



Flanders
State of
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Environmental Enforcement Report 2018

PREFACE

The Environmental Enforcement Report 2018 is the tenth environmental enforcement report to be presented by the Vlaamse Hoge Handhavingsraad voor Ruimte en Milieu – VHRM (Flemish High Enforcement Council for Spatial Planning and Environment). As such, this anniversary edition not only reports on the environmental enforcement policy conducted in 2018, but also takes a look back at ten years of the Environmental Enforcement Decree by focusing on the multi-year developments of specific enforcement aspects such as the supervisors appointed, the inspections carried out and the administrative fines imposed so as to present an overall assessment of the past 10 years and the manner in which the Milieuhandhavingsdecreet (Environmental Enforcement Decree) has been implemented.

The tenth environmental enforcement report also means ten years of the VHRM. Looking back on the past decade, it is safe to say the VHRM has turned into a unique network framework and consultation platform in which the strengths and insights of the enforcement bodies, the main interest groups and the strategic advisory councils operating in the Flemish environmental enforcement landscape come together. Other than that, the VHRM plays a pivotal role in supporting the environmental enforcement bodies at the various levels of governance with the design of practical tools, support tools and the focus on the sharing of knowledge and data. Moreover, the VHRM has racked up substantial expertise on the collection, processing and reporting of data. In times to come, too, these enforcement reports will prove to be of merit in detecting trends with a view to further developing and refining the environmental enforcement policy. All the more so as the VHRM is currently devising a framework to integrate the environmental enforcement report and the spatial planning enforcement report in a single Environment Enforcement Report. The aim is to produce a more qualitative report for you as a reader, with an even better detailed picture of the way in which the enforcement policy is being implemented.

On behalf of the VHRM, I would like to extend my sincere thanks to the bodies who have contributed to the preparation of the report. This report would not have been possible without them. Especially as the quality and representativeness of the data in the environmental enforcement report are inextricably based on their assistance.

Prof. Dr. Michael G. Faure LL.M.

Chairman Flemish High Enforcement Council for Spatial Planning and Environment

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1 INTRODUCTION

1.1 DECREE OF 5 APRIL 1995 SETTING FORTH GENERAL PROVISIONS ON ENVIRONMENTAL POLICY

The legal basis for the Flemish High Enforcement Council for Spatial Planning and Environment (VHRM) is the Decree of 21 December 2007 supplementing the Decree of 5 April 1995 setting forth general provisions on environmental policy with a Title XVI “Supervisor, enforcement and safety measures” or¹ the Environmental Enforcement Decree for short.

The VHRM was established to support the Flemish Parliament and the Government of Flanders with the co-ordination and the concretisation in terms of content of the environmental enforcement policy. With a view to a more effective enforcement of the environmental legislation, the VHRM therefore organises systematic consultation with the environmental enforcement bodies. This consultation may result in agreements between the various bodies. These agreements are referred to as protocols. The VHRM is the facilitator for holding consultations with environmental enforcement bodies as well as for preparing and concluding the protocols. In addition, miscellaneous memos, templates and guidelines are prepared on an informal basis which are made available via the Knowledge Centre on the VHRM website (accessible to the enforcement bodies)² to the supervisors. These documents are extensively consulted by the supervisors and are supplemented or amended where necessary within the VHRM’s working groups.

The entering into force of some articles of the Decree of 25 April 2014 on the enforcement of the environmental licence on 6 September 2014 saw the Flemish High Council for Environmental Enforcement transformed into the Flemish High Enforcement Council for Spatial Planning and Environment, or the VHRM for short. The transition of the Flemish High Council for Environmental Enforcement into the Flemish High Enforcement Council for Spatial Planning and Environment went hand in hand with the expansion of the members, representatives and alternate members of the VHRM, including a vice-chairman with expertise in the enforcement of the Flemish Spatial Planning Code and members and alternate members nominated by the policy council of the Spatial Planning, Housing Policy and Immovable Heritage policy area and the Strategic Spatial Planning – Immovable Heritage Advisory Council.

The constitution of the plenary assembly of the VHRM was laid down in the Government of Flanders Order of 17 October 2014 on the appointment of the members of the Flemish High Enforcement Council for Spatial Planning and Environment, updated by the Government of Flanders Order of 18 January 2019 amending the Government of Flanders Order of 17 October 2014 on the appointment of the members of the Flemish High Enforcement Council for Spatial Planning and Environment. In addition to a plenary assembly, the VHRM has several working groups to examine specific issues. In 2018, the constitution of the working groups was reviewed, with the activities segregated into 4 working groups: Environmental Enforcement Practice; Knowledge Building and Sharing; Environmental Enforcement and Spatial Planning Enforcement. Chapter 6 dilates on the activities of

¹ Publication Belgian Official Gazette 29 February 2009

² <http://www.vhrm.be/handhavers>

the VHRM and the various working groups in 2018.

The VHRM is required to prepare an annual environmental enforcement report and a five-yearly environmental enforcement programme.

- ▶ The environmental enforcement programme, which – for the first time – has been given a five-year time horizon, sets out recommendations for environmental enforcement based on the analysis of the individual programmes of all bodies to whom the Environmental Enforcement Decree applies. The 2015-2019 Environmental Enforcement Programme also sets out a strategic and operational plan of the VHRM itself and concrete policy recommendations in the areas of water, waste and the exchange of information. The 2015-2019 Environmental Enforcement Programme is also available to be consulted on the VHRM website³.
- ▶ At a minimum, the environmental enforcement report is to put forward a general assessment of the regional environmental enforcement policy conducted in the previous calendar year; a specific assessment of the commitment of the individual enforcement instruments; an overview of the cases where, within the specified period, no decision was made about the appeals against decisions on administrative measures; an assessment of the decision-making practice of the public prosecution services on whether or not to institute criminal proceedings for an established environmental crime; an overview and comparison of the environmental enforcement policy followed by the municipalities and provinces; an inventory of the insights that were gleaned from the enforcement process and which may be used to improve the environmental regulations, policy visions and policy implementation; and recommendations for the further development of the environmental enforcement policy. These environmental enforcement reports from 2009 through 2017 are available on the VHRM website⁴.

In addition, the VHRM also prepares a annual Spatial Planning Enforcement Report and co-ordinates the preparation of the Environmental Enforcement Programme.

Based on the results of an investigation into the preparation of an Environmental Enforcement Report which was outsourced in 2018, the VHRM is currently looking into ways to prepare an integrated Environmental Enforcement Report may be prepared in the years ahead. This year, the 2018 Environmental Enforcement Report and the 2018 Spatial Planning Enforcement Report will still be published as two separate documents.

³ <http://www.vhrm.be/milieuhandhavingsprogramma>

⁴ <http://www.vhrm.be/milieuhandhavingsrapport>

1.2 METHODOLOGY AND RELEVANCE OF THE 2018 ENVIRONMENTAL ENFORCEMENT REPORT

1.2.1 Working method

Based on relevant and reliable numerical and qualitative data, the intent of the environmental enforcement report is to provide a detailed picture of the environmental policy that was conducted in the Flemish Region from 01 January 2018 through 31 December 2018.

To meet this objective – and the components laid down by decree – the VHRM has prepared a questionnaire, similar to the format used for the previous environmental enforcement reports, for the environmental enforcement bodies and which focuses on the various assignments of these bodies. Since 2015, the bodies have been sent a digital survey questionnaire as part of the 'radically digital' campaign (see Coalition Agreement 2014-2019⁵).

The following actors were asked about their activities in the area of environmental law enforcement between 1 January 2018 and 31 December 2018.:

- ▶ Departement Omgeving – afdeling Handhaving – Omgevingsinspectie (Department of Environment – Enforcement Division – Environmental Inspectorate);
- ▶ Departement Omgeving – afdeling Gebied-sontwikkeling, Omgevingsplanning en -projecten (Department of Environment and Spatial Development – Territorial Development, Environmental Planning and Projects Division), i.e. the new division as part of the Department of Environment and Spatial Development in which the former Environmental Licences Division of the Department of Environment, Nature and Energy (LNE-AMV) was vested;
- ▶ Department of Environment and Spatial Development, the regional entity of the Enforcement Division;
- ▶ Departement Omgeving – afdeling Gebied- ontwikkeling, Omgevingsplanning en -projecten en Vlaams Planbureau voor Omgeving (Department of Environment and Spatial Development – Territorial Development, Environmental Planning and Projects Division and the Flemish Planning Bureau for the Environment and Spatial Development), i.e. the new divisions as part of the Department of Environment in which the former Land and Soil Protection, Substrate and Natural Resources Division of the Department of Environment, Nature and Energy (LNE-ALBON) was vested;
- ▶ The Secretary General of the Department of Environment and Spatial Development;
- ▶ Openbare Vlaamse Afvalstoffenmaatschappij OVAM (Public Waste Agency of Flanders);
- ▶ Vlaamse Landmaatschappij VLM (Flemish Land Agency);
- ▶ Vlaamse Milieumaatschappij VMM (Flanders Environment Agency);
- ▶ Agentschap voor Natuur en Bos ANB (Agency for Nature and Forests);
- ▶ Agentschap Maritieme Dienstverlening en Kust (Agency for Maritime Services and Coast);
- ▶ Vlaams Agentschap Zorg en Gezondheid VAZG (Flemish Agency for Care and Health);
- ▶ Agentschap Wegen en Verkeer AWC (Agency for Roads and Traffic);

⁵ <http://www.vlaanderen.be/nl/publicaties/detail/het-regeerakkoord-van-de-vlaamse-regering-2014-2019>

- ▶ De Vlaamse Waterweg NV (Flemish Waterways plc) (previously Waterwegen en Zeekanaal NV & De Scheepvaart NV⁶);
- ▶ Departement Mobiliteit en Openbare Werken MOW (Department of Mobility and Public Works);
- ▶ The Flemish mayors;
- ▶ The Flemish municipalities;
- ▶ The intermunicipal associations which carry out environmental enforcement duties;
- ▶ The Flemish police districts;
- ▶ The Federal Police;
- ▶ The Flemish provincial governors;
- ▶ The provincial supervisors;
- ▶ The Enforcement Board (previously the Environmental Enforcement Board);
- ▶ The public prosecution services.

A uniform questionnaire was again used to ensure comparable information was obtained. For instance, the survey enquired into the number of supervisors within the organisation, the number of full-time equivalents (FTEs) committed by the supervisor(s) to carry out environmental enforcement duties under the Environmental Enforcement Decree and the FTEs committed to provide administrative support for environmental enforcement duties by non-supervisors, the number of inspections carried out between 01 January 2018 and 31 December 2018, the number of initial official reports, the number of identification reports and the number of administrative measures and safety measures imposed. The sanctioning bodies were also asked about their activities between 01 January 2018 and 31 December 2018.

Based on the information received through the standardised questionnaires this report provides a quantitative overview of the activities performed by the enforcement bodies in 2018. These figures are represented graphically in a graph or table along with a text explanation. Even though the various bodies involved were officially contacted and a duty to provide assistance is in place for the bodies that are part of the Flemish Region, no full response across the board was received. This means that the figures are not entirely representative and the conclusions are to be read in this light. In addition, it should be pointed out that the figures supplied are a snapshot in time, not always the definitive result of an inspection or of a case. This has to do with current time limits and the fact that the survey relates to the 1 January 2018 through 31 December 2018 time frame. In other words, a certain margin of error needs to be factored in.

The 2018 Environmental Enforcement Report is the tenth environmental enforcement report since the Environmental Enforcement Decree came into force. This being the case, this anniversary edition considers various aspects of this decree and puts forward a quantitative outline of changes over the past 10 years. This gives a clear picture of the impact and implementation of the Environmental Enforcement Decree. The figures used for this decade edition are those from the previous environmental enforcement reports. The restrictions, contextualisation and enabling conditions which applied to the data and processing operations of the figures received at the time obviously continue to apply when they are presented as part of an outline of the changes over the past years. The crucial element in this respect is that the response rate fluctuated through the years, which means that, in all cases, this needs to be factored in the presentation of absolute numbers.

⁶ On 10 February 2017, the name of De Scheepvaart NV was changed into De Vlaamse Waterweg NV (Flemish Waterways plc). Waterwegen en Zeekanaal NV (Waterways and Sea Canal plc) was dissolved on 1 January 2018 and absorbed by De Vlaamse Waterweg NV (Flemish Waterways plc).

1.2.2 Structure

The decree clearly specifies the topics that demand minimum reporting. The VHRM designed the questionnaires to meet these requirements, although the sequence may differ from the listing in the Environmental Enforcement Decree.

The focus of chapter 2 mainly goes out to the efforts of the supervisory authorities. First, an assessment is presented of the environmental enforcement policy implemented by the regional supervisors, the Federal Police, the Local Police and the enforcement activities carried out at local level by the provincial governors, the provincial supervisors, the mayors, the municipal supervisors and the supervisors of the intermunicipal associations over the past calendar year. A figured picture is presented of the number of supervisors per organisation, the FTEs committed by these supervisor(s) to perform environmental enforcement duties under the Environmental Enforcement Decree and the FTEs assigned to provide administrative support for environmental enforcement duties by non-supervisors, and the number of inspections carried out by these supervisors in 2018. This also gives a clear picture of the number of inspections performed per supervisor. For the Federal Police and the Local Police, the type of official environmental reports that were raised by the police forces in 2018 are discussed.

In addition, special attention is paid to the proactive inspections carried out by the Federal Police in the context of waste shipments and to the activities of supervisors appointed by the Local Police. The current local enforcement policy is also assessed. With respect to the local environmental enforcement policy, attention is drawn to the presence of the number of class 1, class 2 and class 3 – establishments on the territory and the appointment of the number of local supervisors in the municipalities. Furthermore, the supervisory duties performed by the Flemish municipalities and cities are also assessed.

Chapter 3 focusses on the use of individual environmental enforcement instruments by the different environmental enforcement bodies. To set clear boundaries for the concept of 'environmental enforcement instrument', a list of these instruments has been prepared based on the parliamentary preparations for the Environmental Enforcement Decree. The uniform questionnaires were created based on this list. This relates to the following instruments: recommendations, exhortations, administrative measures (rectification orders, cease and desist orders, administrative coercive measures or a combination thereof) which may or may not involve periodic penalty payments, safety measures, administrative fines (and expropriation of unlawful material benefits) and criminal penalties. Administrative fines, administrative transactions and criminal penalties will be discussed in a separate chapter 4 entitled 'Assessment of the sanctioning policy conducted in the previous calendar year'. Same as in the previous Environmental Enforcement Reports, the enforcement instruments are considered in light of the number of inspections carried out where an offence has been established and not in relation to the total number of inspections carried out. The official report and the identification report are also included in this specific assessment of the use of the individual environmental enforcement instruments.

Chapter 4 'Assessment of the sanctioning policy conducted in the previous calendar year' continues with an overview of the administrative and criminal penalties imposed by the Flemish Land Agency (VLM) and the regional entity of the Enforcement division of the Department of Environment and Spatial Development, along with an overview of the activities of the public prosecution services and the Enforcement Board.

Other types of penalties may also be imposed, such as the municipal administrative sanctions (GAS) and fines for mandatory levies. However, as these do not come under the Environmental Enforcement

Decree, they will not be discussed any further.

As stated above, throughout these three chapters, this decade edition – where possible – will also outline the changes determined in the various data series over the past ten years. This enables to highlight certain developments and trends in the effects of the Environmental Enforcement Decree and to put forward targeted and motivated long-term conclusions and recommendations.

The conclusion of the report (chapter 5) is an effort to establish an inventory of the insights obtained during the enforcement which can be used to improve environmental regulations, policy visions and policy implementation, and to put forward recommendations for further development of the environmental enforcement policy.

In chapter 6, the VHRM reports on its own work in 2018 on environment-related issues. Activities were carried out both in the plenary assembly and in the working groups, which benefit environmental enforcement in the Flemish Region. These activities may be viewed in the context of the VHRM's strategic and operational plan but they may also be linked to certain recommendations put forward by the VHRM in previous environmental enforcement reports and in the 2015- 2019 Environmental Enforcement Programme.

1.3 ENVIRONMENTAL ENFORCEMENT POLICY

The 2014-2019 Government Coalition Agreement of the Government of Flanders⁷, which applied in 2018, set out the ambition to step up efficiency, and achieve greater co-operation and alignment between all services whose remit is to enforce Flemish regulations and to penalise offences. The Coalition Agreement aspired to streamline the procedures in the existing Flemish enforcement regulations.

In addition, as part of the modernisation of the instruments and the creation of an even more efficient administration, said Coalition Agreement sought to further flesh out the policy guidelines and priorities of the enforcement of the environmental licence in the enforcement programme and to ensure the optimum use of the instruments of administrative enforcement. It also aspired to achieve a solution-focused and customer-friendly Environment Administration that sees the administrations come up with solutions and act to facilitate projects, whilst serving as a know-how unit which help to create widespread public support, in all cases in the public interest. In the area of enforcement too, the idea was for reasonableness to come first, with a solution-focused approach and customer-friendliness at the forefront. The framework created by the relevant decrees in which the administrations operated was intended to support this solution-driven operating method.

The VHRM was assigned a major supporting role in these endeavours. Aligning the environmental enforcement report with the Spatial Planning enforcement report as well as the co-ordinating role of the council in preparing the Spatial Planning Enforcement Programme are an implementation of this coalition agreement.

The 2014-2019 Environment Policy Memorandum of Flemish Minister Joke Schauvliege⁸ set out strategic and operational objectives in the area of environmental enforcement which the VHRM was able to help implement to a large degree in 2018.

Strategic objective 3, 'Simple and effective instruments', is especially important for enforcement as further specified in operational objective 14, 'Further development of targeted enforcement policy'.

The Policy Memorandum of Flemish Minister for general government policy Geert Bourgeois⁹ too set out points of departure in respect of enforcement, particularly in strategic objective 1 "Swift and reliable service delivery for the Government of Flanders, innovative process management for the decision-making and concretisation of the Flemish Justice policy".

This strategic objective was further detailed in six operational objectives, two of which directly relate to the enforcement policy.

For one thing, this was elaborated in operational objective 1.4: Implementation of the co-operation agreement on criminal policy and security policy to ensure a more coherent prosecution of offences: "Flanders has many powers in terms of criminal law, such as the environment, urban planning, employment, traffic safety, arms trade, youth protection and compulsory education. I will implement the co-operation agreement on criminal policy and security policy so that offences covered by Flemish powers relating to criminal law may be prosecuted in a more coherent way. After the sixth state reform, Flanders will have more instruments to enforce its own regulations and to develop its own prosecution policy. I will initiate collaboration with the Board of Procurators General as soon as

⁷ <http://ebl.vlaanderen.be/publications/documents/60797>

⁸ <http://ebl.vlaanderen.be/publications/documents/65581>

⁹ <http://ebl.vlaanderen.be/publications/documents/65542>

possible. I will actively attend the meetings of the Board of Procurators General and ensure that the policy priorities of the Government of Flanders are translated into guidelines for criminal policy as soon as possible. In this respect, I go by the principle that criminal prosecution should ideally be requested only for the most punishable offences (criminal law as the ultimate remedy). In order to prepare the guidelines for criminal policy, it is important to appoint representatives in the various thematic networks of expertise and in horizontal networks of expertise, such as criminal policy and criminal proceedings. I am strengthening collaboration with the federal level as part of the security policy and I am actively contributing to the Framework Memorandum on Integral Security and the National Security Plan. All of this is done in close consultation with my colleagues who are responsible for the matters in question. This is why I will set up a co-ordination mechanism within the Flemish administration. The remit of this body is to support the criminal policy and the security policy. Through the active power of injunction, Flanders may order the Public Prosecutor's Office to bring a prosecution or to use a legal remedy in individual cases. I will exercise this active power of injunction responsibly and in close consultation with the authorised ministers of the matters in question."

On the other hand, explicit keystones were formulated in operational objective 1.5 'Development of a Flemish inspection and enforcement policy' by boosting the efficiency of and alignment between all inspectorates and enforcement services and streamlining processes and procedures: "I will lay the foundations for a Flemish inspection and enforcement policy, on the understanding that these separate inspectorates will continue to exist. To this end, I will carry out the recommendations of the enforcement theme audit of Audit Flanders. A project has already been started within the administration to elaborate recommendations on a cross-policy domain inspection and enforcement policy. I am investigating how the activities of this working group will continue in order to develop concrete proposals for increasing efficiency and more collaboration and alignment between all inspection and enforcement services. The guiding principle is that inspection and enforcement services in Flanders must comply with six principles of good supervision: selectivity, decisiveness, collaboration, transparency, professionalism and independent functioning. I am also setting up a specific project group to investigate how we can streamline inspection processes and procedures in the existing Flemish enforcement regulations. With regard to the inspection processes, I am thinking, for example, of the duration and frequency of inspections, joint inspections by various services, and the reduction of the supervisory burden. I am also committed to developing an administrative enforcement decree that streamlines the processes and procedures for imposing administrative fines and measures. I am increasing the customer-friendliness of inspections and reducing the supervisory burden of inspected parties. Where irregularities are encountered during an inspection, the inspectorates shall provide information to the inspected person on how he can fulfil all obligations. Sanctions are imposed only if the offence persists. The option to impose an immediate sanction continues to exist for serious offences. I have instructed that methods to increase spontaneous compliance are inventoried based on the literature and existing practices. The inspection and enforcement services shall be systematically and structurally involved in the preparation and amendment of relevant legislation and regulations."

In light of the framework outlined above, in 2018 the VHRM was able to substantially contribute to the implementation of both the Policy Memorandum of the Flemish Minister for the Environment, Nature and Agriculture and the Policy Memorandum of the Flemish Minister for general government policy.

2 ASSESSMENT OF THE ENVIRONMENTAL ENFORCEMENT POLICY CONDUCTED

This chapter assesses the Flemish environmental enforcement policy from 01 January 2018 through 31 December 2018. It reports on the enforcement and supervisory activities of the various bodies operating in the Flemish Region in 2018. Where possible and relevant, this chapter also makes a comparison with the data collected by the VHRM in the previous environmental enforcement reports.

2.1 ASSESSMENT OF THE REGIONAL ENFORCEMENT POLICY

The chapter below discusses the enforcement activities of the following enforcement bodies: the Secretary General of the Department of Environment and Spatial Development; – Enforcement Division – Environmental Inspectorate (formerly AMI); Department of Environment – Territorial Development, Environmental Planning and Projects Division (formerly AMV); Department of Environment and Spatial Development – Territorial Development, Environmental Planning and Projects Division & Flemish Planning Bureau for the Environment and Spatial Development Division (formerly ALBON); Flemish Land Agency (VLM); Flanders Environment Agency (VMM); Flemish Agency for Care and Health (VAZG); Agency for Nature and Forests (ANB); Public Waste Agency of Flanders (OVAM); De Vlaamse Waterweg NV (Flemish Waterways plc) (previously Waterwegen en Zeekanaal and De Scheepvaart NV); Agency for Roads and Traffic (AWV), the Maritime Access Division of the Department for Mobility and Public Works (MOW) and the Agency for Maritime Services and Coast.

