁰ When Norwegian-linked ships are referred to, this implies affiliation through ownership or flag history.

"Harrier" case. This has been an important contribution to establishing case law within this field.

4.3 The Norwegian Environment Agency cannot document that it carries out a risk-based inspection of the export of waste

The Norwegian Environment Agency is supposed to carry out risk-based inspection. Good risk and materiality assessments require that the Norwegian Environment Agency has a good understanding of the field it is supervising. This means that field monitoring should form the basis for risk and materiality assessments.¹¹

In 2017, a number of EU requirements were introduced for inspection plans for cross-border transport of waste.¹² The goal is for the inspection plans to help environmental authorities target problematic waste flow that has a high risk of being harmful to health and the environment.

The investigation shows that the Norwegian Environment Agency's risk assessments have not been updated, and that the Agency's implementation of the Waste Shipment Regulation's requirements for supervisory planning has weaknesses.

4.3.1 The Norwegian Environment Agency's risk assessment has not been updated since 2016

According to the Waste Shipment Regulation, the authorities' inspection plans should be based on a risk assessment of specific waste flows and sources of illegal transfers. The Norwegian Environment Agency's risk assessment for cross-border waste shipments is from 2016, and it has not been updated since.

According to the professional guidelines for the implementation of the requirements of the Waste Shipment Regulation, it is necessary to renew the risk assessment at least once every three years or when there are significant changes in the basis for the assessment.¹³ Since 2016, for example, the regulations for the export of plastic waste have changed, and the basis of knowledge relating to the illegal export of EEE has been strengthened as a result of efforts to prevent such exports. But none of this is included in the risk assessment. In the opinion of the Office of the Auditor General, given the complexity of the field and the changes that have taken place, it is not sufficient for the Norwegian Environment Agency to use a risk assessment that is six years old.

According to the Waste Shipment Regulation, risk assessments shall form the basis for the inspection plan for cross-border waste. It is difficult to meet this requirement when the risk assessments are not updated. An example of

¹¹ Report No. 19 (2008–2009) to the Storting *Administration for democracy and community*; Prop. 1 S (2021–2022) for the Ministry of Climate and Environment.

¹² Article 50 of the Waste Shipment Regulation, by amendment EU No. 660/2014.

¹³ European Union Network for the Implementation and Enforcement of Environmental Law (2016) *Guidance on Effective Waste Shipment Inspection Planning*.

a change in priorities that is not anchored in the risk assessments is the Norwegian Environment Agency's shift in their inspection focus from waste brokers towards WEEE. This happened from 2019. However, the Norwegian Environment Agency does not refer to the risk assessments when making such changes. Nor have the risk assessments been updated following the change in inspection focus. There is therefore no clear link between the risk assessment and the inspection plan.

Risk-based inspection shall prioritise those areas where there is the greatest likelihood of breaches of regulations and where the consequences of breaches are greatest. The Directorate states that the focus of their inspection will change over time, so that they can focus their efforts on certain areas or some parts of the industry for certain periods. Over time, the purpose is to cover the full range of illegal activities. The Directorate believes that this way of conducting risk-based inspection results in an efficient use of resources.

The Office of the Auditor General would like to point out that when the focus of inspection changes, this should be based on risk assessments that are continuously adjusted in light of new information on the likelihood of breaches and their consequences. In the opinion of the Office of the Auditor General, a risk assessment from 2016 is a poor knowledge base for assessing where the inspection focus should be directed.

4.3.2 There are weaknesses in the Norwegian Environment Agency's implementation of the Waste Shipment Regulation's requirements for inspection planning

It follows from the Waste Shipment Regulation that states shall prepare one or more inspection plans for transboundary waste shipments. The inspection plan for transboundary shipments must be clearly defined. It shall contain, among other things, information on the objectives and priorities of the supervisory authorities, the tasks assigned to authorities involved in inspections, the arrangements for cooperation between the relevant authorities and information on the human, financial and other resources necessary to implement the plans.

The investigation shows that the Norwegian Environment Agency has not prepared a separate inspection plan for waste exports, but the topic is briefly discussed in the Agency's overall inspection plan. By comparison, Sweden, Denmark and Finland all have their own plans for importing and exporting waste, which are more extensive.