No VMM data were included in the tables and graphs for this 2018 Environmental Enforcement Report given the fact that the figures provided would create a distorted picture. Enforcement duties at the VMM are shared by two divisions, namely the Operational Water Management Division and the Water Reporting Division. For 2018, both divisions were not able to report a full summary of the enforcement activities carried out.

2.1.1 Regional supervisors

Pursuant to article 16.3.1 of the Environmental Enforcement Decree the staff of the Department and the agencies belonging to the policy areas of the Environment and Spatial Development, Welfare, Public Health and Family, and Mobility and Public Works may be assigned as supervisors by the Government of Flanders. Article 16.3.2 of the Environmental Enforcement Decree specifies that only persons who have the required qualifications and characteristics to properly serve the supervisory assignment may be appointed as supervisors. The questionnaire asked the regional supervisors to specify the number of supervisors, appointed by the Government of Flanders whom they were able to call upon in 2018. In 2018, as in the previous years, no supervision was exercised by the Secretary General of the Department of Environment and Spatial Development as no exceptional circumstances occurred in which he had to use his jurisdiction. As such, the Secretary General of the Department of Environment and Spatial Development is not included as an actor in the tables and graphs.

The table below shows the number of supervisors committed by the regional enforcement bodies in 2018.

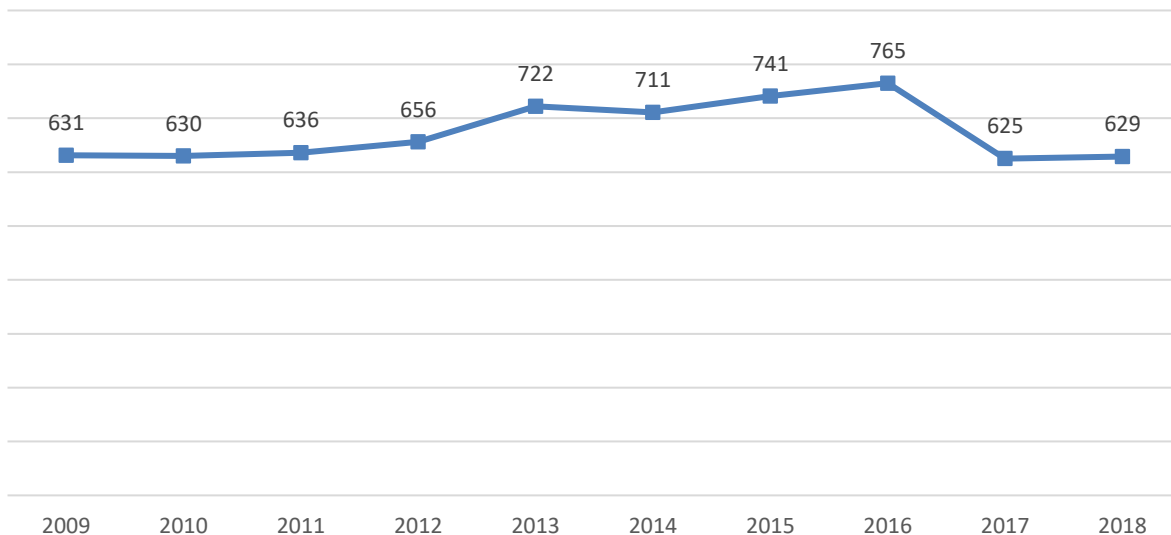
REGIONAL ENFORCEMENT BODY	# supervisors
Department of Environment and Spatial Development – Territorial Development, Environmental Planning and Projects Division & Flemish Planning Bureau for the Environment and Spatial Development (formerly ALBON)	13
Department of Environment and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI)	99
Department of Environment and Spatial Development – Territorial Development, Environmental Planning and Projects Division (formerly AMV)	3
Agency for Nature and Forests (ANB)	134
De Vlaamse Waterweg NV (Flemish Waterways plc)	82
Agency for Roads and Traffic (AWV)	51
Flemish Agency for Care and Health (VAZG)	18
Public Waste Agency of Flanders (OVAM)	159
Flemish Land Agency (VLM)	39
Flanders Environment Agency (VMM)	23
Department of Mobility and Public Works (MOW)	8
Agency for Maritime Services and Coast	0
Total	629

Table 1 Number of supervisors per regional authority in 2018

The finding is that a total of 629 regional supervisors were appointed in 2018. The table shows the diversity of entities where the supervisors are appointed and the differences in supervisor numbers per entity. In the preparation of the Environmental Enforcement Decree, the idea was to step up the probability of identifying the wrongdoers for certain offences, such as illegal dumping, by committing more supervisors. As a result, civil servants from outside the Environment and Spatial Planning policy area were assigned to fight the waste problems.

Based on the data from the previous environmental enforcement reports, it is possible to compile a summary of the number of supervisors available to be called upon by the supervisory bodies over the last ten years. This is shown in the graph below.

Planning and Projects Division as part of the Department of Environment and Spatial Development, previously known as the Environmental Licences Division and the decrease in the number of supervisors at the former De Scheepvaart NV.



Graph 1 Number of supervisors in Flanders from 2009 through 2018

Although a greater number of entities were enabled to assign supervisors over the past ten years, their number has remained unchanged since the implementation of the Environmental Enforcement Decree, other than during the peak between 2013 and 2016. The sharp drop in 2017 is mainly referred to the fall in the number of supervisors appointed within the Territorial Development, Environmental

2.1.2 Efforts in the area of environmental enforcement duties

Efforts

The manner in which the regional enforcement bodies organise their enforcement assignments differs highly. Some enforcement bodies have appointed a lot of supervisors whereas their enforcement duties or enforcement authorizations are rather minimal. Then there are bodies where the supervisors spend (as good as) all of their time on carrying out environmental enforcement duties. This being the case, the specification of the number of supervisors appointed does not give a complete picture of the actual effort made in respect of the enforcement duties. This is why the regional supervisory bodies were also asked to specify how many full-time equivalents (FTEs) were assigned to perform enforcement duties. In spite of the fact that the Environmental Enforcement Decree does not determine how many FTEs are to be committed to enforcement duties, the number of FTEs may provide a clearer and more balanced picture of the actual efforts made.

The table below not only provides a picture of the total time spent on environmental enforcement duties by the regional supervisors but also of the number of FTEs assigned to provide administrative support for environmental enforcement duties by non-supervisors. Administrative support for environmental enforcement duties is related to the time spent by non-supervisors on environmental enforcement-related duties. This may involve entering data into the case monitoring system, providing policy support (preparing reports and programmes), purely administrative duties (drafting correspondence, organising inspections) and providing legal support (elaborate internal guidelines for supervisors).

	Total FTEs committed to environmental enforcement duties	FTEs committed by supervisors to perform environmental enforcement duties	FTEs assigned to provide administrative support for environmental enforcement duties by non-supervisors
REGIONAL ENFORCEMENT BODY			
Department of Environment and Spatial Development – Territorial Development, Environmental Planning and Projects Division & Flemish Planning Bureau for the Environment and Spatial Development (formerly ALBON)	2.15	1.65	0.5
Department of Environment and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI)	101	84	17
Department of Environment and Spatial Development – Territorial Development, Environmental Planning and Projects Division (formerly AMV)	0.45	0.4	0.05
Agency for Nature and Forests (ANB)	44.5	44.5	0
De Vlaamse Waterweg NV (Flemish Waterways plc)	0.2	0.1	0.1
Agency for Roads and Traffic (AWV)	5	4	1
Flemish Agency for Care and Health (VAZG)	4.67	1.37	3.3
Public Waste Agency of Flanders (OVAM)	12.2	9.1	3.1
Flemish Land Agency (VLM)	33	33	0
Flanders Environment Agency (VMM) ¹⁰	/	/	/
Department of Mobility and Public Works (MOW)	0.1	0.05	0.05
Agency for Maritime Services and Coast;	0	0	0
Total	203.27	178.17	25.1

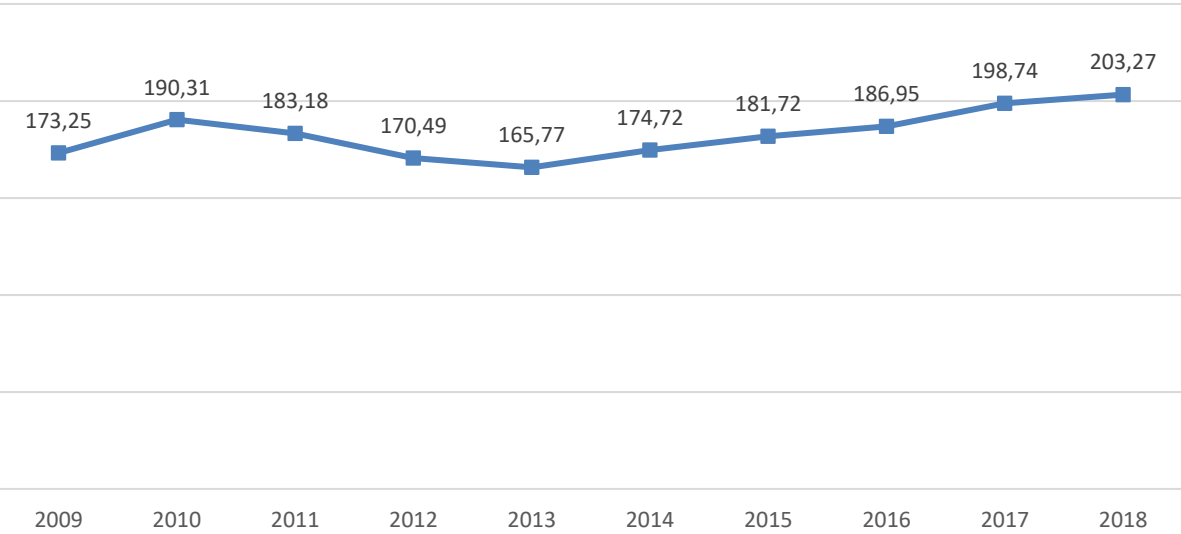
Table 2 Efforts in the area of environmental enforcement duties 2018

The 629 regional supervisors jointly committed 178.17 FTEs to perform enforcement duties in 2018. Factoring in the administrative support for enforcement duties by non-supervisors, a total of 203.27 FTEs were assigned by regional supervisory bodies to perform enforcement duties. This means that 12% of the total number of FTEs assigned to enforcement duties related to administrative duties, was carried out by non-supervisors.

The finding is that a wide diversity is seen to exist between the various regional supervisory bodies in terms of the number of FTEs committed to enforcement duties. Certain bodies devote a large number of FTEs to enforcement duties, while other environmental enforcement bodies commit only a limited number of FTEs to carrying out environmental enforcement duties. For instance, nearly half of the total number of FTEs assigned to environmental enforcement duties by regional enforcement bodies were committed by the Department of Environment and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI), i.e. 101 FTEs. Other enforcement bodies committed very few, if any, FTEs to environmental enforcement duties, such as the Department of Mobility and Public Works and De Vlaamse Waterweg. In 2018, they were respectively able to call on 8 and 82 regional supervisors, respectively assigning the equivalent of 0.1 FTE and 0.2 FTE to perform environmental enforcement duties. This may be explained by the fact that environmental enforcement is not part of their priority duties.

¹⁰ For the VMM it was impossible to supply these data regarding the FTEs committed for 2018

The graph below shows an overview of the total number of FTEs committed over the past ten years by the regional supervisory bodies to perform enforcement duties.



Graph 2 Total number of FTEs assigned to environmental enforcement duties in Flanders

The total number of FTEs committed to environmental enforcement duties by the regional supervisory bodies increased by 17% in 2018 compared to 2009. However, the line fluctuates, same as that of the total number of appointed regional supervisors. The average number of FTEs assigned to enforcement duties per supervisor, i.e. the total number of FTEs committed to enforcement duties divided by the number of supervisors, consistently hovered between 0.22 FTEs (2013) and 0.32 FTEs (2018) in recent years. In 2009, this stood at 0.27 FTEs. As such, it is safe to say that since the Environmental Enforcement Decree came into force, the number of regional supervisors has remained fairly stable, yet the number of FTEs assigned to enforcement duties by the regional supervisory bodies went up.

Number of inspections

In order to provide a better framework for the environmental enforcement efforts of the regional supervisory bodies, they were asked how many environmental enforcement inspections were carried out by these supervisors between 01 January 2018 and 31 December 2018. The definition of an inspection is as follows: “An inspection in the context of environmental enforcement is to seek to establish, at the premises of a legal person and/or a natural person bound by statutory environmental law obligations, whether the said legal person or natural person effectively acts in compliance with the said statutory obligations”. The table below shows an overview of the total number of environmental enforcement inspections carried out by the supervisors in 2018.

REGIONAL ENFORCEMENT BODY	# of inspections
Department of Environment and Spatial Development – Territorial Development, Environmental Planning and Projects Division & Flemish Planning Bureau for the Environment and Spatial Development (formerly ALBON)	175
Department of Environment and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI)	11,147
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)	169
Agency for Nature and Forests (ANB)	9,144
De Vlaamse Waterweg	20
Agency for Roads and Traffic (AWV)	1,642
Flemish Agency for Care and Health (VAZG)	8,712
Public Waste Agency of Flanders (OVAM)	1,187
Flemish Land Agency (VLM)	6,193
Flanders Environment Agency (VMM) ¹¹	/
Department of Mobility and Public Works (MOW)	0
Agency for Maritime Services and Coast	0
Total	38,389

Table 3 Number of environmental enforcement inspections carried out by supervisors in 2018

In 2018, the regional supervisors carried out a total of 38,389 environmental enforcement inspections. Here too, there is a major difference between the various enforcement bodies. Where some bodies conducted many inspections in 2018, there are enforcement bodies which – in spite of the fact that only a limited number of FTEs were assigned to perform enforcement duties – carried out no or very few environmental enforcement inspections. This too is an indication that for some bodies enforcement is only a limited – or even pro forma – part of the duties of these employees whereas to other supervisors, enforcement makes up the core of the activities.

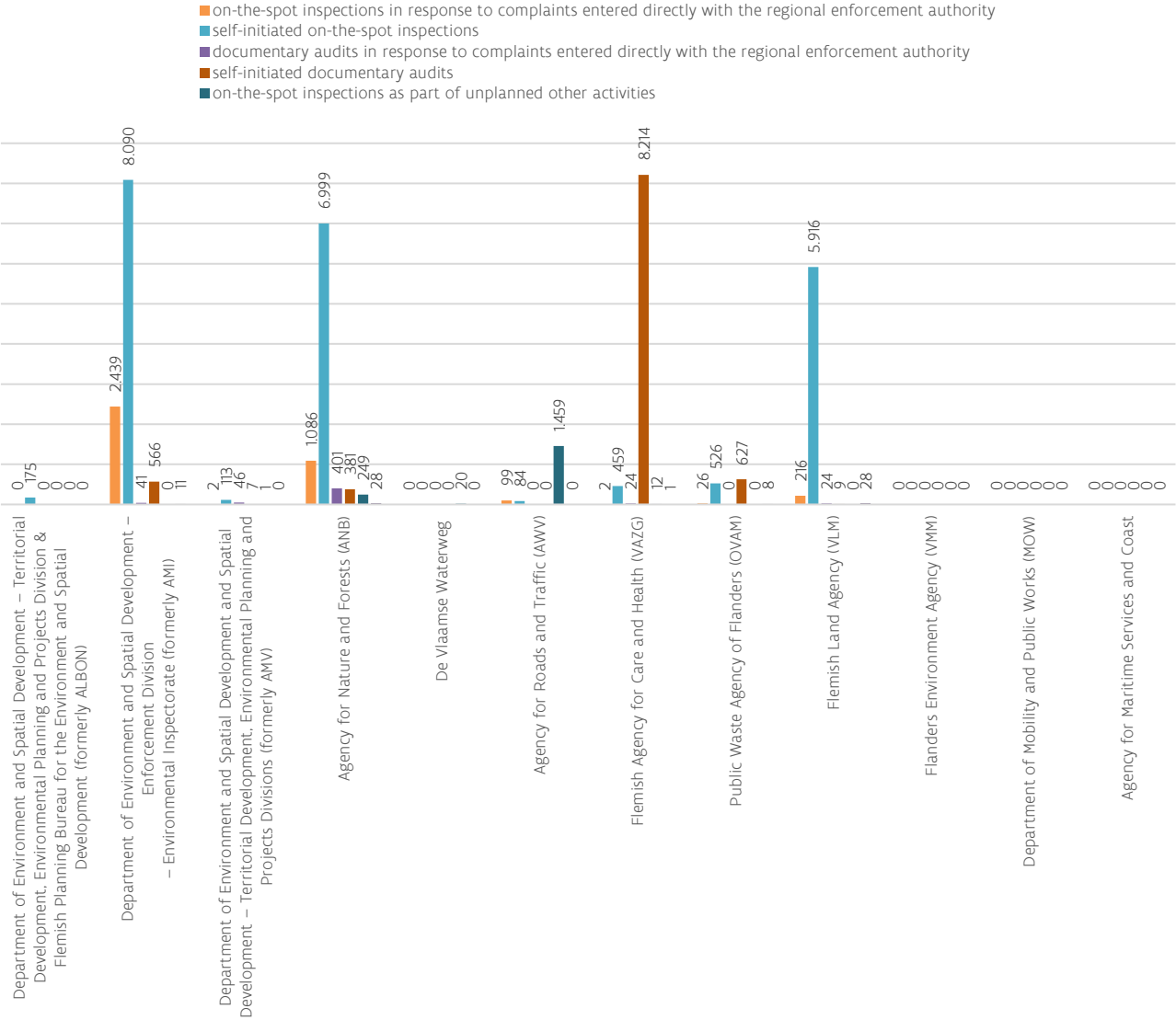
Inspection types

New since 2016 is that the regional supervisors were also queried as to the reason why they carried out the inspections they conducted. For example, in addition to the number of environmental enforcement inspections carried out, they were asked to distinguish between the number of documentary audits in response to complaints made directly to the regional authority, self-initiated documentary audits conducted, on-the-spot inspections where assistance was provided, on-the-spot inspections whilst performing other unplanned duties, self-initiated on-the-spot inspections and on-the-spot inspections in response to complaints entered directly with the regional authority. The graphs below bring this classification into focus, per body and for all of the environmental enforcement inspections carried out.

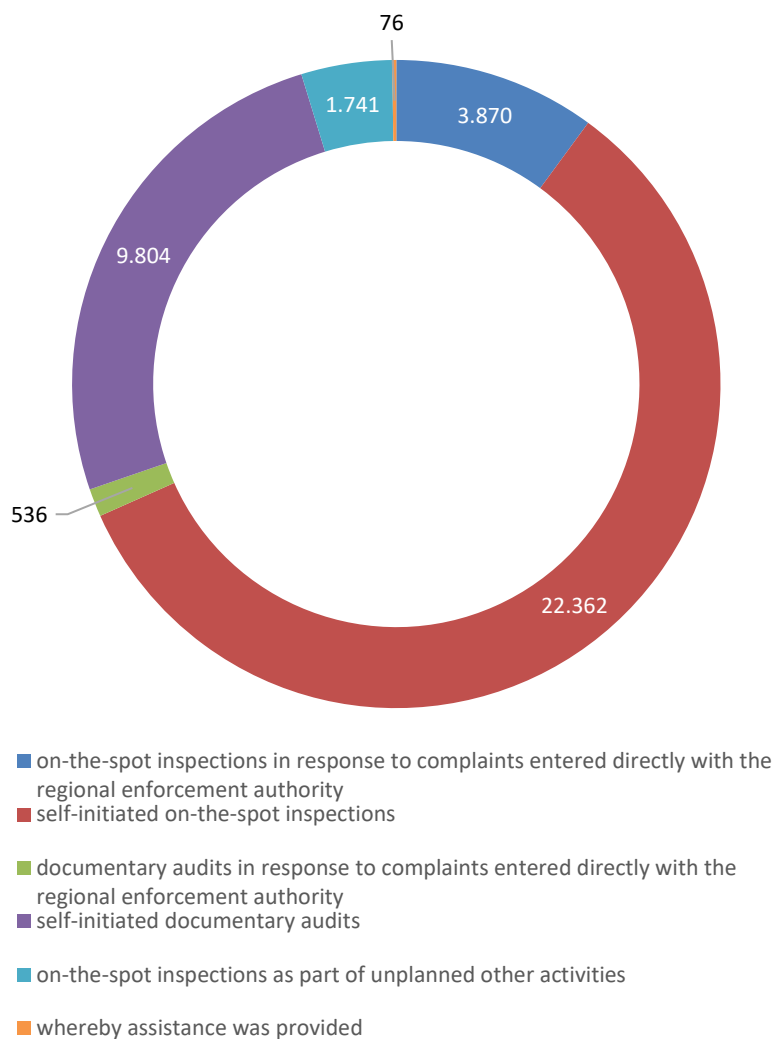
For those enforcement bodies where enforcement is the main focus of their work, the inspections in 2018 were mainly performed at their own initiative. For instance, over 72% of the inspections conducted by the Department of Environment and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI) were carried out at the department's initiative. At the VLM, this percentage was even more than 95%, at the VAZG it was more than 94% and at the Department of Environment and Spatial Development – Territorial Development, Environmental Planning and Projects Division & Flemish Planning Bureau for the Environment and Spatial Planning (formerly

¹¹ The VMM was unable to report the data requested

ALBON), inspections were only carried out on their own initiative. Over 88% of the inspections carried out by the supervisors of the Roads and Traffic Agency were on-the-spot inspections as part of unplanned other activities. This may be explained by the 'many eyes on the ground' principle, whereby "environmental enforcement" is an additional assignment as part of the entirety of activities for these supervisors (not an exclusive activity) and whereby enforcement inspections are mainly carried out as they perform other duties.



Graph 3 Reason for inspections carried out in 2018 per enforcement body

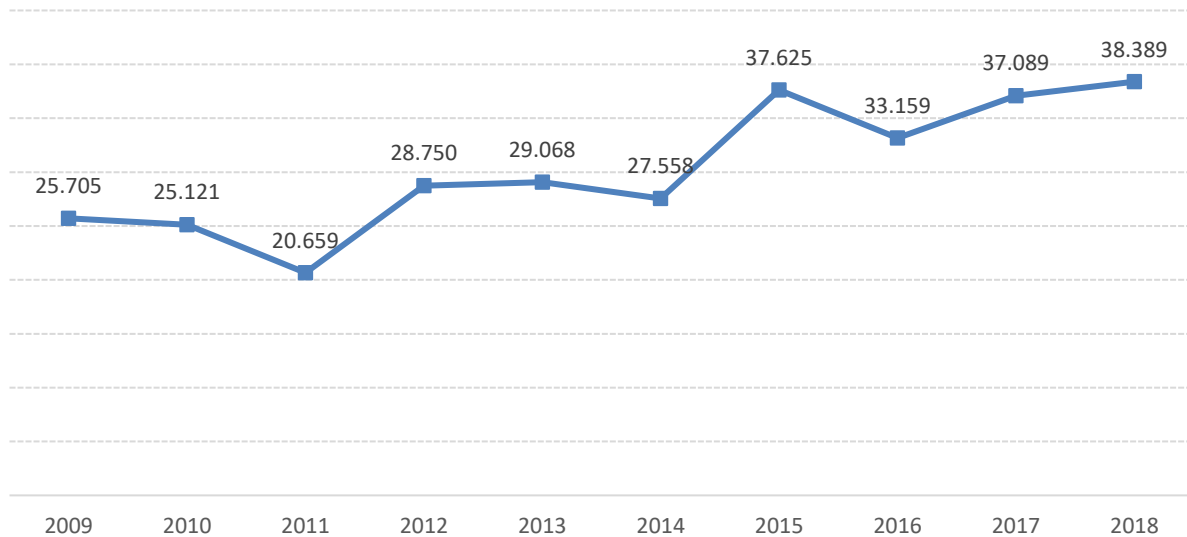


Graph 4 Total number of inspections in 2018 broken down according to reason

The graph above shows that 83.5% of the total number of 38,389 environmental enforcement inspections in 2018 were self-initiated. 69.5% of self-initiated inspections were on-the-spot inspections and 30.5% of the cases were documentary checks. Only 11.5% of the total number of inspections carried out by the regional supervisors were inspections in response to complaints.

Based on the data from the earlier environmental enforcement reports, the following developments in terms of the total number of environmental enforcement inspections carried out can be made.

In 2018, 49% more enforcement inspections were carried out than in 2009. The figures already showed that the number of supervisors had remained more or less unchanged and the number of FTEs committed to enforcement duties went up by 17% in 2018 compared to 2009. Also, the line of the number of environmental enforcement inspections carried out is also seen to fluctuate. However, it is safe to say that since the Environmental Enforcement Decree came into force, the number of inspections carried out rose more sharply than the amount of time spent on enforcement duties.



Graph 5 Total number of environmental enforcement inspections carried out in Flanders from 2009 through 2018

The table below not only shows the number of supervisors, the total number of FTEs committed to enforcement duties¹² and the number of inspections carried out by the supervisors in 2018, it also weighs these figures by dividing the number of environmental enforcement inspections carried out by the number of supervisors so as to arrive at the average number of inspections per supervisor. An inspection often involves more than just actually performing the inspection and travelling to the site in question, so in order to obtain a more balanced picture, the number of inspections carried out by the supervisors will be divided by the total number of FTEs assigned to perform enforcement duties per regional authority; this makes it possible to also propose an average number of inspections per FTE for 2018. In this way, the preparations for each inspection and the administrative processing are also taken into account. The average number of inspections per FTE may be higher than the total number of environmental enforcement inspections carried out as not every enforcement body commits at least one full-time equivalent to perform enforcement duties.

¹² This relates both to the FTEs committed by supervisors to perform environmental enforcement duties under the Environmental Enforcement Decree and the FTEs assigned to deliver administrative support for environmental enforcement duties by non-supervisors

	Number of supervisors	Total FTEs assigned to environmental enforcement duties	Number of environmental enforcement inspections	Average number of inspections per supervisor	Average number of inspections per FTE
REGIONAL ENFORCEMENT BODY					
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON)	13	2.15	175	13	81
Department of Environment and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI)	99	101	11,147	113	110
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)	3	0.45	169	56	376
Agency for Nature and Forests (ANB)	134	44.5	9,144	68	205
De Vlaamse Waterweg NV (Flemish Waterways plc)	82	0.2	20	0	100
Agency for Roads and Traffic (AWV)	51	5	1,642	32	328
Flemish Agency for Care and Health (VAZG)	18	4.67	8,712	484	1,866
Public Waste Agency of Flanders (OVAM)	159	12.2	1,187	7	97
Flemish Land Agency (VLM)	39	33	6,193	159	188
Flemish Environment Agency (VMM)	/	/	/	/	/
Department of Mobility and Public Works (MOW)	8	0.1	0	0	0
Agency for Maritime Services and Coast;	0	0	0	0	0
Total	606	203.27	38,389	63	189

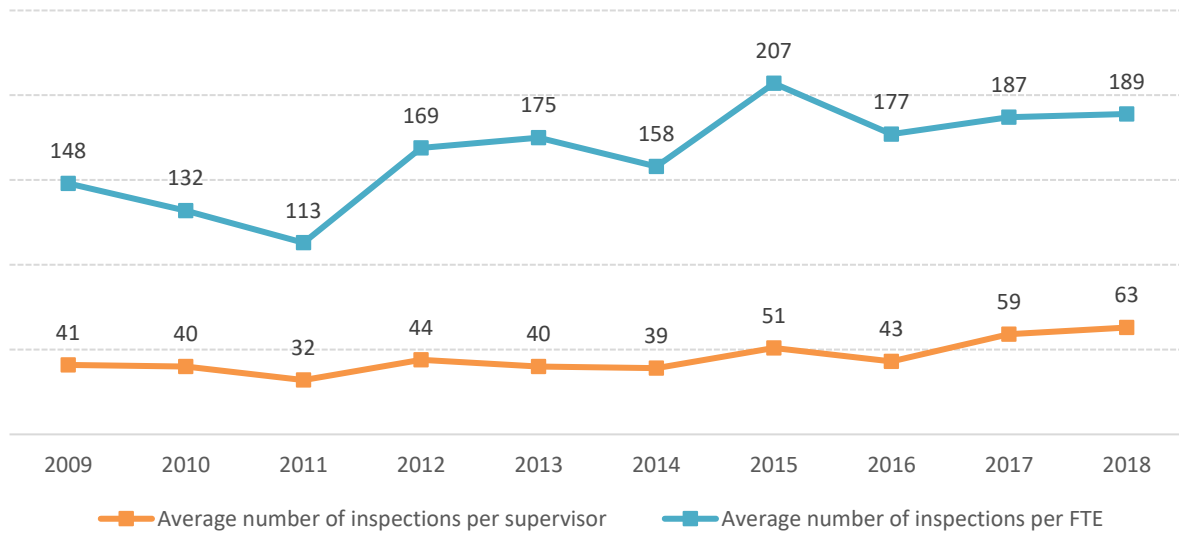
Table 4 Efforts in the area of environmental enforcement duties in 2018

The table above indicates that an average of 63 inspections per supervisor were carried out in 2018. However, if this information is considered separately for the various regional supervisory authorities, the picture is very diversified. This difference may be explained by the nature of the inspections carried out and by the fact that, to certain supervisors, the enforcement of environmental law is a virtually exclusive task, whereas for other supervisors enforcement is just a small part of the employee's set of duties.

The average number of inspections per FTE is the total number of inspections carried out compared to the total number of FTEs committed to enforcement duties. This indicator provides a more accurate picture of the efforts made by the regional enforcement bodies in 2018. On average, the supervisors carried out 189 inspections per FTE. For certain bodies, the average number of inspections per FTE is a fictitious scenario as less than 1 FTE was committed to enforcement duties within their organisation.

The results of these environmental enforcement inspections carried out by the regional enforcement bodies will be reviewed in chapter 3 'Assessment of the use of the individual environmental enforcement instruments and safety measures'.

Based on the data from the previous Environmental Enforcement Reports, the changes in terms of the average number of inspections per supervisor and the average number of inspections per FTE are shown in the graph below.



Graph 6 Efforts in the area of environmental enforcement duties in Flanders from 2009 through 2018

Based on the above graph, and in spite of fluctuations, a rising curve is seen for the past ten years for the average number of inspections per supervisor and the average number of inspections per FTE. Compared to 2009, 2018 witnessed a rise of nearly 54% in the average number of inspections per supervisor whereas the average number of inspections per FTE went up by almost 28%.

2.2 ASSESSMENT OF THE ENVIRONMENTAL ENFORCEMENT POLICY CONDUCTED BY THE POLICE

For the preparation of this environmental enforcement report, the Flemish High Enforcement Council for Spatial Planning and Environment also queried the Federal and the Local Police in the context of their environmental enforcement activities. For example, they were asked how many official reports for environmental offences were raised by the Federal Police and by the Local Police in the Flemish Region in response to the establishment of an offence (based on an offence being reported to them, a complaint or offenders being caught in the act) between 01 January 2018 and 31 December 2018. Further details were also requested regarding the specific environmental enforcement activities of the Federal Police and the activities of the supervisors appointed within the Local Police districts.

2.2.1 General

The table below shows an overview of the type of official report raised by the police forces in respect of environmental offences in 2018.

TYPE OF OFFENCE	UNITS			Total
	Federal Police	Local Police	Other	
Waste by business	8	261	3	272
Waste transport	10	49	1	60
Waste: permit recognition	1	32	0	33
Waste by private citizen	39	1,669	3	1,711
Air pollution	4	315	2	321
Water pollution	11	108	1	120
Soil contamination	1	58	1	60
Environment: Noise pollution	0	70	0	70
Environmental taxes and duties	0	17	0	17
Environment flora fauna Destruction	0	154	0	154
Environment flora fauna Animal Welfare	3	891	1	895
Environment flora fauna Nature Conservation	0	83	1	84
Environment flora fauna Licence recognition	5	41	0	46
Environment flora fauna other	0	1	0	1
Other phenomena linked to the environment	181	5,744	14	5,939
Total	263	9,493	27	9,783

Table 5 Official reports raised by police officers in respect of environmental offences for the year 2018 in the Flemish Region – source: ANG

The figures include both the initial official report and the simplified official report. Such simplified official reports are mainly raised for minor offences, for instance involving unknown perpetrators, which are not systematically passed on to the public prosecution service. The fact that they also contain the simplified official reports explains the difference between the number of official reports raised by the police force and the number of cases received – raised by the police forces – by the public prosecution services (see chapter 4.1).

The figures derive from the General National Data- base. The General National Database (ANG) is the entirety of IT systems of the integrated police intended to support the duties of the judicial or

administrative police to ensure the best possible structured and protected information management.¹³

In total, 9,783 official reports were raised by the police force in the Flemish Region in 2018. Over 97% of these official reports were raised by the Local Police and 3% by the Federal Police.

More than half, i.e. 61%, of the official reports related to 'other phenomena linked to the environment'. This includes offences that are not covered by the Environmental Enforcement Decree, such as offences in the context of fireworks fraud. The second largest category is 'waste by private citizens'. This category represents 17% of the total number of offences established.

Compared to the data from the Environmental Enforcement Reports for 2017, 2016, 2015 and 2014, a falling trend is seen in the number of official reports raised, i.e. 15,303 in 2014, 13,373 in 2015, 12,968 in 2016 and 12,632 in 2017. However, the proportion between the reporting units (Federal Police, Local Police and other police forces) remains virtually unchanged, as does the proportion between the various offence types.

2.2.2 Assessment of the environmental enforcement policy conducted by the Federal Police

The Flemish High Enforcement Council for Spatial Planning and Environment also queried the Federal Police about its environmental enforcement activities for the 2018 Environmental Enforcement Report. In amongst other things, they were asked how many official reports were stored in the ANG in 2018 in respect of environmental crime whereby the reporting unit belonged to the Federal Police. These data were presented in 2.2.1. In addition, they were also asked to specify how many people within the Federal Police were actively involved in the enforcement of environmental law in the Flemish Region in 2018.

Within the Federal Police, 103 people were part of the Environmental Network in Flanders in 2018. The purpose of this Environmental Network is to exchange information on environmental offences, to provide mutual support, to jointly develop best practices and to conduct large-scale investigations effectively and efficiently. 201 members of the Local Police also operate as part of this network. However, the figure of 103 members of the Federal Police who are actively involved in environmental enforcement is both an overestimation and an underestimation. All the more so as this number is generated by the Environmental Network database. Not all people in this database are still actively involved in environmental enforcement activities. On the other hand, it is also true that not all persons involved in environmental enforcement within the Federal Police are included in this network. The 103 Federal Police officers should therefore be regarded as indicative.

More accurate is that 26 FTEs within the Federal Police were actively involved in environmental enforcement in the Flemish Region in 2018. This concerns 4 FTEs in the Environmental Service of the Directorate for Combating Serious and Organised Crime (DJSOC/ Environment), 5 FTEs research capacity within the Federal Judicial Police, 1 FTE Centrex co-ordinator and 16 FTE phenomenon co-ordinators. These phenomenon co-ordinators investigate and monitor the phenomenon of environmental crime.

The Federal Police deals with supra-local phenomena that meet the definition of serious environmental crime. In amongst other offences, these include repeated systematic actions in violation of regulations and other statutory provisions; a strong inter-dependence with fraud; activities that take place on an organised basis, often in a business context; activities that take place

¹³ Art. 44/7 Office of Police Act.

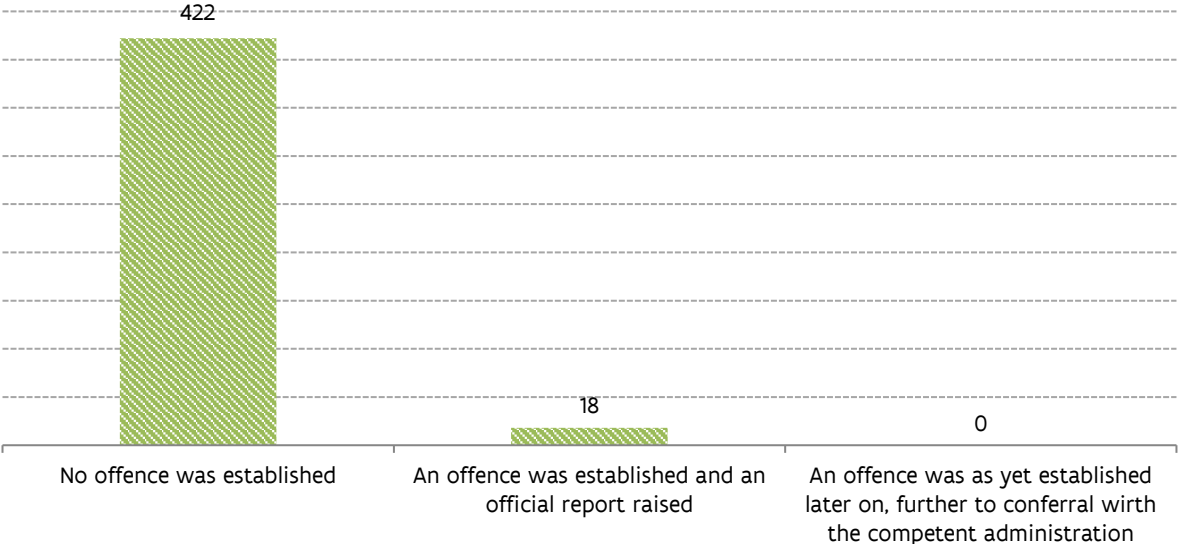
at supra-regional level and international networks; activities that are aimed at substantial financial gains; and business activities that cause substantial and often irreparable damage to the environment and/or pose an imminent hazard to public health.

In 2018, a total of 263 official reports were recorded in the General National Database for environmental crime on the territory of the Flemish Region, with the reporting unit belonging to the Federal Police. These are usually the more complex environmental cases. The offences established are the result of a complaint or someone reporting a situation to the police or offenders being caught in the act. However, a number of investigations are initiated in response to (administrative, police or judicial) information gathered. These official reports were not only about environmental offences but also about environment-related offences.

Proactive inspections relating to waste shipments on the territory of the Flemish Region

In addition to the reactive inspections listed above, in 2018 the Federal and Local Police also carried out 592 proactive inspections of waste shipments on the territory of the Flemish Region. The Federal Police decided to tackle waste which poses a serious hazard to public health or the environment and which generates large (illegal) profits. This focus on inspections of waste shipments by the Federal Police is related to the 2016-2019 National Safety Plan¹⁴ in which the Federal Government decided to make waste fraud a priority issue, in among other forms of crime. It should be pointed out that in these figures on waste shipments only those waste shipments are included for which an ECO form¹⁵ has been prepared and dispatched to the central DJSOC/Environment service. Which means that the inspections of waste shipments for which no ECO form was raised or handed in are absent from these figures, which makes the figure an underestimation.

The graph below shows an overview of the results of the 592 inspections carried out in 2018 by the Federal and Local Police in connection with wasteshipments.

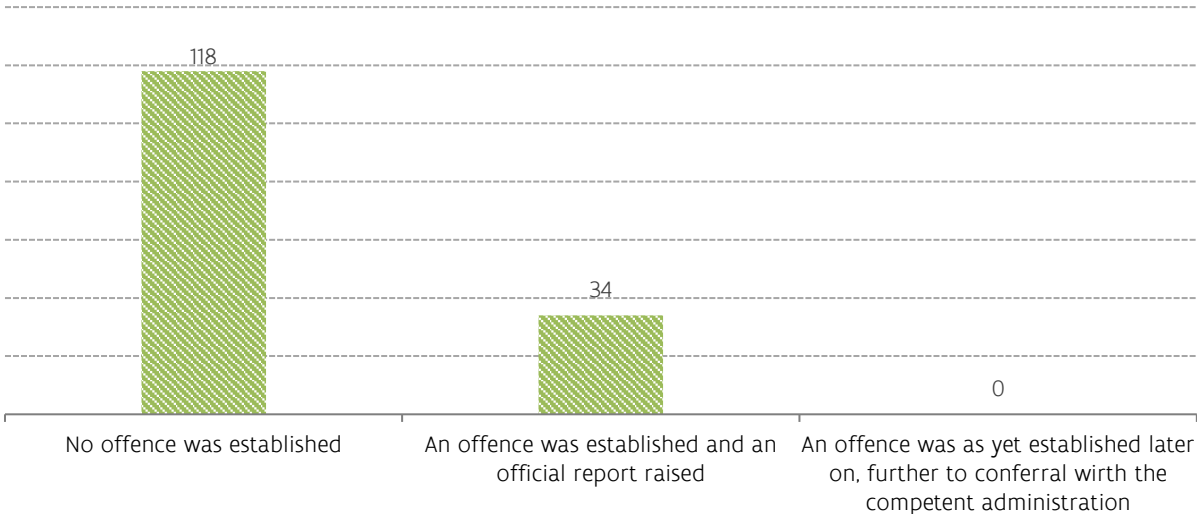


Graph 7 Proactive inspections (reported through the raising of an ECO form) carried out by the Federal Police of waste shipments on the territory of the Flemish Region in 2018

¹⁴ <http://www.politie.be/files/fed/files/ORG/INT/NVP2016-2019.pdf>
¹⁵ For each inspection of a waste shipment (including manure) the police officer raises a document, referred to as the ECO waste form (EFA). This document enables the authorities to track and trace parts of waste flows

In 422 inspections of the total of 440 proactive inspections carried out, no offences were established. Offences were established as part of 18 inspections and an official report was raised at the time when the ECO form was being completed. It is possible that offences were established afterwards, after the data had been checked by the administration. For now, no added extra offences have been established yet. This was included in the graph as 'An offence was as yet established later on, further to conferral with the competent administration'. When completed, the ECO waste form is sent to the Department of Environment and Spatial Development of the Federal Judicial Police for further investigation.

It should also be mentioned that the Local Police also carried out waste shipment inspections in 2018. This is shown in the graph below.



Graph 8 Proactive inspections (reported through the raising of an ECO form) carried out by the Local Police as part of waste shipments on the territory of the Flemish Region in 2018

In 2018, 152 waste transport inspections were carried out by the Local Police. In the 118 inspections carried out in 2018, no offences were established. 34 official reports were raised at the time of completing the ECO form. No added extra offences were established after verification by the administrations. The above data may also be underestimates, given that the figures for waste shipments only include those shipments of waste for which an ECO form has been raised and sent to the central agency DJSOC/Environment. As previously stated, the inspections of waste shipments for which no ECO form has been prepared or submitted are absent from these figures.

2.2.3 Assessment of the environmental enforcement policy conducted by the Local Police

The general section (2.2.1) on the police forces looks at the official reports raised by the Local Police and the Federal Police in 2018 in respect of a specific environmental issue. However, the activities of the supervisors of the Local Police are discussed in this chapter, after the activities of the Federal Police. This is to do with the fact that the Local Police has distinct duties with regard to the enforcement of environmental legislation. On the one hand, some municipalities and cities have appointed police officers as supervisors within the local police district. On the other hand, the Local Police are responsible for basic police care and, more specifically, they carry out all administrative and judicial police duties that are necessary to inspect local events and phenomena that occur on the territory of the police district, as well as carry out certain police duties of a federal nature. Obviously, environmental legislation is also enforced in this context, even if it is not as a supervisor

within the framework of the Environmental Enforcement Decree. Especially as specialist environmental units may be set up within various police districts or it may be decided to have one or more staff specialise in environment-related subjects. These are not always employees who have been appointed as supervisors; they may also work only as officers or agents of the judicial police. It should also be mentioned that 201 persons from the Local Police belonged to the Environmental Network in 2018, as described earlier in the section on the Federal Police.

For the present environmental enforcement report too, the chief superintendents of the Flemish police districts were asked to report on the activities of these supervisor(s), albeit only if a supervisor has been appointed within the police district. This component is to be understood in parallel with the assessment of the local environmental enforcement policy conducted (2.3).

In addition to appointing a municipal supervisor within its own staff or by an intermunicipal association, a choice can be made to concretise the municipal environmental enforcement efforts by appointing supervisors within the Local Police – possibly via a co-operation agreement. Same as the local supervisors appointed within the municipality itself or within an intermunicipal association, the Local Police supervisors' remit is to supervise the laws and regulations detailed below, at the establishments which, in the classification list to the VLAREM II¹⁶ regulations have been designated as class 2 and class 3 establishments, in the field and at the unclassified establishments:

- ▶ Title III of DABM (Decreet Algemene Milieubeleid or Decree setting forth General Provisions regarding Environmental Policy)
- ▶ the Air Pollution Act;
- ▶ the Surface Water Act, for the discharge of waste water and the detection of all forms of water pollution, and with regard to Chapter IIter;
- ▶ the Noise Abatement Act;
- ▶ articles 11, 12, 13, 23, 25, § 1, articles 39 and 40 of the Materials Decree;
- ▶ the Groundwater Decree;
- ▶ the Environmental Licences Decree;
- ▶ the Environmental Licence Decree and Title V of DABM (from 23/2/2017);
- ▶ the Manure Decree and its implementing decrees;
- ▶ the decrees implementing these acts and decrees;
- ▶ chapter 6.3 of part 6 of Title II of the regulations;
- ▶ Regulation (EC) no.1005/2009 of the European Parliament and the Council of 16 September 2009 on substances that deplete the ozone layer;
- ▶ Regulation (EC) no.1069/2009 of the European Parliament and the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) no.1774/2002;
- ▶ Regulation (EC) no. 850/2004 of the European Parliament and the Council of 29 April 2004 on persistent organic polluted substances and amending directive 97/117/EEC;
- ▶ Regulation (EC) no. 1013/2006 of the European Parliament and the Council of 14 June 2006 on the transfer of waste materials;
- ▶ the Pesticides Decree;
- ▶ Regulation (EC) no. of the European Parliament and the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) no. 842/2006.

¹⁶ Up until 23/2/2017 was this VLAREM I

The local supervisor may also establish offences at establishments which, in compliance with Schedule 1 of Title II¹⁷ of the VLAREM, have been designated as class 1 establishments – in application of the afore- said statutory acts, decrees and regulations – based on sensory observations, as specified in article 16.3.14 of the DABM.