The purpose of the amendments to the Waste Shipment Regulation of 2017 was to ensure regular and consistent planning of inspection of transboundary waste shipments. The regulation states that the purpose of the risk assessment is, among other things, to identify the minimum number of inspections required, including physical controls of businesses and waste shipments or of the actual treatment of the waste. The Norwegian Environment Agency has not done this.

The Waste Shipment Regulation also requires authorities to carry out regular inspections of businesses and facilities, including waste brokers and

retailers, to ensure compliance with the Regulation.¹⁴ Businesses licensed under the Pollution Control Act are subject to frequency-based inspections. These are carried out by the Norwegian Environment Agency or the County Governor. In the frequency-based inspections, the inspectors consider whether the export of waste should be a topic. The inspection plan does not specify when exports are to be considered as a topic in these inspections. The Norwegian Environment Agency therefore lacks a system that ensures that the Agency or the County Governor follows up on the most important risks associated with waste export when conducting frequency-based inspections.

The inspection plan says nothing about how the Norwegian Environment Agency is to ensure that enterprises that do not need a permit under the Pollution Control Act – and that are therefore not subject to frequency-based inspection – are regularly controlled. This applies, among other things, to waste brokers and dealers.

The Waste Shipment Regulation requires that the inspection plan is revised and evaluated at least every three years. The evaluation shall, among other things, address the extent to which the goals have been achieved. The Norwegian Environment Agency cannot document that they have carried out such an evaluation. The absence of evaluations of the inspection work results in an insufficient basis for future planning of inspections.

As can be seen from the points above, there are weaknesses in the Norwegian Environment Agency's implementation of the Waste Shipment Regulation's requirements for inspection planning.

In the opinion of the Office of the Auditor General, this affects the Norwegian Environment Agency's ability to perform risk-based and planned inspection of cross-border waste shipments.

4.3.3 The Norwegian Environment Agency uncovers few serious deviations in its own inspections

The Office of the Auditor General has reviewed all inspections of transboundary waste shipments in the period 2017–2021. The review shows that most of the serious deviations detected in the waste export area are from inspections carried out in cooperation with another agency – normally Norwegian Customs. These inspections include both controls carried out by Norwegian Customs based on the Norwegian Environment Agency's control priorities and joint actions carried out by the Norwegian Environment Agency and Norwegian Customs. In the 92 inspections carried out by the Norwegian Environment Agency without assistance from other agencies, one serious deviation was discovered that concerned waste exports.

According to the Norwegian Environment Agency's internal guidelines, it is in principle a serious deviation when notifiable waste is exported without consent. For instance, by issuing notifiable waste as green-listed waste, an exporter can circumvent the restriction provisions to which the waste is

¹⁴ The Waste Shipment Regulation: Article 50(2) of and the Waste Directive: Article 34.

subject. In the period 2017–2021, four inspections discovered that notifiable waste was exported without consent. In three of the cases, this was considered not serious.

The Office of the Auditor General notes that the Norwegian Environment Agency, in several cases relating to waste, considers deviations as less severe than what the Directorate's own guidelines generally propose. This can have negative consequences, especially since less control is exercised over how the deviation is concluded.

4.4 Norwegian Customs has an inaccurate system for selecting shipments to be controlled

If an item is to be exported from Norway, it must always be declared to Norwegian Customs. In the declaration control, Norwegian Customs assesses and verifies the declarant's information. When the agency selects declarations for further control, the information in the declarations is checked against a number of control criteria. These criteria are based on analysis, intelligence information, regulations and procedures. Declarations that are covered by the criteria are stopped and considered for control. Declarations that are not covered by the control criteria are automatically approved and may be exported.

Since 2020, Norwegian Customs has worked to make the agency's system for selecting declarations for control more accurate. However, the investigation shows that the agency's systems in 2022 still stops many more waste-related declarations than what the agency has the capacity to follow up on with further control. A large number of the declarations relating to waste that are stopped are also considered by customs officer in Norwegian Customs to be uncontrollable.

The investigation also shows that Norwegian Customs' efforts to improve its system for selecting shipments for control have dragged on, partly as a result of internal capacity limitations. Norwegian Customs also emphasizes that the work is extensive, and that it will probably continue over several years.

Improving the system for selecting declarations for control will contribute to significant resources saved for Norwegian Customs. In addition, businesses will be less likely to experience that shipments are stopped unnecessarily by Norwegian Customs.