In a similar way to the survey of municipal super- visors (see 2.3.5), the survey of the police districts inquired about the number of residents in the police district, the fact whether or not the police district can call on an appointed supervisor, the number of supervisors, the time expenditure and the reporting of supervisors, and the number of inspections carried out and offences established, together with the results of the inspections carried out. The results of inspections carried out will be discussed in Chapter 3 ‘Assessment of the use of the individual environ- mental enforcement instruments and safety measures’. This section will focus on the response rate, the number of appointed supervisors at the Local Police districts and the reporting to the Department of Environment and Spatial Development , the average time expenditure by these supervisors, the number of inspections carried out in response to complaints and the number of self-initiated inspections, the average number of inspections per supervisor and the average number of inspections per FTE. Where possible, the changes over the past ten years will be covered since the Environmental Enforcement Decree came into force, based on the data from the previous reports.

Response of the Local Police to the survey

Analogous to the previous environmental enforcement reports, it was decided to go for a classification based on the number of residents in the police district. This means the report goes by 5 police district categories. The table below shows the number of police districts in the various classes and the number of responding zones in the classes.

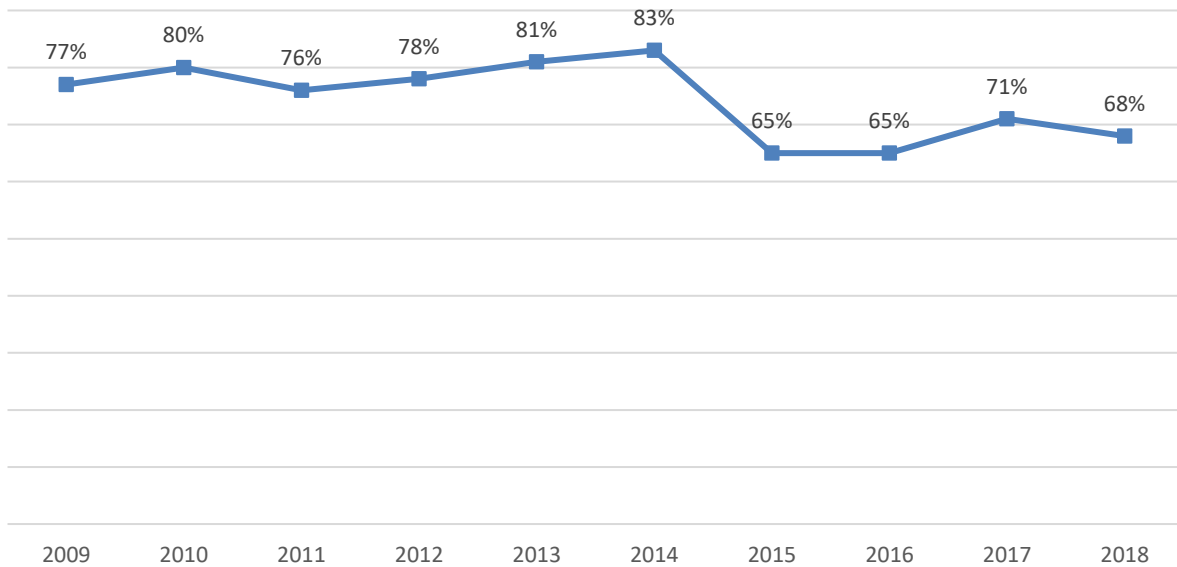
POLICE DISTRICTS	Number of police districts in the class in question	Number of responding police districts per class
≤ 24,999	7	4
25,000 - 49,999	62	39
50,000 - 74,999	22	18
75,000 - 99,999	9	5
≥ 100,000	9	8
Total	109	74

Table 6 Categories of Flemish police districts including the number of police districts per class and the number of respondents per class in 2018.

The VHRM received a completed questionnaire from 74 out of the 109 police districts in the Flemish Region. This is a response rate of nearly 68%.

The graph below shows the changes in the response rate of the Flemish police districts over the last ten years.

¹⁷ From 23/2/2017



Graph 9 Response rate Local Police in Flanders from 2009 through 2018

During the first six years of the survey, a fairly stable high response rate can be seen. However, since the survey for the 2015 Environmental Enforcement Report the response rate has decreased. This lower rate could be explained by the fact that the VHRM has conducted digital surveys of the enforcement bodies since the 2015 Environmental Enforcement Report.

Appointment and time expenditure of Local Police supervisors

Article 16, §1 of the Flemish Government Order of 12 December 2008 implementing title XVI of the decree of 5 April 1995 governing the general provisions on environmental policy, in short the Environmental Enforcement Decree, stipulates that municipalities must have at least one local supervisor at their disposal.

A municipality with more than three hundred class 2 establishments in compliance with the classification list of Title II of the VLAREM regulations or more than thirty thousand inhabitants if the number of establishments is insufficiently known, must at least have two local supervisors.

Since it is possible to appoint supervisors within the police districts, all police districts in the Flemish Region were asked whether or not a supervisor had been appointed within their police district, how many supervisors had been appointed and how much time they spent on environmental enforcement duties under the Environmental Enforcement Decree in 2018. The table below provides a general summary.

	≤ 24,999	25,000 - 49,999	50,000 - 74,999	75,000 - 99,999	≥ 100,000	Total
Response	4	39	18	5	8	74
Police district with appointed supervisor	0	11	9	5	2	27
Police district with no appointed supervisor	4	28	9	0	6	47
Number of appointed supervisors	0	14	17	7	8	46
Average number of supervisors per police district	0	1	2	1	4	2
Total time expenditure on environmental enforcement duties (FTEs)	0.00	4.60	9.82	5.80	5.80	26.02
of which FTEs committed by the supervisor for environmental enforcement duties under the Environmental Enforcement Decree	0.00	4.15	7.22	5.60	4.80	21.77
of which FTEs assigned to deliver administrative support for environmental enforcement duties by non-supervisors	0.00	0.45	2.60	0.20	1.00	4.25
Average time expenditure per supervisor on environmental enforcement duties (FTEs)	0.00	0.33	0.58	0.83	0.73	0.57

Table 7 Summary of the appointment of supervisors with the Local Police and efforts in the area of environmental enforcement duties in 2018 (per number of residents)

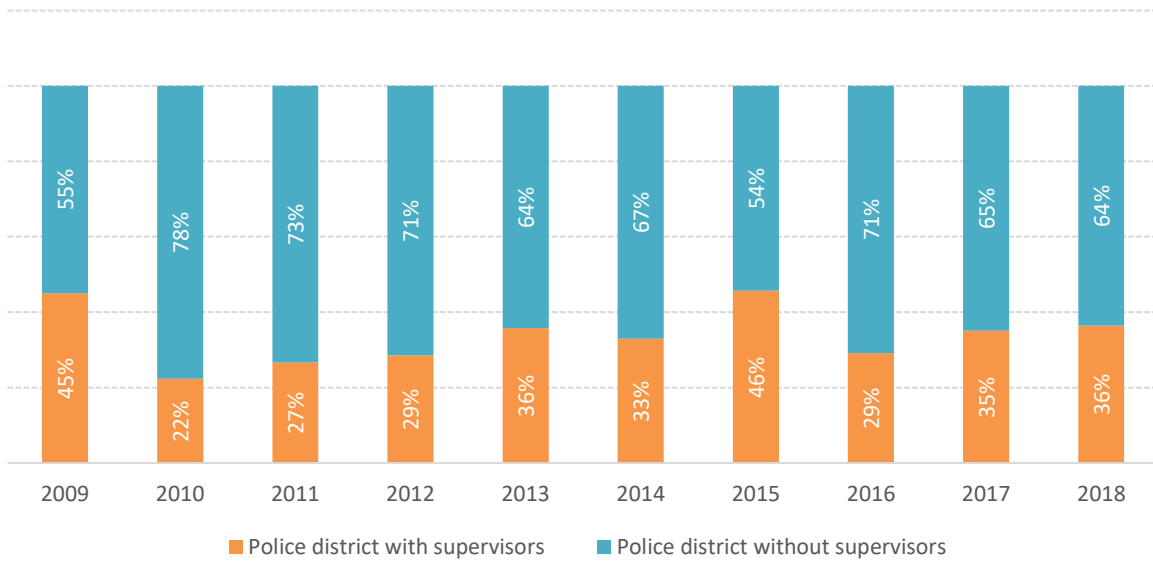
The above table shows that 27 of the 74 responding police districts used the services of a supervisor appointed within their own police district in 2018. This is 36.5% of the total number of responding police districts.

The total number of appointed Local Police supervisors in 2018 stood at 46 which corresponds to nearly 1.74 supervisors per police district, spread across those police districts which had actually appointed at least one supervisor.

In 2018, 26 FTEs were committed to environmental enforcement duties within the police districts, of which 21.77 FTEs by the supervisors and 4.25 FTEs to deliver administrative support by non-supervisors. The average time expenditure per supervisor on environmental enforcement duties in 2018 stood at the equivalent of 0.57 FTE. In a general sense, it is safe to say that the average Local Police supervisor in 2018 spent just over half his working time on environmental enforcement duties. As there were an average 1.74 supervisors per police district with an appointed supervisor in 2018, there was an average time expenditure¹⁸ of 0.99 FTE on enforcement duties in the police districts which had a supervisor appointed within their own police constabulary.

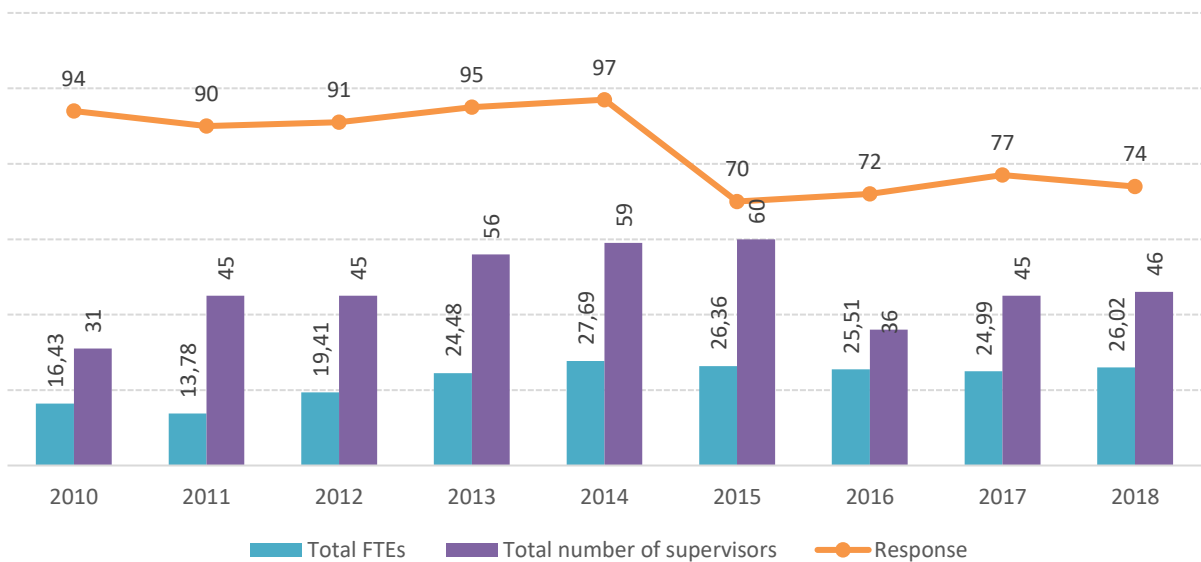
The graphs below show an overview – based on the data from the previous reports – of the changes over the past ten years in the percentage share of responding police districts with and without a supervisor, of the total number of supervisors and the total number of FTEs, of the average number of supervisors per police district, the average number of FTEs per supervisor and the average time spent on enforcement duties in the Flemish police districts with a supervisor. For the most part of these data series, no data for 2009 are available, which means developments start in 2010.

¹⁸ This amount of time spent is determined by multiplying the average time expenditure per supervisor on supervisory duties by the average number of supervisors per police district (which actually appointed a supervisor). This produces an overview of the average number of FTEs assigned to environmental enforcement duties within a police district which actually appointed one or more supervisors.



Graph 10 Percentage share of the police districts in Flanders with and without supervisors from 2009 through 2018

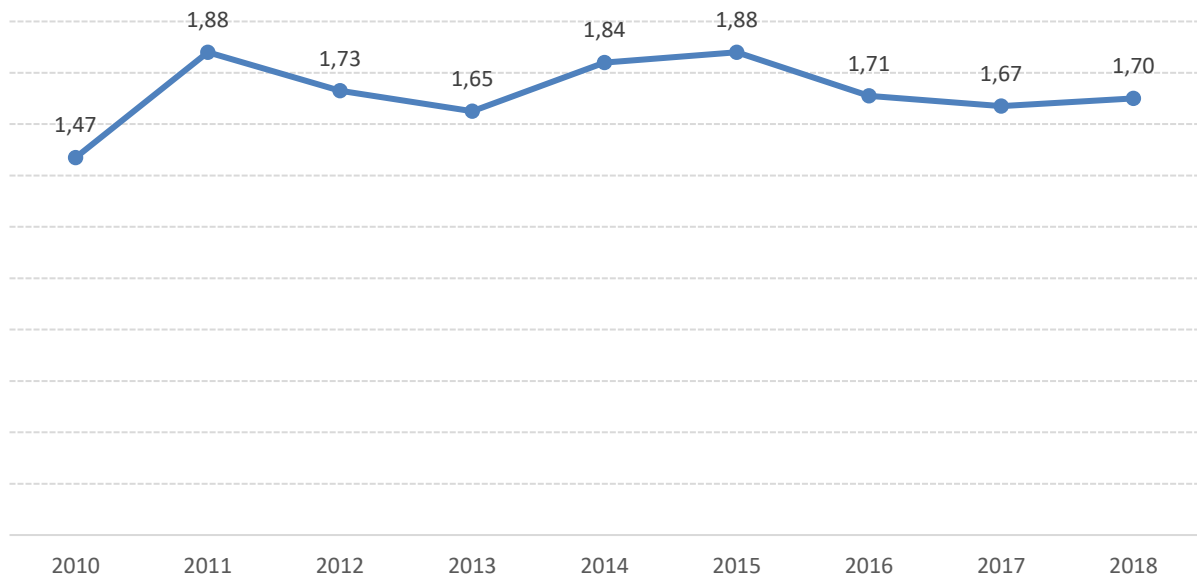
The graph above shows that, over the past ten years, consistently less than half the responding police districts had appointed a supervisor within the police district. The proportion between police districts with supervisors and the police districts without supervisors greatly fluctuates however. This does not necessarily mean that the effective appointments fluctuate as well. This could also be explained by a change in the responding police districts.



Graph 11 Total number of supervisors against the total number of FTEs committed in Flanders from 2009 through 2018

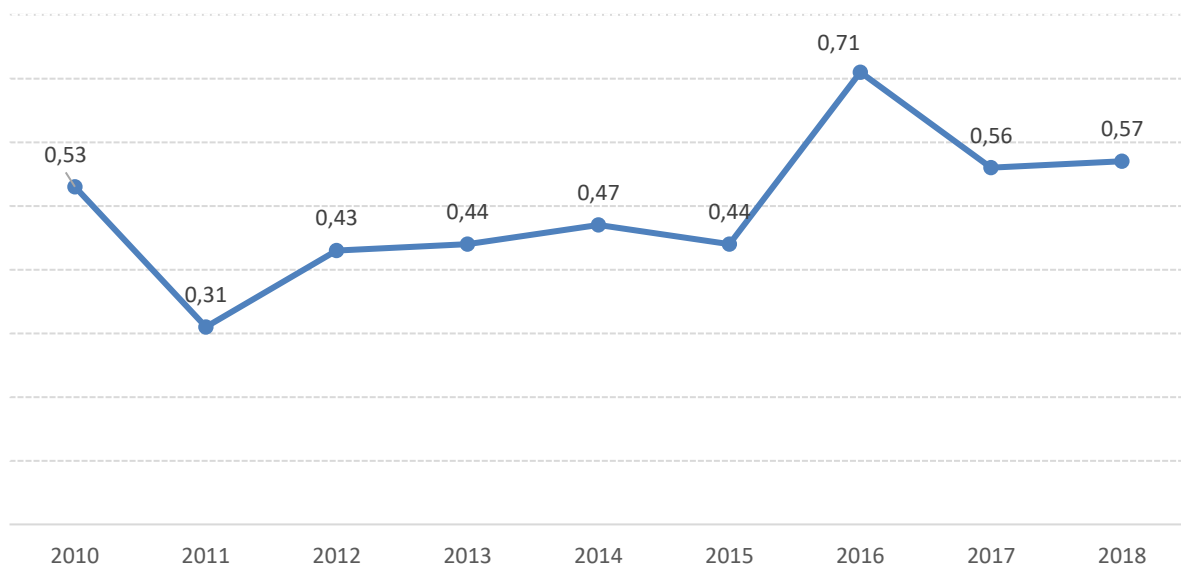
The above graph, which details the total number of appointed supervisors, also shows fluctuations over time in the total number of supervisors appointed within the Flemish police districts. Moreover, this fluctuation cannot just be linked to the response rate, but possibly to the responding districts.

In 2018, the total number of FTEs assigned to enforcement duties within the police zones rose by 58% compared to 2010. The curve of the total number of FTEs also fluctuates less than that of the total number of supervisors appointed within the police districts.



Graph 12 Average number of supervisors per police district in Flanders from 2009 through 2018

Graph 12 shows that the average number of supervisors per police district with a supervisor also fluctuates less than the non-weighted total number of supervisors. Except for 2010, within the police districts which had appointed a supervisor, on average more than one but fewer than two supervisors were in place.



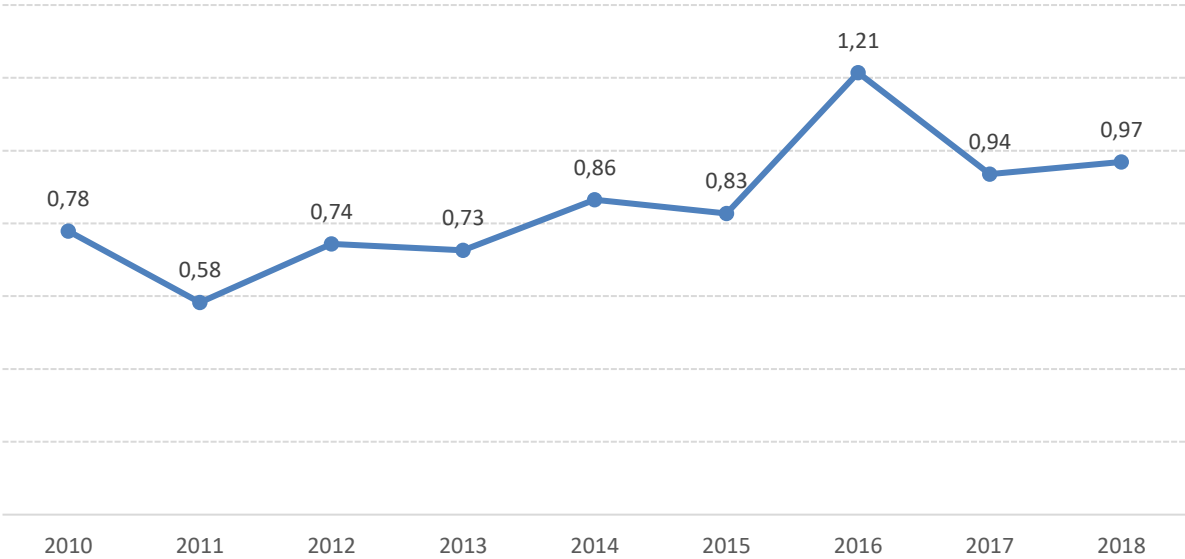
Graph 13 Average number of FTEs per supervisor of Flemish police districts from 2009 through 2018

In a general sense, it is safe to say that the supervisors appointed within the Local Police districts do not spend all their time on environmental enforcement duties. The average time expenditure¹⁹ per Local Police supervisor on environmental enforcement duties – which also includes the FTEs committed to deliver administrative support – stood at no more than 0.71 FTEs (2016) since the Environmental Enforcement Decree came into force.

¹⁹ The average time expenditure per supervisor is the total number of FTEs reported that are assigned to environmental enforcement duties, divided by the total number of appointed supervisors reported

Disregarding 2010, since the Environmental Enforcement Decree came into force there has been an increase in the average number of FTEs per supervisor in the Flemish police districts. Where the average number of supervisors in recent years remained more or less equal, a slight rise is seen in the average number of FTEs that these supervisors were able to commit to enforcement duties.

In addition to the average time expenditure per supervisor, it is also possible to determine the average time expenditure. This amount of time spent is determined by multiplying the average time expenditure per supervisor on supervisory duties by the average number of supervisors per police district (which actually appointed a supervisor). This makes it possible to outline a picture of the average FTEs committed to environmental enforcement duties within a police district which also effectively appointed one or several supervisors. This development is shown in the graph below.



Graph 14 Average time expenditure on enforcement duties in the Flemish police districts with supervisors from 2009 through 2018

Except for the peaks witnessed in 2010 and 2016, in general there is a rising trend in the average number of FTEs that are committed within a police district to perform environmental enforcement duties since the Environmental Enforcement Decree came into force. Especially as this was nearly a full-time equivalent in 2018.

Environmental enforcement inspections performed by Local Police supervisors

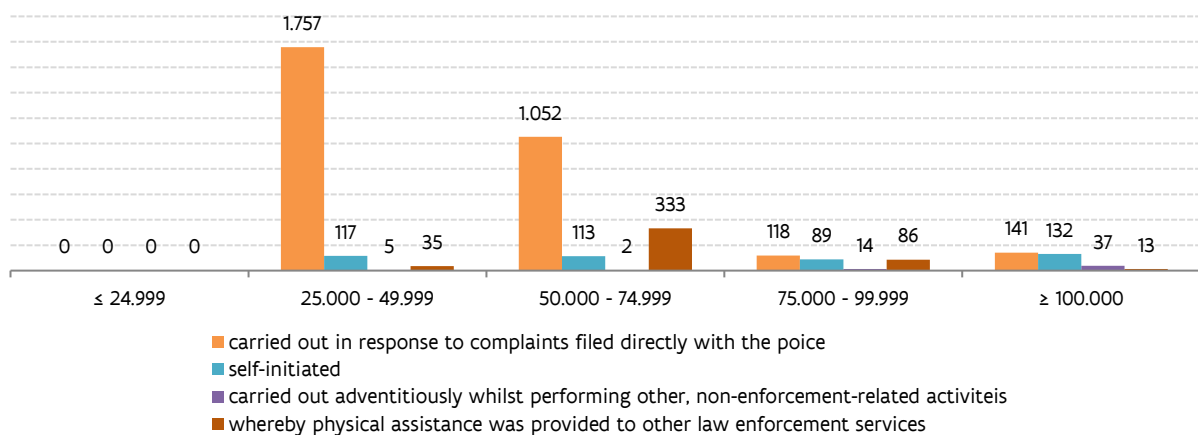
To gain an insight into the activities of supervisors appointed by the Local Police, the table below shows the total number of environmental enforcement inspections carried out per police district category, as well as the average number of environmental enforcement inspections per supervisor and the average number of inspections per FTE. The survey therefore explicitly inquired into the number of environmental enforcement inspections carried out under the Environmental Enforcement Decree by supervisors of the police district between 01 January 2018 and 31 December 2018.

	≤ 24,999	25,000 - 49,999	50,000 - 74,999	75,000 - 99,999	≥ 100,000	Total 2018
Response	4	39	18	5	8	74
Number of appointed supervisors	0	14	17	7	8	46
Number of environmental enforcement inspections carried out	0	1,914	1,500	307	323	4,044
Average number of environmental enforcement inspections per supervisor	0	137	88	44	40	88
Average time expenditure per supervisor on supervisory duties (FTEs)	0	0.33	0.58	0.83	0.73	0.57
Average number of environmental enforcement inspections per FTE	0	416	153	53	56	155

Table 8 Efforts in the area of environmental enforcement inspections carried out by the Local Police supervisors in 2018

In 2018, a total of 4,044 environmental enforcement inspections were carried out by the 46 supervisors appointed with the Local Police. This amounts to an average of 88 environmental enforcement inspections per supervisor. The average number of environmental enforcement inspections per FTE in 2018 stood at 155.

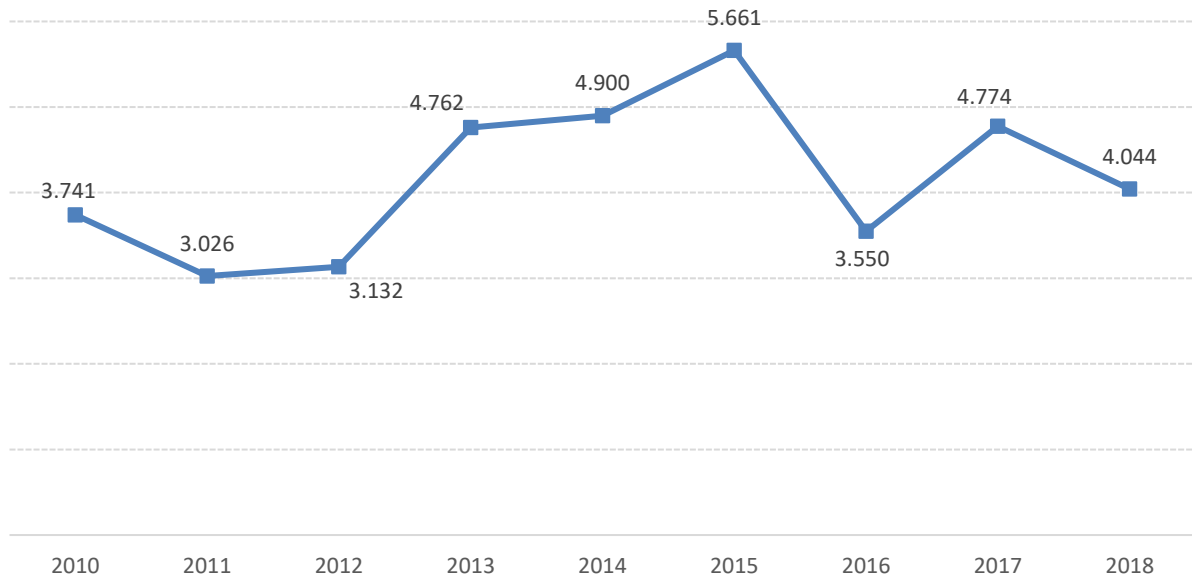
The graph below shows an overview, per class, of the number of environmental enforcement inspections that were carried out in response to complaints directly reported to the police, the number of self-initiated inspections, for instance as part of a planned environmental enforcement campaign, the number of inspections which were carried out adventitiously whilst conducting other, non-enforcement-related activities and the number of inspections whereby physical assistance was provided to other law enforcement services in 2018.



Graph 15 Number and type of environmental enforcement inspections carried out under the Environmental Enforcement Decree by supervisors of the Flemish police districts

The above graph shows that, same as the previous years, most of the environmental enforcement inspections were carried out in response to complaints filed directly with the police, i.e. 76% of the total number of environmental enforcement inspections conducted. 1.5% of the inspections were carried out adventitiously whilst performing other, non-enforcement-related activities. In addition, 11.5% of the inspections were self-initiated.

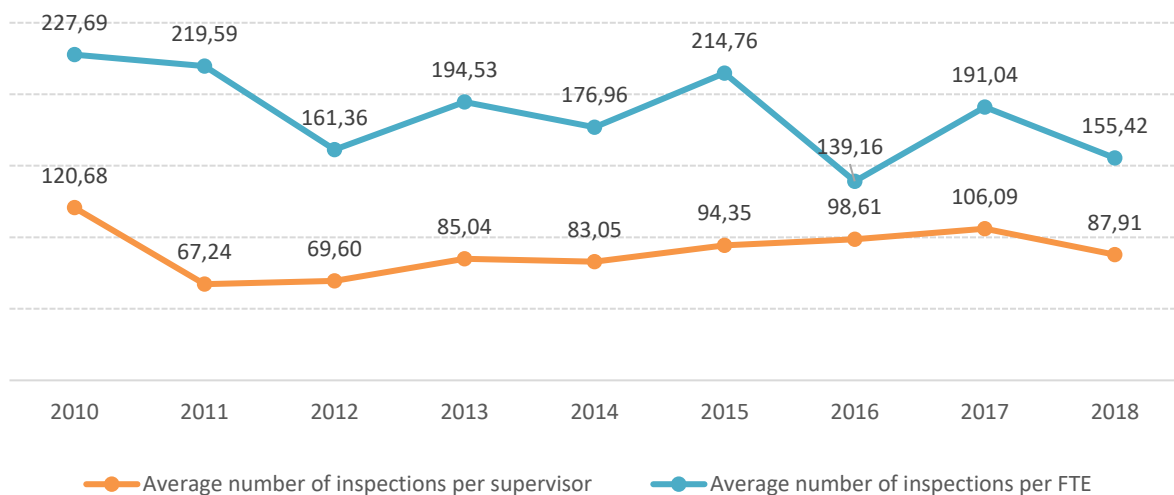
The graphs below show an overview – based on the figures from the previous environmental enforcement reports – of the total number of environmental enforcement inspections carried out by the Local Police supervisors, the average number of inspections per supervisor and the average number of inspections per FTE in recent years.



Graph 16 Total number of environmental enforcement inspections by the Flemish police districts from 2009 through 2018

Graph 16 shows a fluctuating picture of the annual total number of environmental enforcement inspections carried out by the Local Police supervisors. This fluctuation cannot be entirely explained by the fluctuating nature of the response rate. In 2015 for instance, this amounted to just 65%, whereas the highest number of inspections were carried out in that year, i.e. 5,661 environmental enforcement inspections.

To display a more weighted image, the graph below shows an overview of the average number of inspections per supervisor and the average number of inspections per FTE.



Graph 17 Average number of inspections by the Flemish police districts per supervisor and per FTE from 2009 through 2018

The average number of inspections per FTE and the average number of inspections per supervisors have also fluctuated in recent years. Given the fact that the Local Police supervisor on average does not commit a full-time equivalent on environmental enforcement duties, the average number of inspections per supervisor is less than the average number of inspections per FTE. However, it is safe to say that this gap has been narrowing in recent years, since 2016.

2.3 ASSESSMENT OF THE PROVINCIAL ENVIRONMENTAL ENFORCEMENT POLICY CONDUCTED

2.3.1 Provincial governors

The powers of the provincial governors of the 5 Flemish provinces were very clearly defined in the Environmental Enforcement Decree. In particular, they have the power to impose administrative measures and/or safety measures pursuant to:

- ▶ Article 2 of the Act of 26 March 1971 governing the protection of surface waters from pollutants;
- ▶ Article 12, §1 of the decree of 23 December 2011 to the sustainable management of material cycles and waste materials;
- ▶ The unlicensed operation of class 2 and 3 establishments contrary to applicable environmental health requirements.

The provincial governors were asked to provide an overview of the requests they received to impose administrative measures in 2018 as well as the number of administrative measures actually imposed. In addition, they were asked to specify how many enquiries the provincial governor received to impose safety measures and how many safety measures were actually imposed.

Administrative measures

The provincial governor may be asked or requested to impose administrative measures. Questions to impose administrative measures include the questions of supervisors to the provincial governor to take administrative measures. Administrative measures on the other hand can also be the result of a request to impose such measures by persons directly affected by an environmental infringement or crime, by persons with an interest in seeing said environmental infringement or environmental crime penalised, and by the legal persons intended in the Act of 12 January 1993 on the right of action for the protection of the environment. This request must be sent in by registered letter to persons authorised to impose administrative measures, in the event of a sufficiently substantiated request that demonstrates that an environmental infringement or environmental crime exists, and in compliance with a strict procedure involving short time limits.

For the present environmental enforcement report, the VHRM received replies from all provincial governors. Once provincial governor confirmed he had admitted 1 request to put in place administrative measures, but after a hearing and an investigation no administrative measures were imposed. Another provincial governor said he had received 1 demand from a third party to impose administrative measures. However, the provincial governor decided there was no reason to take an administrative measure.

All the other provincial governors too confirmed they had not imposed any administrative measures in 2018.

The previous environmental enforcement reports also showed that these options, i.e. requests to impose administrative measures as well as the actual imposition of administrative measures by the provincial governors, are hardly used. Since the Environmental Enforcement Decree came into effect, the responding provincial governors received a total of only 16 requests/enquiries to impose administrative measures. In addition, it can be reported that the provincial governor of Limburg imposed only 1 administrative measure in 2017, which took on the form of an administrative coercive

measure, whereby de facto action was taken against the environmental crime or environmental infringement established.

It is safe to conclude that the "requests concerning the imposition of administrative measures" instrument addressed to the provincial governors and the actual imposition thereof is hardly ever used or not at all. This may be explained by the fact that supervisors – whether or not regional or local – are better placed to impose administrative measures themselves, since supervisors can act in complete independence and neutrality (see article 16.3.3 of the Environmental Enforcement Decree) and with the necessary expertise, qualifications and characteristics (see article 16.3.2 of the Environmental Enforcement Decree), rather than submitting a request to the provincial governor. Another or additional explanation could be that third parties who can submit requests for the imposition of administrative measures to the provincial governor are not aware of this possibility and initially choose to contact the environmental department of the municipalities or the Local Police (first-line treatment) in order to get to the supervisor.

Safety measures

Article 16.7.1 of the Environmental Enforcement Decree specifies that safety measures are measures whereby, in amongst other things, the provincial governor may put in place or impose all actions considered necessary in the given circumstances to eliminate, reduce to an acceptable level or stabilise a significant risk to man or the environment.

The provincial governors – and also the mayors – can put in place the safety measures ex officio or at the request of a supervisor. To this end, the provincial governors were asked how many requests were entered to impose safety measures and how many safety measures they actually imposed.

In 2018 no safety measures were imposed by the provincial governors. Since the Environmental Enforcement Decree came into force in 2009, only 1 safety measure has been imposed by a provincial governor. This was in 2016.

2.3.2 Provincial supervisors (supervision under the Environmental Enforcement Decree)

Article 16.3.1, §1, 2° of the DABM specifies that province staff members may be appointed as supervisors by the provincial executive. These are the so-called provincial supervisors.

The provincial supervisors have the power to supervise compliance with the following regulations:

- ▶ Article 2 of the Surface Water Act, as regards category 2 and 3 unnavigable watercourses and their appurtenances, as set out in the Act of 28 December 1967 on unnavigable watercourses;
- ▶ Article 12 para. 1 of the Materials Decree, as regards the category 2 and 3 unnavigable watercourses and their appurtenances, as set out in the Act of 28 December 1967 on unnavigable watercourses;
- ▶ the decrees implementing the Act and the Decree referenced above with regard to the category 2 and 3 unnavigable watercourses and their appurtenances, as set out in the Act of 28 December 1967 on unnavigable watercourses;
- ▶ Section II of Chapter III of Title I of the Integrated Water Policy Decree and articles 62 and 70 of the Integrated Water Policy Decree, as regards the category 2 and 3 unnavigable watercourses and their appurtenances, as defined in the Act of 28 December 1967 on unnavigable watercourses.

The provincial supervisors have the authority to supervise compliance with the following regulations:

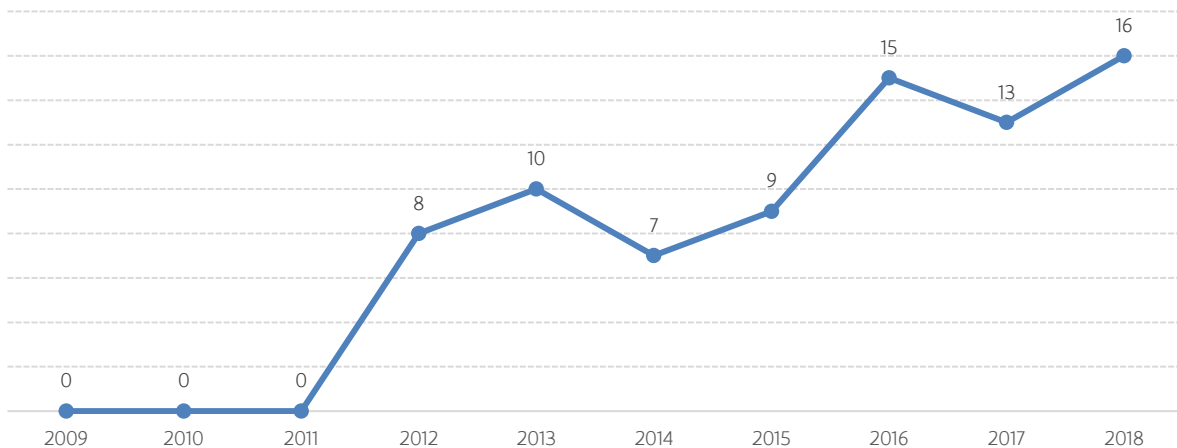
- ▶ The Noise Abatement Act and its implementing decrees;
- ▶ The Environmental Licences Decree, the Environmental Licence Decree, Title V of the DABM, and its implementing decrees, with regard to the noise aspects for establishments classified as class 2 and 3 in accordance with Schedule 1 to Title II of the VLAREM regulations.

In the case of establishments classified as class 1 establishments in accordance with Schedule 1 to Title II of the VLAREM regulations, they may, within the framework of these laws, decrees and their implementing decrees, establish offences in respect of the noise aspects based on sensory perception, and investigate cases as specified in article 16.3.14 of the Environmental Enforcement Decree.

In light of this provision, the VHRM considered it advisable to query the registrars of the five Flemish provinces about the appointment of these supervisors and the efforts with regard to environmental enforcement duties. As part of this survey aimed at preparing the present environmental enforcement report, the VHRM received replies from the five provinces regarding the provincial supervisors and their activities in 2018.

The provinces of Limburg, Flemish Brabant and West Flanders reported that, same as the previous years, no supervisors had been appointed in 2018 under the Environmental Enforcement Decree. Only the province of Antwerp and the province of East Flanders were able to call on provincial supervisors in 2018, more specifically 12 and 4 provincial supervisors respectively, all of whom are registered with the Territorial Development, Environmental Planning and Projects Division of the Department of Environment. A total of 0.8 FTE was committed to environmental enforcement duties under the Environmental Enforcement Decree by supervisors in the province of Antwerp. In addition, 0.5 FTE was committed in this province to deliver administrative support of environmental enforcement duties by non-supervisors. The supervisor of the province of East Flanders committed 0.05 FTEs to environmental enforcement duties in 2018. In addition, 0.05 FTE was committed to deliver administrative support by non-supervisors.

The graph below shows the changes in the total number of provincial supervisors since the Environmental Enforcement Decree came into force.



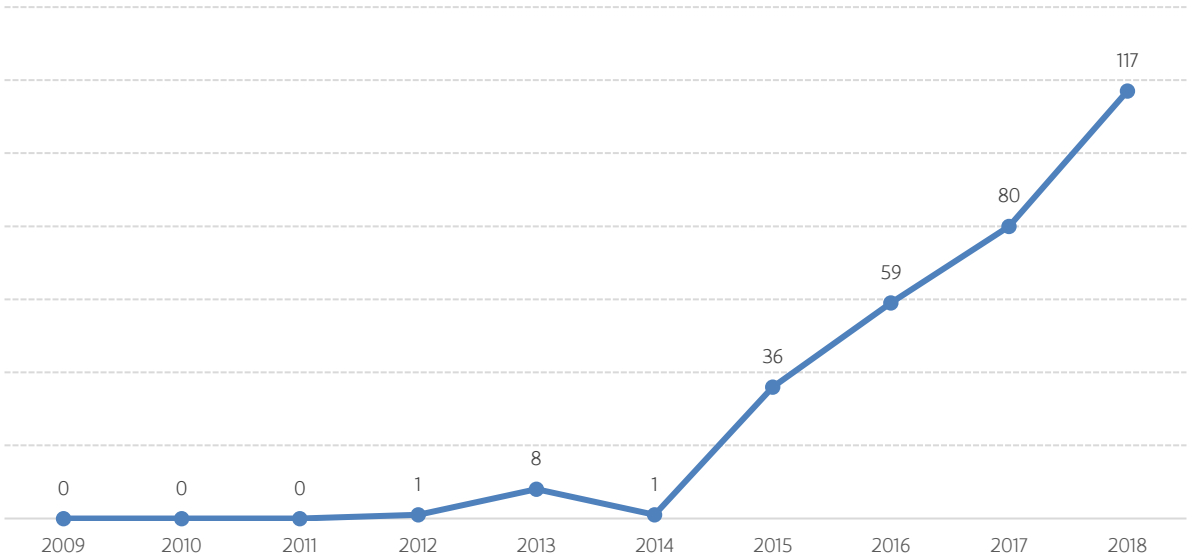
Graph 18 Number of provincial supervisors in Flanders from 2009 through 2018

In spite of the fact that the provinces have been able to appoint supervisors since 2009, they did not start doing so until 2012. Globally speaking, there is a rising trend in the total number of appointed supervisors. However, it should be stressed that these supervisors were appointed only in the province of Antwerp and the province of East Flanders. The other provinces have not yet appointed any supervisors since the Environmental Enforcement Decree came into force ten years ago. However, people in all provinces were being trained up as provincial supervisors in 2018.

As to the inspections carried out in 2018, the province of Antwerp conducted 18 environmental enforcement inspections in response to a complaint or a report and 19 inspections were conducted adventitiously whilst performing other, non-enforcement-related activities. Offences were established as part of 37 inspections and a exhortation was issued for 20 inspections. Three official reports were raised.

The provincial supervisor of the province of East Flanders carried out 4 inspections in 2018 in response to a complaint or a report, and 76 inspections were carried out adventitiously on the spot whilst performing other, non-enforcement-related activities. Offences were established as part of 64 inspections and a exhortation was issued in 62 inspections.

The graph below shows an overview of the total number of environmental enforcement inspections carried out by the provincial supervisors since the Environmental Enforcement Decree came into force.



Graph 19 Total number of environmental enforcement inspections carried out from 2009 through 2018

Just like the number of appointed provincial supervisors, the total number of environmental enforcement inspections carried out has been gradually increasing. Again, it should be pointed out that these inspections were carried out only by the supervisors of two provinces as the other three provinces have not yet appointed any supervisors since the Environmental Enforcement Decree came into force.

2.3.3 Provincial authorities in the area of unnavigable watercourses (other than those set out in the Environmental Enforcement Decree) by appointed provincial staff (supervision beyond the Environmental Enforcement Decree)

In addition to the duties of the provinces with regard to the Environmental Enforcement Decree, their responsibility as waterway managers should also be taken into account. In this context, the province also has a supervisory role for legislation that was not included in Title XVI of the Environmental Enforcement Decree but for which provincial staff were appointed per province to carry out this supervisory function, notably:

- ▶ The Act of 28 December 1967 on unnavigable watercourses;
- ▶ The Royal Decree of 5 August 1970 setting the general police regulations for unnavigable watercourses.

Until recently, the management of the unnavigable watercourses in Flanders was highly fragmented. In 2014, the Government of Flanders amended the law on unnavigable watercourses in such a way that waterway managers can change the category of a watercourse, in joint consultation, in order to efficiently organise the management of these watercourses.

With a view to the more efficient management of the unnavigable watercourses – objective breakthrough 63 of the internal reform of the federated state – intensive consultations took place between the provinces, municipalities, the polders and drainage authorities and the Flemish Region. As a result, most municipalities transferred the management of their category 3 watercourses to the provinces in 2014.

This transfer also means that the number of provincial staff appointed to monitor the management of watercourses and surrounding areas has been increased. Provincial authorities are working on an information channel on their own websites to inform citizens and to raise public awareness of the regulations, rights and obligations relating to unnavigable watercourses. On the other hand, they also have a hotline for reporting issues.

These are a few important points of attention:

- ▶ do not leave grass clippings or trimmings on the banks;
- ▶ do not reinforce the banks yourself;
- ▶ do not cover the watercourse without planning permission;
- ▶ do not raise levels along the watercourse without planning permission;
- ▶ observe the distance regulations when building along the watercourse;
- ▶ no illegal dumping;
- ▶ do not use pesticides within 5 metres of the watercourse.

Provincial water-awareness employees inform the public about these focus points during field visits. The raising of official reports (not under the DABM) almost always results in the case being shelved (lowest category of offences with very short time-barred periods). As a result, the field staff often decides not to raise an official report. This does not mean that offences go unnoticed. They are established for instance in site visit reports whereby the wrongdoer is informed of the offence and asked to rectify the problem.

The table below shows the number of provincial water-awareness employees and the number of FTEs assigned to inspections of unnavigable watercourses in 2018.

	Number of provin- cial staff who were appointed to carry out inspections	Number of FTEs committed to the inspections	Number of inspec- tions carried out	Number of official reports raised	Number of recti- fication exhortations raised
Province of Limburg	9	2	73	1	28
Province of Flemish Brabant ²⁰	0	0	0	0	0
Province of Antwerp	12	2.5	0 ²¹	0	49
Province of East Flanders	14	1.6	520	0	98
Province of West Flanders	8	1	0 ²²	/ ²³	25
Total	43	7.1	593	1	200

Table 9 Number of inspections carried under the Act of 28 December 1967 on unnavigable watercourses and the Royal Decree of 5 August 1967 setting forth the general police regulations for unnavigable watercourses by the appointed provincial staff between 1 January 2018 and 31 December 2018.

The number of appointed staff for these duties, the number of committed FTEs and the number of inspections carried out outstrip those under the DABM regulations.

²⁰ The inspections in the area of unnavigable watercourses are part of the everyday activities.

²¹ The number of inspections (0 entered) is high but no records are kept thereof. This is part of the everyday activities of the district inspectors.

²² The number of inspections is high but no records are kept thereof. This is part of the everyday activities of the district inspectors.

²³ This is not counted. The daily inspection is considered as one big inspection.