Customs declaration

Exporters must obtain permission before exporting goods. They apply for such a permit by sending a customs declaration to Norwegian Customs. They can either do this themselves, or it can be done by someone who declares goods on their behalf. The declaration follows a fixed form that provides various information about the shipment.

4.5 The controls carried out by Norwegian Customs are not well suited to uncovering illegal waste exports

4.5.1 The majority of the cases received by the Norwegian Environment Agency are not identified in Norwegian Customs' ordinary declaration control

The investigation shows that Norwegian Customs' primary method for selecting cases for control is the declaration control. Declarations that meet certain criteria will raise flags that a customs officer at Norwegian Customs will consider whether or not to control. The Norwegian Environment Agency then takes over the follow-up of the most serious cases.

The Office of the Auditor General finds that most of the cases that the Norwegian Environment Agency takes over from Norwegian Customs have not been uncovered through the declaration control. The investigation shows that one customs officer – who selects cases for control outside the ordinary declaration control – has been the source of seven out of a total of ten cases that the Norwegian Environment Agency took over in the period 2017–2021. In the view of the Office of the Auditor General, the fact that the declaration control identifies few serious cases shows that there are weaknesses in Norwegian Customs' regular work of selecting consignments for control.

4.5.2 Norwegian Customs almost exclusively carries out document controls, although such controls are not well suited to uncovering illegal waste exports

Norwegian Customs' selection system consists of a great range of selection criteria. Stopped declarations have a risk weight that shows how Norwegian Customs should prioritize them. A high-risk weight means that the customs officer *should* or *must* control the declaration. In the period 2019–2021, 3466 declarations were stopped by so-called waste-related selection criteria with a high-risk weight. For the period as a whole, approximately two-thirds of these were approved for export without being subject to any control actions, while Norwegian Customs carried out document controls of approximately one-third. 1.3 per cent of these declarations were subject to physical control. This constituted 47 out of 3466 declarations with a high-risk weight.

When a declaration is stopped by Norwegian Customs' selection system, the customs officer – in addition to a risk weight – receives a description that indicates why there is a risk attached to the declaration, and how a control should be organised. The investigation shows that Norwegian Customs' officers were asked to carry out a physical control on 374 waste-related declarations in 2021. Only 13 of these declarations were physically controlled. This is illustrated in Figure 2.



Declaration control

If an item is to be exported from Norway, it must always be declared to Norwegian Customs. In the declaration control, Norwegian Customs assesses the information in the declarations received.

Based on the information in the declaration, shipments that are associated with risk will raise a flag, and case workers will assess whether the shipment should be controlled.

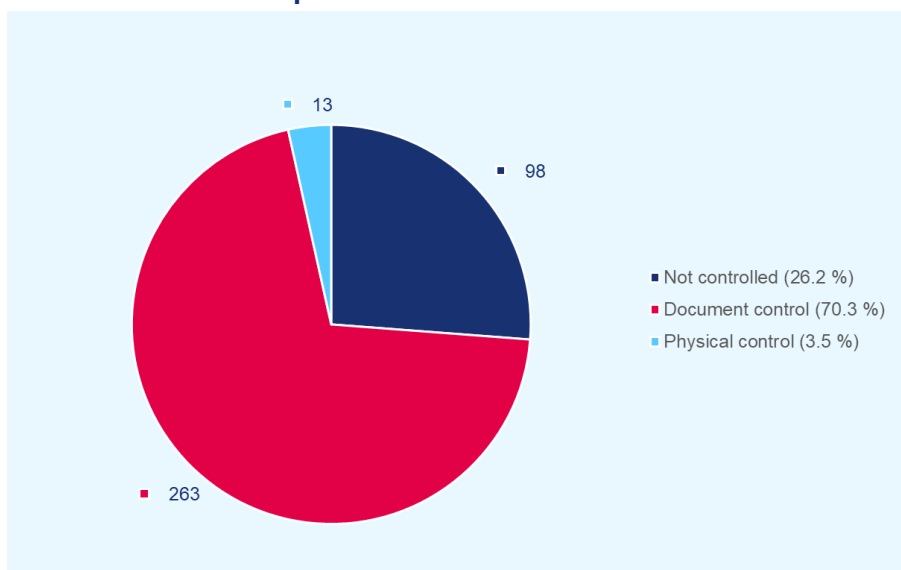


Customs controls

Declarations that are selected for manual control first undergo a **document control**. Here, the case worker in charge will review documents referred to in the declaration.