2.4 ASSESSMENT OF THE MUNICIPAL ENVIRONMENTAL ENFORCEMENT POLICY CONDUCTED

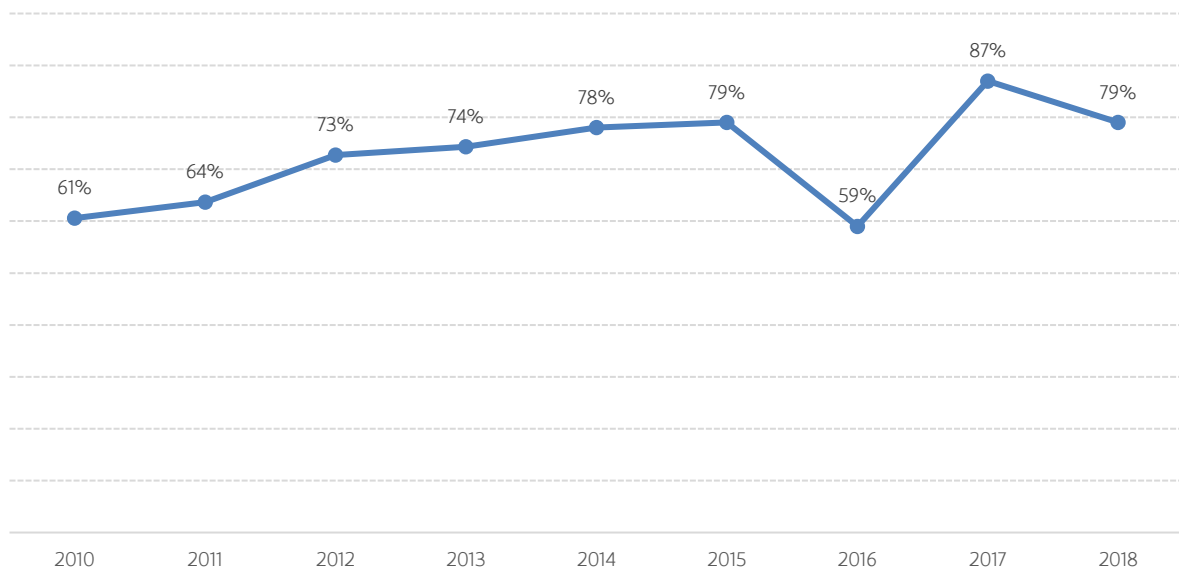
2.4.1 Mayors

As in previous years, the survey of the mayors in municipalities and cities of the Flemish Region for the present environmental enforcement report was in line with the survey of the municipal supervisor(s). The mayors were asked to report on their activities relating to the imposition of administrative measures and safety measures in 2018.

Response

The VHRM received a reply from 244 mayors in the Flemish Region of a total of 308. This is a response rate of 79%.

The graph below shows an overview of the response rate of the mayors since 2010.



Graph 20 Response rate of the Flemish municipalities and cities from 2009 through 2018

The response rate is continuously rising, except for the extremes witnessed in 2016 and 2017. The response rate is related to the representativeness of the data in the environmental enforcement reports and the accuracy of the picture that can be presented of the various facets of the local environmental enforcement landscape and the policy advice which may be put forward based on these data.

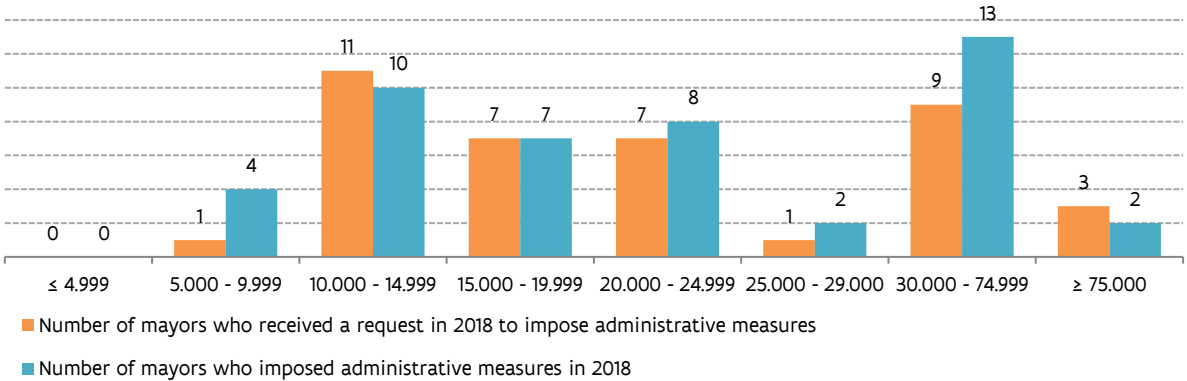
Administrative measures

As stated earlier, mayors in the Flemish Region have the authority to impose administrative measures. This power may be exercised in response to an enquiry or a request to that effect. However, mayors can also put in place administrative measures ex officio.

The term 'request for the imposition of administrative measures' relates to the requests to impose administrative measures entered by regional supervisors, municipal supervisors, Local Police supervisors, provincial governors, etc. with the authorised persons, including the mayor, as set out in article 16.4.6 of the Environmental Enforcement Decree to put in place administrative measures.

Administrative measures may also be put in place further to a request to impose such measures by persons directly affected by an environmental infringement or environmental crime, by persons with an interest in seeing said environmental infringement or environmental crime penalised, and by legal persons referred to in the right of action for the protection of the environment.

The graph below provides an overview of the number of responding mayors who received a request to put in place administrative measures and the number of responding mayors who actually imposed an administrative measure in 2018.

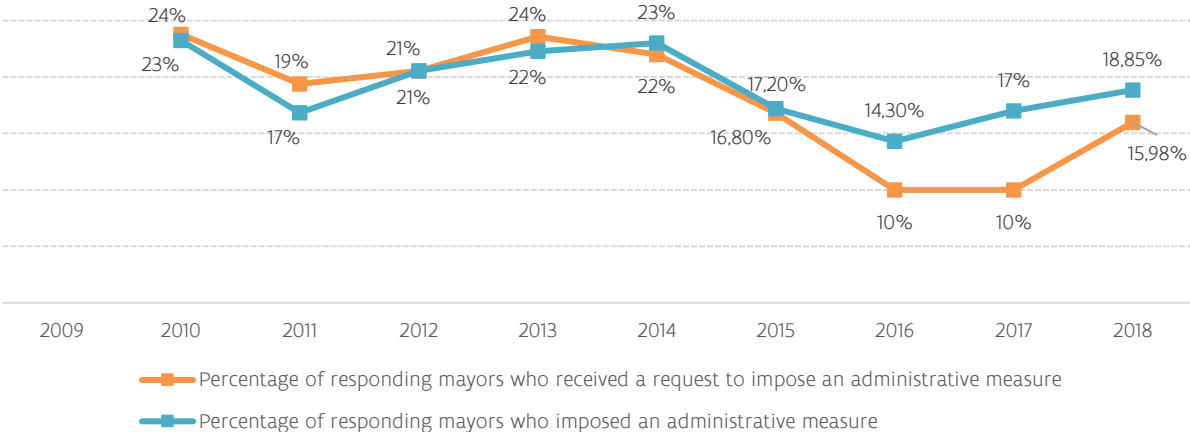


Graph 21 Number of responding mayors who received a request to impose administrative measures and number of responding mayors who imposed administrative measures in 2018

The above graph shows that in 2018, 39 out of the 244 responding mayors received an enquiry or a request to impose an administrative measure. This represents 16% of the responding mayors. In addition, 46 mayors actually imposed administrative measures in 2018. This means that 15% of the responding mayors made use of this power.

As the number of mayors who actually imposed administrative measures exceeds the number of mayors who received a request to that effect, it is safe to conclude that the imposition of administrative measures also occurred at the mayors' own initiative, not always in response to a request or an enquiry.

The graph below shows an overview of the percentage share of responding mayors who received a request to impose administrative measures and the percentage share of responding mayors who actually imposed administrative measures over the 2010-2018 time frame.



Graph 22 Percentage ratio of the responding mayors who received a request to impose an administrative measure compared to the responding mayors who imposed an administrative measure

Both curves are found to fluctuate. The proportion of the percentage share of mayors who received a request to impose administrative measures and the percentage share of mayors who imposed administrative measures is subject to fluctuations throughout the reported period.

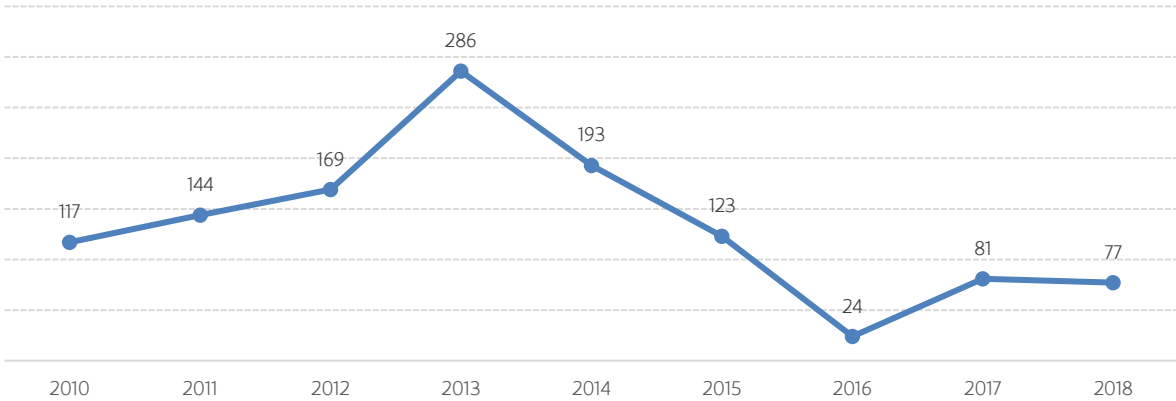
The table below shows an overview of the number of requests to impose administrative measures which the mayors received from the various enforcement bodies and the number of requests to impose administrative measures entered with the mayors by third parties.

Mayor of a city/ municipality with a population of:	Requests received by the mayors to impose administrative measures, entered by:						
	regional supervisors	municipal supervisors	Inter- municipal partnership	police district	provincial supervisors	requests submitted by third parties	Tota l
≤ 4,999	0	0	0	0	0	0	0
5,000 - 9,999	0	0	0	0	0	1	1
10,000 - 14,999	2	14	6	3	1	11	37
15,000 - 19,999	0	7	0	2	0	4	13
20,000 - 24,999	0	3	1	0	0	5	9
25,000 - 29,000	0	2	0	0	0	0	2
30,000 - 74,999	1	5	1	2	0	1	10
≥ 75,000	0	4	0	0	0	1	5
Total	3	35	8	7	1	23	77

Table 10 Number of requests to impose administrative measures received by the mayors of Flemish municipalities and cities in 2018

All the mayors together received a total of 77 requests to impose administrative measures in 2018. Just under half of these 77 requests, i.e. 45%, were submitted by municipal supervisors. In addition, 30% of the total number of requests to impose administrative measures were entered by third parties.

The graph below shows an overview of the total number of requests to impose administrative measures which the mayors received over the 2010-2018 time frame.



Graph 23 Number of requests received by the mayors to impose administrative measures 2010-2018

Again, a fluctuating picture is noticeable for the period of 2010-2018. Part of these fluctuations can be explained by the response rate, mainly for 2016 when the response rate was just 59%.

The mayors of Flemish municipalities and cities were not only asked to specify how many requests and enquiries for the imposition of administrative measures they received but also how many

administrative measures they actually imposed in that year and which kind of administrative measures these were.

The administrative measures which may be imposed are:

- ▶ cease and desist orders: these are orders from the authorised person to the suspected offender to stop performing particular activities, activities or the use of things;
- ▶ rectification orders: these are orders from the authorised supervisor to the suspected offender to put in place certain measures in order to put an end to an environmental infringement or an environmental crime, undo the consequences/ effects thereof and to prevent its recurrence;
- ▶ administrative coercive measures: in this case, the authorised supervisor de facto takes action himself against the environmental infringement and the environmental crime established;
- ▶ or a combination of these measures.

The table below shows an overview of the number of administrative measures which the mayors imposed in 2018. It also indicates the type of administrative measures that were imposed and the number of these administrative measures that were not implemented within the deadline set out.

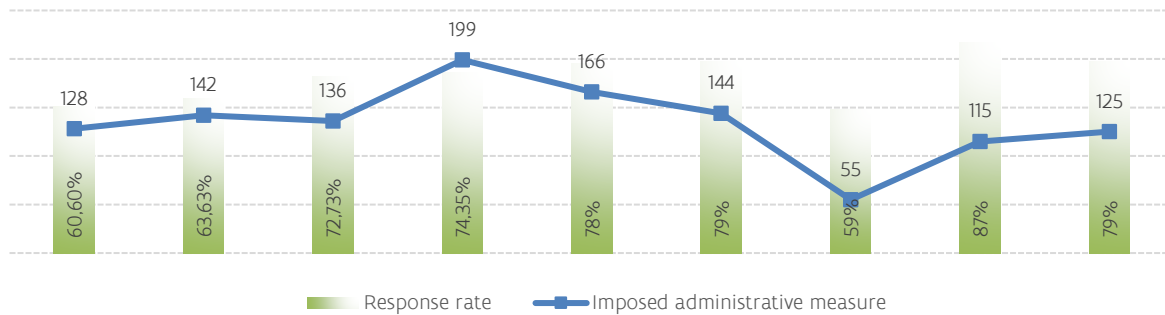
Population	Administrative measures imposed by the mayor					
	Cease and desist orders	Rectification orders	Administrative coercive measures	Combination (cease and desist order, rectification, administrative coercive measure)	Total	It was impossible to carry out the measure within the time limit imposed
≤ 4,999	0	0	0	0	0	0
5,000 - 9,999	4	7	1	3	3	5
10,000 - 14,999	10	13	5	4	32	9
15,000 - 19,999	5	10	0	0	15	6
20,000 - 24,999	6	5	4	1	16	3
25,000 - 29,000	0	3	0	0	3	0
30,000 - 74,999	11	12	5	7	35	6
≥ 75,000	2	4	1	2	9	0
Total	38	54	16	17	125	29

Table 11 Number and type of administrative measures imposed by the mayors of the Flemish municipalities and cities in 2018

The table above shows that in 2018, a total of 125 administrative measures were imposed by the mayors. The majority, i.e. 43%, of the administrative measures imposed in 2018, were rectification orders. In addition, 30% of the total number of administrative measures in 2018 were cease and desist orders and 13% were administrative coercive measures. A remarkable observation is that in 2018 for nearly 1 in 4 administrative measures it was not possible to

enforce the imposed administrative measure within the specified time limit. This also held true in 2017. In 2016, this was the case for nearly 1 in 5 of the administrative measures.

The graph below shows an overview of the total number of administrative measures imposed by the responding mayors over the 2010-2018 time frame.



Graph 24 Administrative measures imposed by mayors in Flanders from 2010-2018

Same as for the number of requests which the mayors received in recent years to impose administrative measures, there is a fluctuating picture when it comes to the total number of administrative measures imposed by the mayors over the 2010-2018 time frame. Here again, these fluctuations can only be partially explained by the fluctuations in the response rate.

Safety measures

In addition to administrative measures, mayors are also authorised to impose safety measures. Safety measures are measures whereby the persons specified in article 16.4.6, including the mayor, can put in place or impose all actions they consider necessary in the given circumstances to eliminate, reduce to an acceptable level or stabilise a significant risk to man or the environment. Safety measures may include, in amongst other things (article 16.7.2 of the Environmental Enforcement Decree):

- ▶ the suspension or execution of works, acts or activities either instantly or within a specified time limit;
- ▶ the prohibition on the use or the sealing of buildings, installations, machinery, appliances, means of transport, containers, land and anything therein or thereon;
- ▶ the total or partial closure of an establishment;
- ▶ the confiscation, storage or removal of relevant items, including waste materials and animals;
- ▶ the prohibition or evacuation of certain areas, grounds, buildings or roads.

The table below provides an overview of the number of mayors who received a request to impose a safety measure and the number of mayors who actually imposed a safety measure in 2018, whether or not based on an enquiry or at their own initiative.

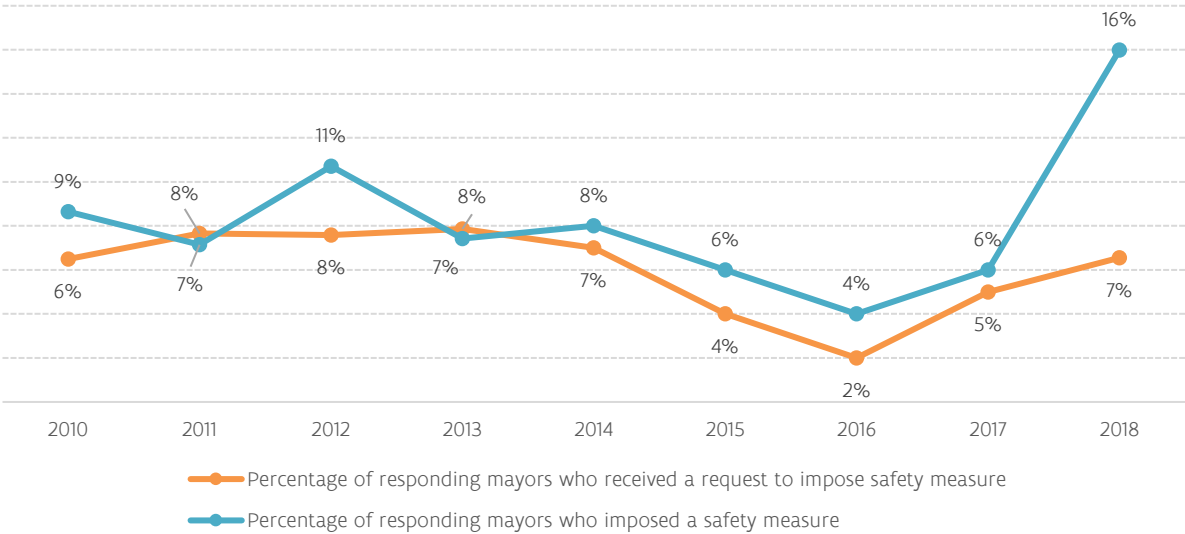
POPULATION	Number of mayors who received an enquiry in 2018 to impose safety measures	The number of mayors who imposed safety measures in 2018
≤ 4,999	0	0
5,000 - 9,999	4	6
10,000 - 14,999	1	16
15,000 - 19,999	4	8
20,000 - 24,999	2	3
25,000 - 29,000	0	0
30,000 - 74,999	3	4
≥ 75,000	2	2
Total	16	39

Table 12 Number of responding mayors who received a request to impose safety measures and the number of responding mayors who imposed safety measures in 2018

The table above shows that 16 out of the 244 responding mayors received a request to impose safety measures. This boils down to 6.5% of the responding mayors. The percentage of mayors who imposed safety measures in 2018, i.e. 16%, exceeds the number of responding mayors.

As the number of mayors who actually imposed safety measures is higher than the number of mayors who received a request to that effect, it is safe to conclude that the imposition of safety measures also occurred ex officio by the mayors, not always in response to a request.

The graph below shows an overview of the percentage share of responding mayors who received a request to impose safety measures and the percentage share of responding mayors who actually imposed safety measures over the 2010-2018 time frame.



Graph 25 Percentage ratio of the responding mayors who received a request to impose a safety measure and the responding mayors who imposed a safety measure from 2010 through 2018

The percentage share of responding mayors who received a request to impose safety measures and the percentage share of responding mayors who imposed safety measures remained more or less equal over the 2010-2018 time frame, except for the low point in 2016 as seen in the graph, which may be explained by the low response rate that year. Up until 2017, the percentage rate of mayors who received a request to impose safety measures stayed close to the percentage rate of mayors who actually imposed safety measures. For 2018, there is a stronger difference between these two curves, which points to more mayors acting ex officio in imposing safety measures in 2018.

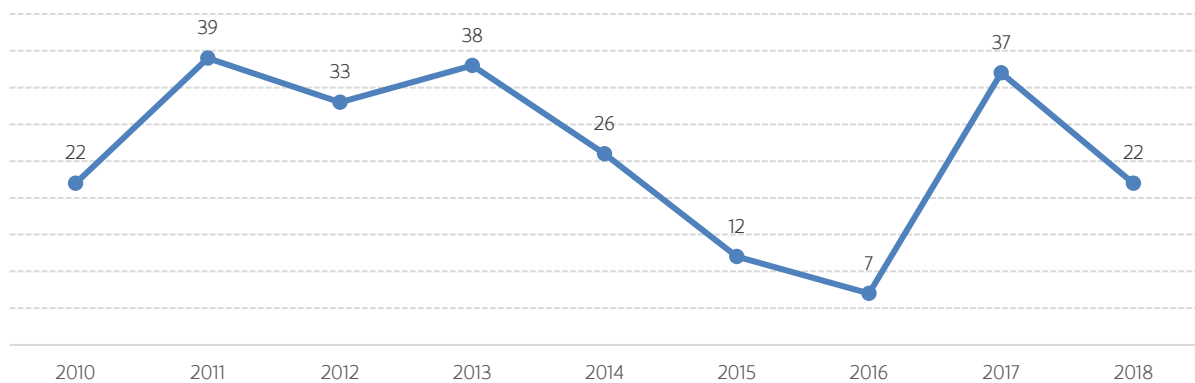
Mayors can impose safety measures ex officio, but they can also do so in response to a request from a supervisor. The table below shows an overview of the number of requests that were entered with the mayors in 2018 in the various categories of town and cities and which supervisors entered the request.

Population	Requests received by the mayor to impose safety measures, entered by:					
	regional supervisors	municipal supervisors	intermunicipal associations	police district	provincial supervisors	Total
≤ 4,999	0	0	0	0	0	0
5,000 - 9,999	1	4	1	1	0	7
10,000 - 14,999	0	0	0	1	0	1
15,000 - 19,999	1	2	0	1	0	4
20,000 - 24,999	0	2	0	0	0	2
25,000 - 29,000	0	0	0	0	0	0
30,000 - 74,999	0	4	0	2	0	6
≥ 75,000	0	2	0	0	0	2
Total	2	14	1	5	0	22

Table 13 Number of requests to impose safety measures received by the mayor from Flemish municipalities and cities in 2018

The 16 mayors who in 2018 received a request to impose safety measures jointly received a total of 22 of these requests from municipal and intermunicipal supervisors or the Local Police supervisors and the regional supervisors. The majority, nearly

64%, were entered by the municipal supervisors. The graph below shows an overview of the total number of requests to impose safety measures received by the mayors over the 2010-2018 time frame.



Graph 26 Number of requests received by the mayors to impose safety measures 2010-2018

Again, a fluctuating picture over the 2010-2018 time frame is shown. Part of these fluctuations can be explained by the response rate, mainly for 2016 when the response rate was just 59%.

The mayors of the Flemish municipalities and cities were not only asked to specify how many requests to impose safety measures they had received in 2018 but also how many safety measures they actually imposed that year and which type of safety measures these were.

The table below shows an overview of the number of safety measures actually imposed by the mayors and of the type of safety measures that were imposed. In line with the question regarding the administrative measures, the VHRM also inquired as to whether they had managed to enforce the measure within the specified time limit. They were also asked to specify the number of cases where safety measures were imposed for which they had to call in physical assistance from the police.

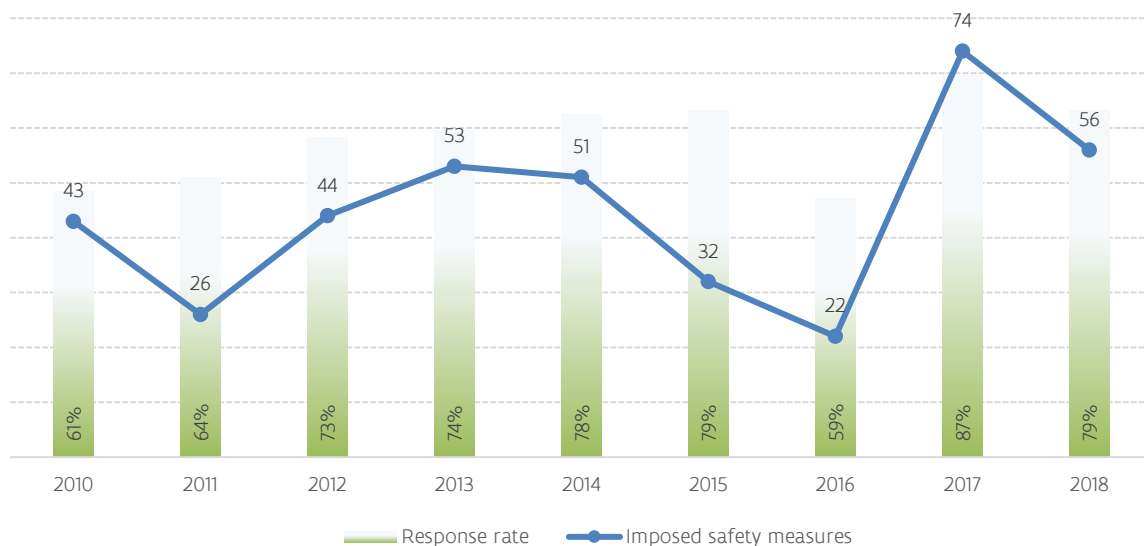
POPULATION	the suspension or execution of works, operations or activities either instantly or within a specified time limit	the prohibition on the use or the sealing of buildings, installations, machinery, appliances, means of transport, containers, land and anything therein or thereon	the full or partial closure of an establishment	the prohibition or evacuation of certain areas, grounds, buildings or roads	combination of previous measures	other measures than previous	Total	used their right to call in physical assistance from the police	It was not possible to enforce the measure imposed within the specified time limit
≤ 4,999	0	0	0	0	0	0	0	0	0
5,000 - 9,999	3	0	1	3	1	6	14	2	1
10,000 - 14,999	1	1	0	2	1	0	5	8	1
15,000 - 19,999	8	3	1	4	2	0	18	5	2
20,000 - 24,999	3	4	0	0	0	0	7	1	1
25,000 - 29,000	0	0	0	0	0	0	0	0	0
30,000 - 74,999	2	2	0	1	1	4	10	0	1
≥ 75,000	0	0	0	0	1	1	2	0	0
Total	17	10	2	10	6	11	56	16	6

Table 14 Number and type of safety measures imposed by the mayors of Flemish municipalities and cities in 2018

Over 30% of the safety measures imposed in 2018 related to the cessation or the performance of rectification works, acts or activities, either instantly or within a set time limit. 18% of the cases related to the safety measure of a ban on the use or the sealing of buildings, installations, machinery, appliances, means of transport, containers, land and anything therein or thereon. In 2018, the ban on entering or vacating certain areas, land, buildings or roads was imposed on 10 occasions as a safety measure, which works out at 18%.

In 28.5% of the safety measures imposed the mayor used his right to call in physical assistance from the police. For 6 safety measures, i.e. 11%, it was not possible to enforce the measure within the specified time limit.

The graph below shows an overview of the total number of safety measures imposed by the responding mayors over the 2010-2018 time frame.



Graph 27 Safety measures imposed by the responding mayors in Flanders 2010-2018

The above graph shows a fluctuating picture of the total number of safety measures imposed by the responding mayors over the 2010-2018 time frame. These fluctuations are only partially explained by the differences in response rate.

2.4.2 Municipal supervisors

To gain insight into the organisation of and the efforts made in the area of local environmental enforcement, the 308 Flemish municipalities and cities were asked to provide information, in amongst other things on the appointment of supervisors, about how supervision is organised in the municipality, the number of environmental enforcement inspections carried out and the outcome of these inspections. The results of the environmental enforcement inspections are discussed in chapter 3, where an assessment per enforcement instrument provides more details. In this chapter a picture of the response from the municipalities to the VHRM's questionnaire, of the number of class 1, class 2 and class 3 nuisance-causing establishments, the organisation of the supervision in the municipalities and cities, the number of appointed local supervisors, the appointment of and time expenditure by the supervisors on supervisory duties, and the number of inspections carried out per municipality category is shown, per supervisor and per FTE in 2018.

Response

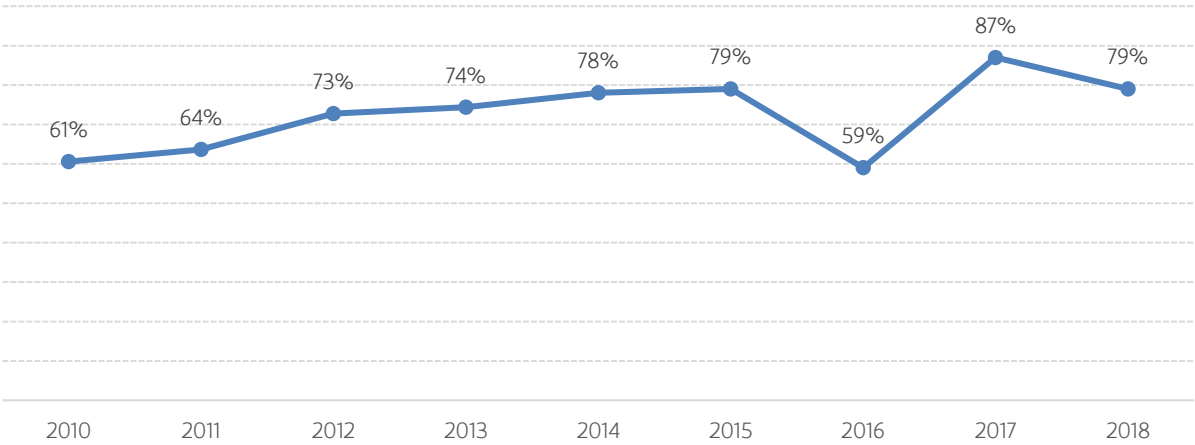
The table below shows an overview of the response from the Flemish municipalities and cities.

POPULATION	Number of municipalities	Number of responding municipalities
≤ 4,999	12	5
5,000 - 9,999	66	51
10,000 - 14,999	84	66
15,000 - 19,999	49	41
20,000 - 24,999	33	28
25,000 - 29,000	16	12
30,000 - 74,999	39	33
≥ 75,000	9	8
Total	308	244

Table 15 Number of responding municipalities per category compared to the total number of municipalities per category in 2018

The table above shows that – in line with the response rate of the mayors – 244 municipalities completed the VHRM’s questionnaire. This is a response rate of 79%.

The graph below shows the changes in response rate over the 2010-2018 time frame.



Graph 28 Response rate Flemish Municipalities and Cities 2010-2018

Other than the extremes in 2016 and 2017, a constant rise over the 2010-2018 time frame can be seen. This positive development makes it possible to paint an increasingly more accurate picture of the local enforcement landscape and the activities of the municipal supervisors since reporting got under way.

Nuisance-causing establishments per municipality

Municipalities and cities were asked how many class 1, 2 and 3 licensed establishments according to Schedule I to Title II of the VLAREM regulations are located on their territory and to provide an estimate of the total number of unlicensed nuisance-causing establishments in their city/municipality in 2018. The purpose of this question is to gain an understanding of the number of nuisance-causing establishments per municipality, an insight that is indispensable in order to prepare a sound inspection plan and to estimate and assess the efforts made in the area of environmental supervision. In addition, the number of class 2 nuisance-causing establishments is used as a criterion to determine the number of supervisors a municipality must have at its disposal. To avoid any confusion, the concept of ‘unlicensed nuisance-causing establishment’ was defined as those establishments which, under the VLAREM could be designated as a class 1, class 2 or class 3 establishment, but have not yet been licensed.

The table below shows the total number of class 1, 2 and 3 nuisance-causing establishments and the estimated number of unlicensed nuisance-causing establishments for 2018. In this respect, it should be noted that on 23 February 2017 approximately 5,000 of the circa 20,000 class 1 establishments were downgraded to class 2.²⁴ This means that the supervision of all these businesses was transferred from the regional supervisors to the municipal supervisors. The table also shows an average number of nuisance-causing establishments per class and the number of municipalities that do not know the number of nuisance-causing or unlicensed establishments on their territory.

²⁴ Question from member of the Flemish Parliament Wilfried Vandaele to Flemish Minister Joke Schauvliege about “environmental enforcement”, VI.Parl., treated at the Parliamentary Committee on the Environment, Nature, Spatial Planning, Energy and Animal Welfare, 24 January 2017.

Population	Number of respondents per resident number band	Class 1 establishments			Class 2 establishments			Class 3 establishments			Unlicensed establishments		
		Total number according to survey	Average number per municipality	Number of municipalities that do not know the number of class 1 establishments	Total number according to survey	Average number per municipality	Number of municipalities that do not know the number of class 2 establishments	Total number according to survey	Average number per municipality	Number of municipalities that do not know the number of class 3 establishments	Total number according to survey	Average number per municipality	Number of municipalities that do not know number of unlicensed establishments or that reported they had no unlicensed establishments
≤ 4,999	5	132	26	0	239	48	0	688	138	0	100	50	3
5,000 - 9,999	51	862	26	18	3,362	102	18	9,839	317	20	328	13	26
10,000 - 14,999	66	2,003	41	17	6,118	125	17	16,538	403	25	529	17	34
15,000 - 19,999	41	1,618	46	6	4,197	127	8	12,689	438	12	583	25	18
20,000 - 24,999	28	1,696	74	5	5,882	256	5	16,499	825	8	315	24	15
25,000 - 29,000	12	632	53	0	2,200	183	0	7,105	592	0	521	65	4
30,000 - 74,999	33	2,538	102	8	8,009	320	8	24,705	1,123	11	760	51	18
≥ 75,000	8	1,060	177	2	4,625	771	2	18,076	3,013	2	37	12	5
Total	244	10,541	56	56	34,632	186	58	106,139	639	78	3,173	26	123

Table 16 Number of nuisance-causing establishments per municipality category in 2018

Not only with respect to the planning of their own environmental enforcement efforts, but equally in order to comply with statutory and decretal obligations, it is paramount for municipalities and cities to know the number of establishments on their territory. As stated earlier, municipalities with more than three hundred class 2 establishments must have two supervisors at their disposal since 1 May 2011. This is discussed further in the context of the 'number of appointed local supervisors'.

The table above shows that in 2018, 188 out of a total of 244 responding municipalities had a total of 10,541 class 1 establishments on their territory. This is offset by the fact that 56 municipalities reported they had no information about the number of class 1 establishments on their territory. This means that, based on the responses, the average municipality in the Flemish Region is home to 56 class 1 establishments. However, looking at the different resident number bands in isolation, this average figure is much more differentiated. The municipalities in the lowest resident number bands on average have just 26 class 1 establishments, whereas for the cities in the highest resident number band this figure goes up to 177 class 1 establishments.

With regard to class 2 establishments, 186 of the 244 responding municipalities combined had 34,632 class 2 establishments on their territory, which works out at an average of 186 class 2 establishments per municipality. The table also reveals that the picture is very uneven when considering the different resident number bands. On average, the smallest municipalities were home to 48 class establishments whereas the largest had no less than 771. Same as for the class 1 establishments, on average the number of class 2 establishments is seen to rise as the number of residents increases. No fewer than 58 municipalities reported they did not know the number of class 2 establishments on their territory.

Coming in at 29.5% of the responding municipalities, the number of municipalities that does not have a line on the number of class 3 establishments on their territory is higher than for the class 1 and class 2. In 2018, the other 166 responding municipalities were jointly home to 106,139 class 3 establishments, which works out at 639 per municipality.

A striking fact is that no less than 121 of the responding municipalities, i.e. 49.5% of the total number of responding municipalities, reported they were aware of a total of 3,173 unlicensed establishments on their territory. As stated earlier, these are establishments which may be designated as a class 1, class 2 or class 3 establishment under the VLAREM regulations but have not yet been granted a licence. This amounts to an average of 26 nuisance-causing and unlicensed establishments per municipality which are not really operated legitimately as no licence has (yet) been issued or no report has yet been filed (class 3 establishments). The remaining 123 responding municipalities reported they did not know the number of unlicensed establishments or they did not have any unlicensed establishments on their territory. In 2020, the VHRM is planning to out- source a study into the significance of these figures. However, these municipalities are advised once again to also place their enforcement focus on these unlicensed nuisance- establishments. After all, these municipalities are aware of environmental legislation offences and could therefore rightfully be expected to take action in this respect.

Number of local supervisors

Article 16, §1 of the Government of Flanders Order of 12 December 2008 in implementation of Title XVI of the Decree of 5 April 1995 setting forth general provisions on environmental policy sets out that municipalities need to be able to call on at least 1 local supervisor within one year after the entry into force of the aforesaid Order, which was 1 May 2010. Within two years after this Order came into effect (1 May 2011), municipalities that are home to more than three hundred class 2 establishments according to the classification list, or that have more than thirty thousand residents if the number of establishments is insufficiently known, must have two local supervisors at their disposal. The data collected makes it possible to determine to what extent the municipalities in the Flemish Region in 2018 complied with the above provisions of the Environmental Enforcement Decree regarding the appointment of the supervisors.

Setting out from the number of class 2 nuisance-causing establishments and from the number of residents, the tables below show to what extent the municipalities in 2018 were able to call on a sufficient number of supervisors.

	number of municipalities		
	without supervisors	with 1 supervisor	with ≥ 2 supervisors
> 300 class 2 nuisance-causing establishments	2	5	26
< 300 class 2 nuisance-causing establishments	20	62	71
do not know the number of nuisance causing establishments	10	18	30
Total	32	85	127

Table 17 Appointment local supervisors based on the number of nuisance-causing establishments in 2018

If the number of nuisance-causing establishments is taken as a criterion to determine the number of supervisors that a municipality must be able to call on – whether or not appointed within their own municipality, an intermunicipal association, or a police district – the conclusion from the above table

is that a minimum of 37 and a maximum²⁵ of 55 of the responding municipalities were unable to call on a sufficient number of supervisors. This is a minimum of 15% and a maximum of 22.5% of the total number of responding municipalities.

If the number of class 2 nuisance-causing establishments is not precisely or insufficiently known, the number of supervisors which a municipality must have at its disposal can also be determined based on the number of residents. This situation is reflected in the table below. As soon as a municipality has more than 30,000 residents, it must have at least two supervisors at its disposal.

POPULATION	number of municipalities		
	without supervisors	with 1 supervisor	with ≥ 2 supervisors
≤ 4,999	4	0	1
5,000 - 9,999	9	19	23
10,000 - 14,999	8	27	31
15,000 - 19,999	6	16	19
20,000 - 24,999	3	8	17
25,000 - 29,000	1	3	8
30,000 - 74,999	1	12	20
≥ 75,000	0	0	8
Total	32	85	127

Table 18 Appointment of local supervisors based on the number of residents in 2018

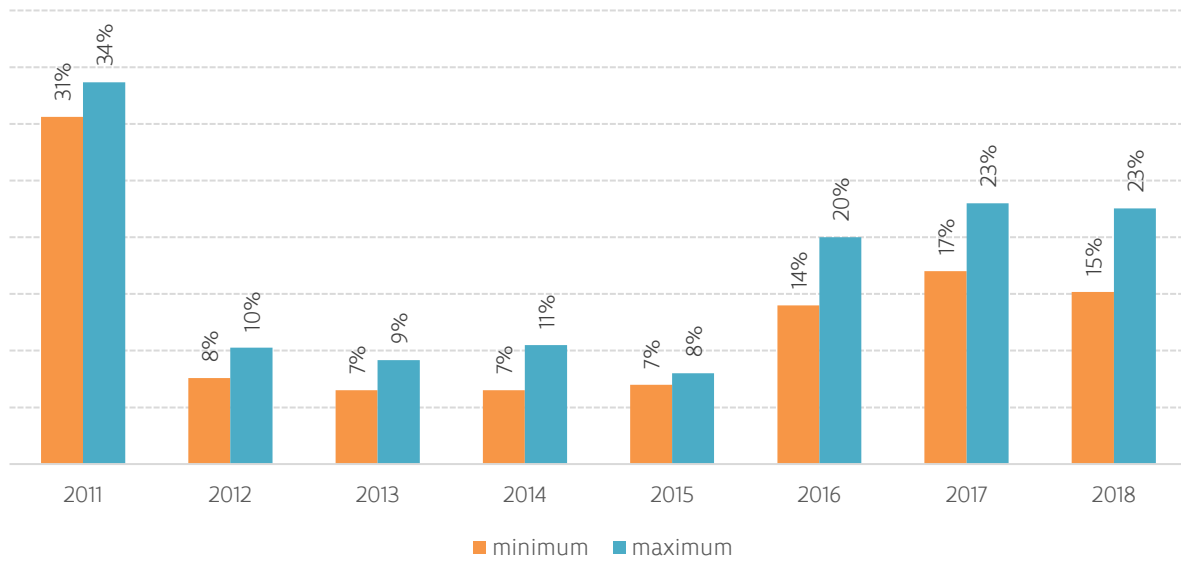
Same as in the previous table, the table above shows that 32 responding municipalities were left that were still unable to call on a supervisor in 2018. This is 13% of the total number of responding municipalities.

If the number of residents is used as a criterion to determine the required number of supervisors laid down by law, all municipalities with more than 30,000 residents should be able to call on at least 2 supervisors. The table shows that within the second largest band (the municipalities home to 30,000 – 74,999 residents) one municipality was unable to call on a supervisor in any shape or form and 12 municipalities were able to call on just one supervisor in 2018. This means that just under 23% of the responding municipalities with over 30,000 residents in 2018 did not yet comply with the provision that they must be able to call on at least 2 supervisors.

In addition, it was found that 32 other municipalities did not have a supervisor at their disposal. This means that in 2018 a total of 44 municipalities did not yet comply with the provisions of the Environmental Enforcement Decree, i.e. 18% of the total number of responding municipalities.

The graphs below reflect this development over the 2011-2018 time frame.

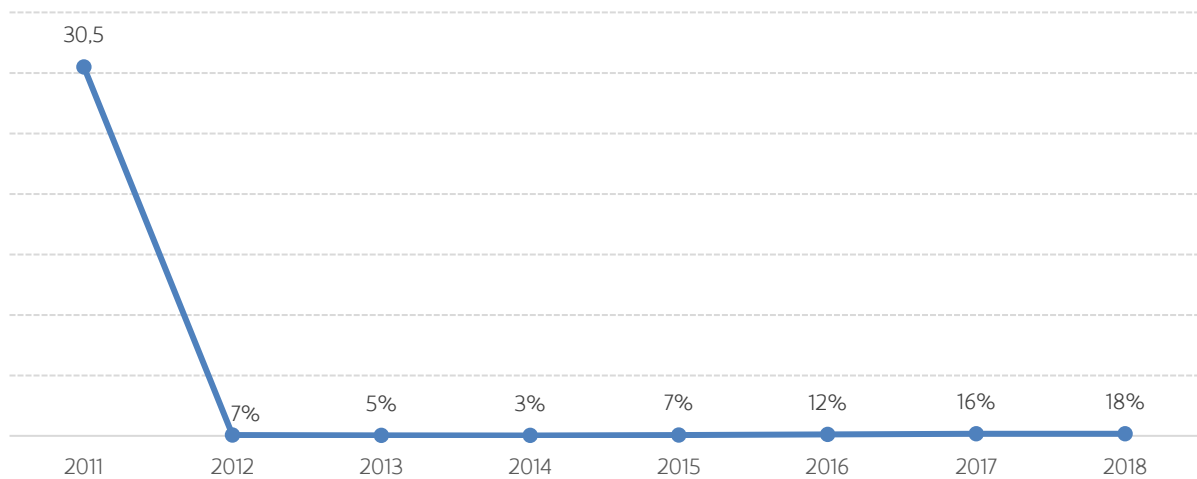
²⁵ Factoring in the 18 municipalities which were able to call on one supervisor and which did not know the number of nuisance-causing establishments on their territory. There could potentially be more than 300 of these establishments, so they should have 2 supervisors at their disposal instead of one.



Graph 29 Number of responding municipalities that were unable to call on a sufficient number of supervisors based on the number of class 2 establishments – 2011-2018 time frame

Factoring in the number of class 2 nuisance-causing establishments to determine the minimum number of supervisors, it is safe to say that for the 2011-2018 time frame the percentage rate of municipalities which did not comply with the decretal provisions was still very high in 2011, but still fell from 2012 onwards. However, since 2016, a rise of the percentage rate of municipalities that were unable to call on a sufficient number of supervisors can be seen.

The graph below shows the calculation of the number of supervisors based on the number of residents over the 2011-2018 time frame.



Graph 30 Number of responding municipalities that were unable to call on a sufficient number of supervisors based on number of residents over the 2011-2018 time frame

Same as for the calculation based on the number of class 2 establishments, it is safe to say that since 2012 the municipal authorities have done a better job of complying with the decretal provisions regarding the minimum number of supervisors, even though the percentage rate of municipalities that were unable to call on a sufficient number of supervisors has started to rise again since 2016. This is an adverse development.

Appointment of municipal supervisors and amount of time dedicated by them

The municipalities and cities in the Flemish Region were asked how many supervisors were appointed in their own municipalities in 2018, how many FTEs they had committed to environmental enforcement duties, and how many FTEs were committed in their own municipalities to deliver administrative support for environmental enforcement duties by non-supervisors.

The table below shows an overview of the appointment and time expenditure of the municipal supervisors per municipality category in 2018.

POPULATION	Response	Municipality with appointed municipal supervisor	Municipality without appointed municipal supervisor	Total number of appointed municipal supervisors	Average number of supervisors per municipality	Time expenditure on supervisory activities (FTEs)			Average time expenditure by supervisors on supervisory duties (FTEs)
						Total FTEs	by supervisors on environmental enforcement duties under the Environmental Enforcement Decree	administrative support for environmental enforcement duties by non-supervisors	
≤ 4,999	5	0	5	0	0.00	0.00	0.00	0.00	0.00
5,000 - 9,999	51	31	20	33	1.06	2.94	2.46	0.48	0.09
10,000 - 14,999	66	40	26	52	1.30	4.55	2.71	1.84	0.09
15,000 - 19,999	41	28	13	33	1.18	7.75	6.73	1.02	0.23
20,000 - 24,999	28	21	7	29	1.38	5.25	3.39	1.86	0.18
25,000 - 29,000	12	8	4	14	1.75	1.70	0.95	0.75	0.12
30,000 - 74,999	33	24	9	43	1.79	7.34	6.56	0.78	0.17
≥ 75,000	8	8	0	33	4.13	17.60	14.85	2.75	0.53
Total	244	160	84	237	1.48	47.13	37.65	9.48	0.20

Table 19 Appointment and time expenditure of the municipal supervisors per municipality category in 2018

In 2018, 237 municipal supervisors were appointed in 160 municipalities. This amounts to an average of 1.48 municipal supervisors per municipality with an appointed municipal supervisor.