Physical controls are potentially done after a document check. The actual goods that are exported are then examined either by opening or scanning the container.

Figure 2 Number and proportion of requests for physical control that were followed up with controls in 2021



Source: Registry data from Norwegian Customs

Norwegian Customs' management states that the number of physical controls is low, but emphasizes that it is a resource-intensive form of control and that the agency must prioritize control resources strictly. Furthermore, Norwegian Customs points out that they manage regulations on behalf of about 20 regulatory owners and must balance their efforts between the control priorities set by the regulatory owners. At the same time, several control environments in Norwegian Customs, in interviews with the Office of the Auditor General, made it clear that Norwegian Customs ought to carry out far more physical controls than today if the agency is to detect illegal waste exports.

According to Norwegian Customs, document controls are often an effective means of ensuring compliance among what they refer to as serious exporters. These are typically operators from the formal waste industry who export large amounts of waste, and who want to comply with the regulations. However, Norwegian Customs' controls are exclusively aimed at export of EEE to specific countries outside the OECD. This export is carried out by small operators and private individuals who act outside the formal waste industry. In all five cases reported in 2021, documentation existed that complied with the regulations, but physical examinations of the containers revealed that the actual shipment did not comply with the declaration.

When the control of waste is exclusively aimed at the export of EEE out of the OECD, the Office of the Auditor General considers it inappropriate for Norwegian Customs to carry out document controls almost exclusively. In the view of the Office of the Auditor General, more physical controls should have been carried out.

4.5.3 Several factors limit Norwegian Customs' ability to carry out physical controls

When physical controls are carried out, the Border Division of Norwegian Customs checks whether goods brought out of the country have been

declared and whether the shipment is actually in line with the declaration application already approved by Norwegian Customs. Through these controls, Norwegian Customs can detect smuggling of waste out of Norway.

The investigation shows that there are several factors that limit Norwegian Customs' ability to carry out physical controls.

The availability of scanners is one factor that affects control potential. Scanning provides a good overview of the contents of a shipment, as opposed to a visual inspection which only gives the inspector a very limited idea. The Ministry of Finance confirms that scanners increase the likelihood of uncovering rule violations, but also points out that this is an expensive tool. When the Norwegian Environment Agency takes over the responsibility for a case from Norwegian Customs, they can order the container to be emptied. This, however, is time-consuming, and according to the Norwegian Environment Agency, they are less likely to examine a shipment that Norwegian Customs has stopped if a scanner image does not exist. As there are large customs offices in Norway that do not have scanners, regulatory violations in these locations are far less likely to be detected and sanctioned.

Norwegian Customs' routines when declarations contain incorrect information is another factor that affects the potential for control. The export declaration specifies the customs office where a shipment is to cross the border. The declarant is obliged to notify Norwegian Customs if the place of export changes. However, Norwegian Customs does not practise strict follow-up in cases where the port of export is not in accordance with the approved declaration, and this creates challenges when the Border Division is to carry out planned physical controls. If the shipment exits somewhere other than the place stated in the approved declaration, the Goods Carriage Division's control request will not be sent to the part of the Border Division that controls the relevant port or border crossing.

When it comes to export via port, it is the regulations themselves that limit the possibility of carrying out effective control. Exporters are obliged to notify the customs authorities of departure before a vessel leaves the customs area, see Section 3-7 (1) of the Customs Act. This should be done well in advance of departure. Sections in Norwegian Customs that are responsible for carrying out controls point out that the lack of specification of the time frame "well before departure" in the regulatory text makes it challenging to exercise adequate control. Often, documentation about the cargo is submitted close to the vessel's departure time. The control is therefore mainly carried out as a formal control of whether there is a declaration, and no time remains to carry out physical controls.

Overall, it is the assessment of the Office of the Auditor General that the Ministry of Finance and Norwegian Customs have not adequately eliminated obstacles that make it difficult to carry out physical controls effectively.

4.6 The Norwegian Environment Agency's preventive work against illegal waste export has several weaknesses

Pursuant to Section 13-2 of the Waste Regulations, the Norwegian Environment Agency shall process and follow up applications to export notifiable waste. They shall also, through advice, guidance and information, work to ensure that the rules on waste are followed.

4.6.1 The Norwegian Environment Agency's processing of permits is largely trust-based. They perform few controls and violations have few consequences

The export of waste is mostly based on self-declaration, and the Norwegian Environment Agency's processing of applications is largely trust-based. The Norwegian Environment Agency bases its assessment on the exporter's waste classification when considering whether it is permissible to export the waste to specified receiving facilities. The Agency therefore depends on the exporter having classified the waste correctly in order to make a reliable assessment of the environmental impact and whether it is permissible to export the waste.

The Norwegian Environment Agency receives information on each shipment of waste exported, at different stages of the administrative process. As more than 60,000 shipments of notifiable waste are exported each year for treatment abroad from Norway, the Norwegian Environment Agency is unable to follow up and verify the documentation on which each shipment are based.

In order to export notifiable waste, consent must be obtained from all the authorities involved. The Waste Shipment Regulation clearly states that the authorities are obliged to withdraw consent if they become aware that the conditions for the consent have been breached, for instance if the composition of the waste is not as reported.

Furthermore, the Waste Shipment Regulation clearly states that consent must be withdrawn at the first violation. However, according to the Norwegian Environment Agency's internal case management guide, the exporter must be notified at the first violation that consent will be withdrawn in the event of further deviations. The Norwegian Environment Agency also says in interviews that this is their practice. The Norwegian Environment Agency therefore does not react as strictly as the border Waste Shipment Regulation requires. The Norwegian Environment Agency withdrew one import consent in 2022. Prior to this, they had not withdrawn any consents since 2016.

The Office of the Auditor General understands that the Norwegian Environment Agency does not have the opportunity to follow up and verify all the documentation on which the export permits are based. At the same time, it is the opinion of the Office of the Auditor General that a trust-based system presupposes that enterprises provide correct information, and that there are consequences when they do not. The fact that the Norwegian Environment

Agency is reluctant to react when there is no correspondence between the information in the application and the actual exports undermines the prerequisites for a trust-based system.

4.6.2 The Norwegian Environment Agency's guidance has lacked essential information on the export of waste out of the OECD

A trust-based system where a lot of responsibility is placed on exporters presupposes that it is as easy as possible for exporters to familiarise themselves with the regulations. The investigation shows that the Norwegian Environment Agency has for a long time failed to provide significant information about the rules for exporting waste out of the OECD in its guidance.

Some countries have opted out of accepting all forms of waste. Therefore, it is illegal to export, among other things, green-listed waste to these countries. According to the Norwegian Environment Agency's guidelines, it is considered a serious deviation if such exports are discovered during inspection. In December 2021, the Office of the Auditor General informed the Norwegian Environment Agency that the Directorate's guidelines on the export of green-listed waste did not contain information on which countries have opted out of receiving such waste. Considering that exporters do not have to apply to the Norwegian Environment Agency for permission to export green-listed waste, it is very important that the guidelines on such exports are correct.

The Norwegian Environment Agency's guidelines on the export of notifiable waste contains the list of countries that have reserved themselves against accepting waste. However, since all countries on the list are outside the OECD and the cross-border regulation prohibits the export of notifiable waste out of the OECD, there is little purpose to including this list in guidelines on the export of notifiable waste.

In the view of the Office of the Auditor General, these examples pose a risk of illegal waste exports as a result of exporters misinterpreting or lacking information about the regulations.

5 Recommendations

The Office of the Auditor General recommends that the Ministry of Climate and Environment

- ensure that the Norwegian Environment Agency reacts in a way that is effective, proportionate and dissuasive
- ensure that the Norwegian Environment Agency has adequate sanctions and, towards this purpose, introduces administrative fees as soon as possible
- ensure that the Norwegian Environment Agency has updated risk assessments and a plan that facilitates good systematic implementation of inspection

- follow up on the Norwegian Environment Agency organizing its inspections so that they can uncover serious violations to a greater extent

The Office of the Auditor General recommends that the Ministry of Finance

- follow up on Norwegian Customs to a greater extent carrying out physical controls when this is needed for detecting illegal waste exports
- ensure that Norwegian Customs provides the Norwegian Environment Agency with sufficient information about Norwegian Customs' controls and discovered regulatory violations