However, the average of 1.48 municipal supervisors per municipality with an appointed supervisor changes significantly as soon as the different classes of municipalities are considered. In the lowest band, the average number of supervisors per municipality is 0, whereas this average figure goes up to 4.13 in the largest cities. This warrants the conclusion that the larger the population, the more supervisors were appointed.

In the 160 municipalities that had a total of 237 municipal supervisors at their disposal in 2018, a total of 47.13 FTEs were committed to environmental enforcement duties, of which approximately 80% by supervisors on environmental enforcement duties under the Environmental Enforcement Decree and approximately 20% on administrative support for environmental enforcement duties by non-supervisors.

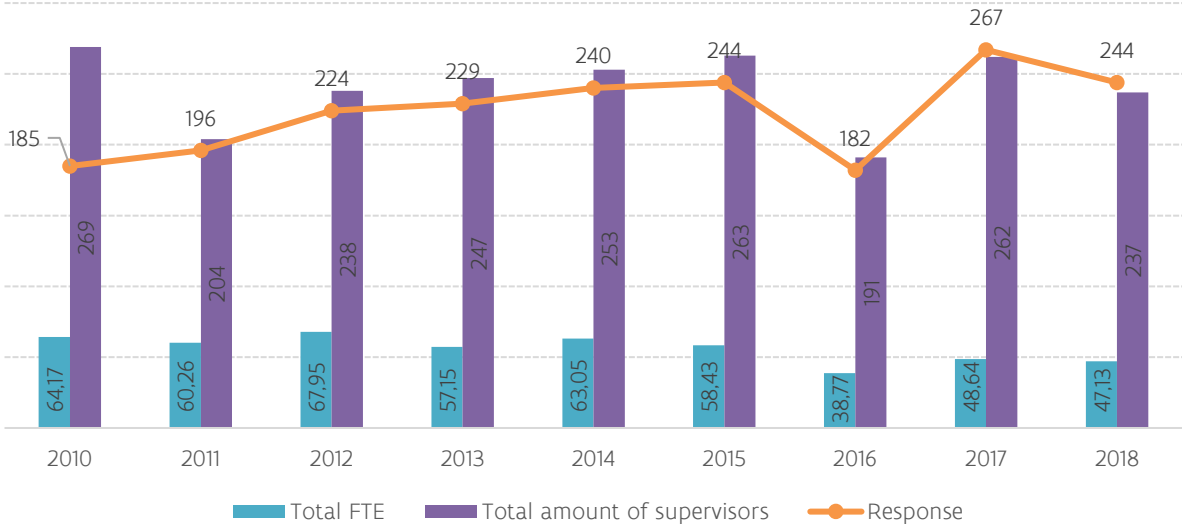
In 2018, the average time expenditure²⁶ per municipal supervisor on environmental enforcement duties – this includes the FTE that is committed to delivering administrative support – stood at 0.20 FTE.

²⁶ The average time expenditure per supervisor is the total number of FTEs reported that are assigned to environmental enforcement duties, divided by the total number of appointed supervisors reported.

This means that the 20% of the working time of the average municipal supervisor was spent on performing environmental enforcement duties under the Environmental Enforcement Decree. As there is an average of 1.48 supervisors per municipality, there was an average time expenditure²⁷ of just under 0.3 FTE on enforcement duties per municipality which was able to call on a supervisor.

Considering the different categories of municipalities in isolation, same as in previous reports, a wide diversity both in terms of the average time spent on environmental enforcement duties and in terms of time expenditure can be seen. In 2018, the average time expenditure per municipal supervisor on environmental enforcement duties was 0.20 FTE. In the largest municipalities (municipalities home to more than 75,000 residents), the supervisor spent an average of 53% of his time on environmental enforcement duties, and the average time expenditure by these municipalities on environmental enforcement duties totalled 2.2 FTEs. However, both the average time dedicated per municipal supervisor and the time dedicated per municipality is seen to fall sharply as the number of residents decreases.

The graphs below show an overview of these data over the 2010-2018 time frame.

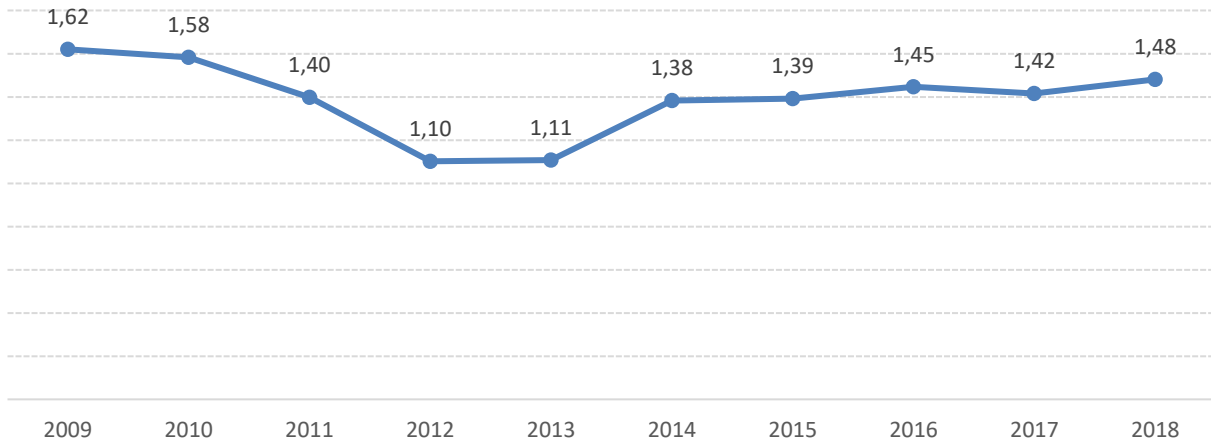


Graph 31 Total number of FTEs committed to environmental enforcement in Flanders in relation to the number of municipal supervisors in Flanders from 2010 through 2018

The above graph shows the total number of municipal supervisors and the total number of FTEs committed to enforcement duties from 2010 through 2018. This shows a slight drop in the number of FTEs that were committed to perform enforcement duties, of which only the sharp fall in 2016 can be explained by the low response. The number of appointed municipal supervisors is seen to fluctuate over the years.

The graph below shows the average number of municipal supervisors per municipality that appointed a municipal supervisor over the 2009-2018 time frame.

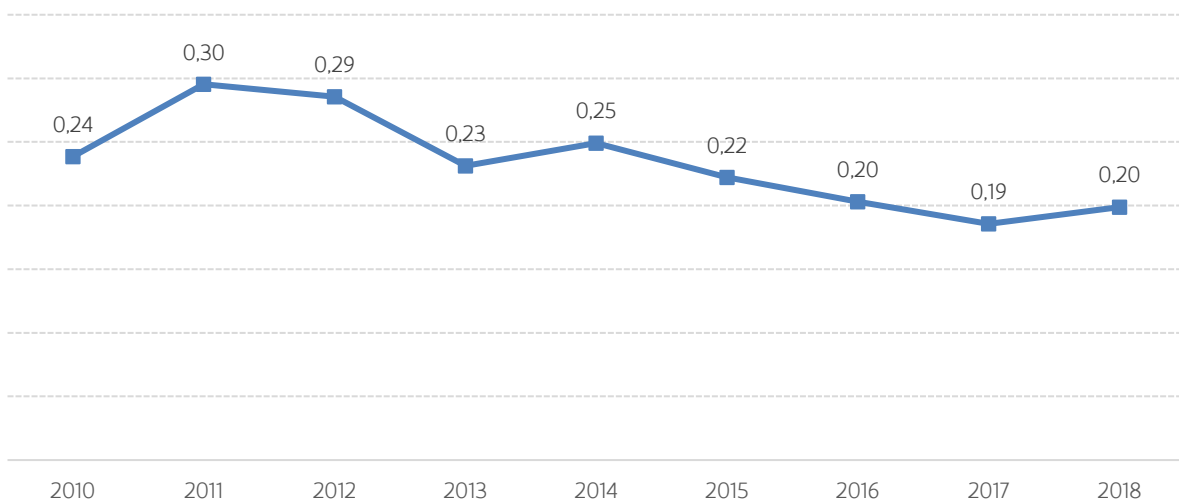
²⁷ This time expenditure is determined by multiplying the average time expenditure per supervisor on supervisory duties by the average number of municipal supervisors per municipality which were effectively able to call on a supervisor. This makes it possible to get a picture of the average FTEs assigned to environmental enforcement duties in a municipality that actually appointed one or more supervisors.



Graph 32 Average number of municipal supervisors per municipality with a municipal supervisor – 2009-2018 time frame

On average, since the implementation of the Environmental Enforcement Decree “one and a half municipal supervisor” operated in those municipalities that had appointed a municipal supervisor, except in 2012 and 2013.

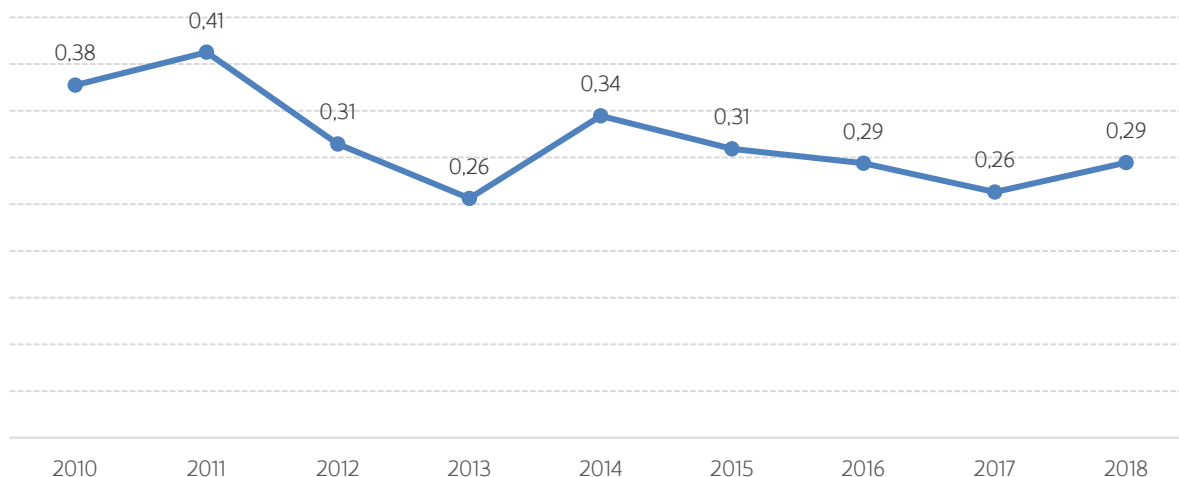
The graph below shows the average time expenditure of the supervisors on enforcement duties over the 2010-2018 time frame. The average time expenditure per supervisor is the total number of FTEs reported that are assigned to environmental enforcement duties, divided by the total number of appointed supervisors reported.



Graph 33 Average time expenditure of the supervisor on enforcement duties

Over the 2010-2018 time frame, the municipal supervisor on average spent 20% to 30% of one FTE on enforcement work, even though – globally speaking – this has diminished since 2011.

The graph below shows the average time spent on enforcement duties by the municipalities that call on a municipal supervisor over the 2010-2018 time frame. This time spent is determined by multiplying the average time expenditure per supervisor on supervisory duties by the average number of municipal supervisors per municipality which were effectively able to call on a supervisor. This produces a picture of the average FTEs committed to environmental enforcement duties in a municipality that actually appointed one or more supervisors.



Graph 34 Average time expenditure on enforcement duties in the Flemish municipalities with supervisors

The average time expenditure of the municipalities with a municipal supervisor fluctuated over the 2010- 2018 time frame, but – same as the time expenditure of the municipal supervisor – witnessed a fall since the first few years after the Environmental Enforcement Decree came into effect.

Environmental enforcement inspections

To gain an insight into the activities of the municipal supervisors in 2018, the table below shows the total number of environmental enforcement inspections carried out per municipality category. In addition, the table also shows the time expenditure

of supervisors on supervisory duties in FTEs, the average number of environmental enforcement inspections per supervisor and the average number of environmental enforcement inspections per FTE. The results of these inspections are subsequently discussed as part of the assessment of the individual enforcement instruments in chapter 3. Table 20 factors in the total expenditure on environmental enforcement duties by the municipalities, i.e. both the FTEs committed to enforcement duties by the municipal supervisors and the FTEs committed to deliver administrative support for the environmental enforcement duties. The purpose of this is to provide a more complete picture of how an inspection is performed.

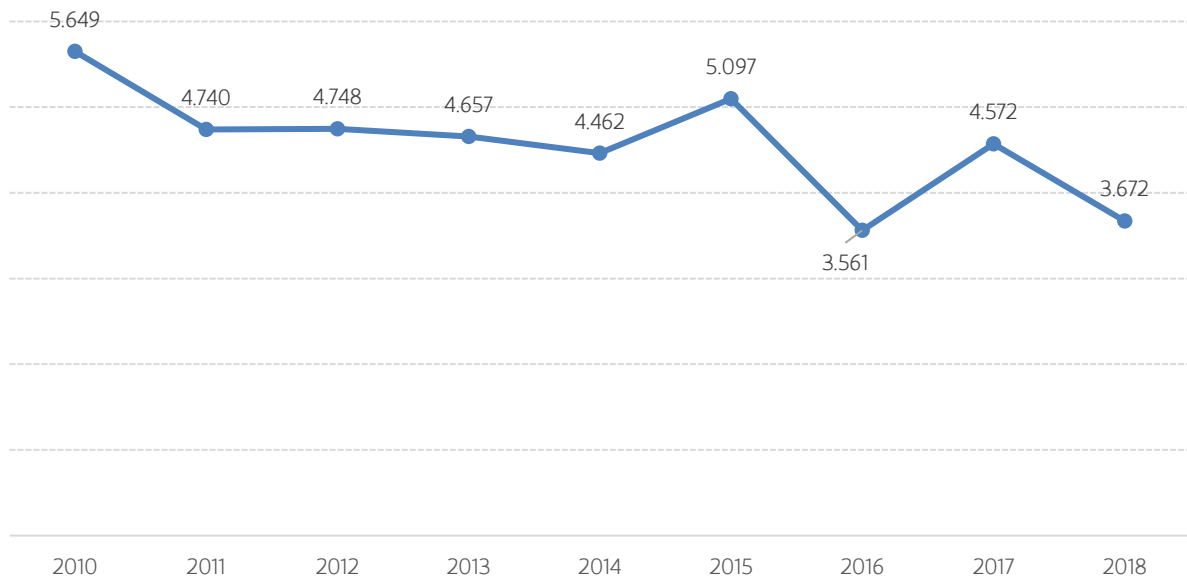
Population	Response	Number of appointed supervisors per municipality	Total time expenditure on environmental enforcement duties in FTEs	Number of environmental enforcement inspections carried out	Average number of environmental enforcement inspections per supervisor	Average time expenditure by supervisors on supervisory duties (FTEs)	Average number of environmental enforcement inspections per FTE
≤ 4,999	5	0	0.00	0	0	0.00	0
5,000 - 9,999	51	33	2.94	287	9	0.09	98
10,000 - 14,999	66	52	4.55	389	7	0.09	85
15,000 - 19,999	41	33	7.75	371	11	0.23	48
20,000 - 24,999	28	29	5.25	262	9	0.18	50
25,000 - 29,000	12	14	1.70	199	14	0.12	117
30,000 - 74,999	33	43	7.34	786	18	0.17	107
≥ 75,000	8	33	17.60	1,378	42	0.53	78
Total	244	237	47.13	3,672	15	0.20	78

Table 20 Efforts in the area of environmental enforcement duties by municipal supervisors per municipality category in 2018

This table shows that the 237 municipal supervisors – who spent a total of 47.13 FTEs on environmental enforcement duties – jointly carried out 3,672 environmental enforcement inspections in 2018. This works out at an average of 15 environmental enforcement inspections per supervisor and an average of 78 environmental enforcement inspections per FTE. This means that if every supervisor could focus full-time on environmental enforcement duties, a total of 18,486 environmental enforcement inspections would be carried out by the 237 appointed municipal supervisors. As the supervisors on average can only spend 1/5th (20%) of their time on enforcement duties, a total of just 3,672 inspections were carried out. These data again calls for an amendment to the Environmental Enforcement Decree and the Environmental Enforcement Order in the sense that they should not establish the number of supervisors per municipality, but the FTEs committed that are to be committed to enforcement duties.

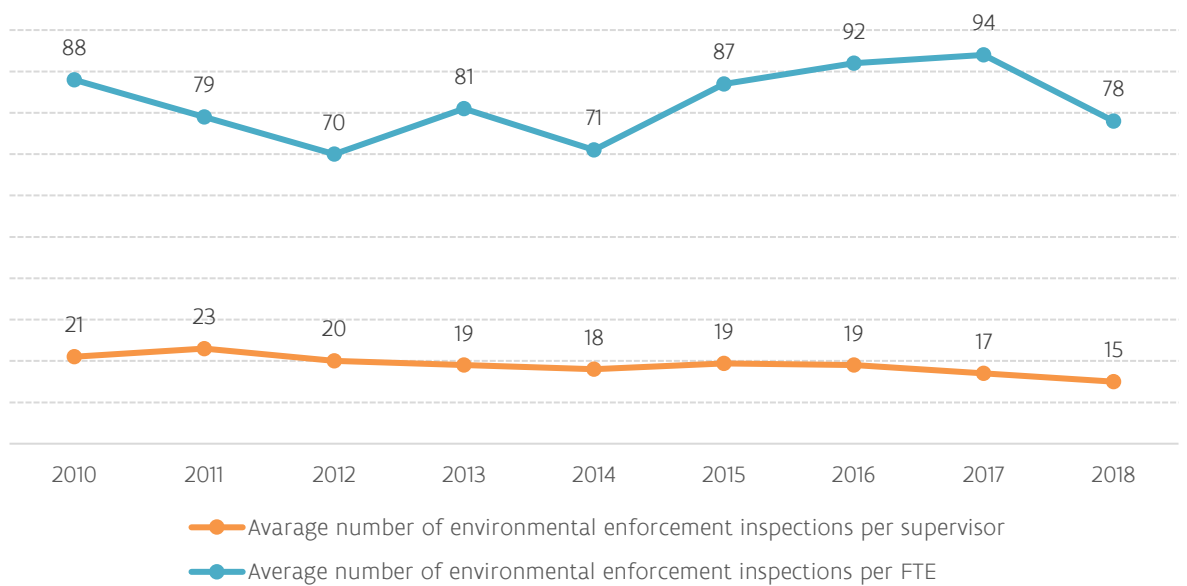
A more mixed picture can be seen looking at the number of environmental enforcement inspections carried out, the average number of environmental enforcement inspections per supervisor and the average number of environmental enforcement inspections per FTE per municipality category. For all categories, the average number of environmental enforcement inspections per FTE is consistently higher than the average number of inspections per supervisor. This has to do with the fact that the appointed supervisors only spent a limited proportion of their time on environmental enforcement duties under the Environmental Enforcement Decree.

The graph below shows the total number of environmental enforcement inspections carried out by the municipal supervisors over the 2010-2018 time frame.



Graph 35 Total number of environmental enforcement inspections per year

Generally speaking, a downward trend in the total number of environmental enforcement inspections carried out by municipal supervisors over the 2010-2018 time frame can be seen. However, the response rate is not taken into account in the above graph. The average number of inspections per supervisor and the average number of inspections per FTE over the 2010-2018 time frame provide a more weighted picture. This is shown in the graph below.



Graph 36 Average number of environmental enforcement inspections per supervisor in relation to the average number of environmental enforcement inspections per FTE

The average number of environmental enforcement inspections per municipal supervisor also shows a falling trend over the 2010-2018 time frame and was even at its lowest point in 2018, ten years after the entry into force of the Environmental Enforcement Decree. The average number of inspections per FTE reveals a fluctuating albeit more positive picture, given that the average number of inspections per FTE is higher than the average number of inspections per supervisor. Obviously this is a fictitious picture as the municipal supervisor on average spend just 1/5 FTEs on enforcement duties.

For 2018, the municipalities were asked to specify how many self-initiated environmental enforcement inspections were carried out in response to complaints and reports, for example under an environmental enforcement programme, at the request of another public authority or at the request of the police district. This is presented in the table below.

Population	Total number of environmental enforcement inspections carried out	Number of self-initiated environmental enforcement inspections	Number of environmental enforcement inspections in response to complaints and reports	Number of environmental enforcement inspections at the request of another public authority	Number of environmental enforcement inspections at the request of the police district
≤ 4,999	0	0	0	0	0
5,000 - 9,999	287	60	164	22	41
10,000 - 14,999	389	42	297	18	32
15,000 - 19,999	371	63	268	23	17
20,000 - 24,999	262	42	183	15	22
25,000 - 29,000	199	51	134	12	2
30,000 - 74,999	786	197	458	71	60
≥ 75,000	1,378	386	870	89	33
Total	3,672	841	2,374	250	207

Table 21 Number of environmental enforcement inspections and reason for inspections carried out by municipal supervisors under the Environmental Enforcement Decree

In 2018, a total of 3,672 environmental enforcement inspections were carried out by provincial supervisors. The majority of these inspections, i.e. 64.5%, were carried out in response to complaints and reports, and approximately 23% of these inspections were proactive self-initiated inspections, as applicable as part of planned actions or under an environmental enforcement programme. Other than this, 7% of the inspections were carried out at the request of another public authority and 5.5% at the request of the police district. Which means the municipal supervisor largely operates on a reactive basis.

2.4.3 Intermunicipal associations

Article 16.3.1, §1, 4^o of the Environmental Enforcement Decree enables staff of intermunicipal associations to be appointed as supervisors. Such supervisors may exercise supervision only in the municipalities that are part of the intermunicipal association. According to article 16, §2 of the Environmental Enforcement Order, every intermunicipal association that appoints supervisors must appoint at least two supervisors for each tranche of five municipalities that uses the supervisors of the intermunicipal associations for the entire package of supervisory duties.

Since the Environmental Enforcement Decree came into force in 2009, the role of the intermunicipal associations in the environmental enforcement landscape has consistently grown. All the more so as organising the supervision of environmental legislation within the framework of an intermunicipal association comes with a number of benefits. For instance, it may be interesting for smaller municipalities to organise themselves in this way. The appointment of an intermunicipal supervisor could lead to an increase in scale in terms of expertise and the territorial deployability of the supervisor. As the supervisor function is currently not required to amount to a full-time equivalent and the function is mostly combined with other duties in the smaller municipalities, the appointment

of a full-time equivalent, which in practice is not always the case, within an intermunicipal association will only act to step up the proficiency and expertise of this supervisor.

In addition, it may be a good idea to appoint several supervisors in a single intermunicipal association so that supervisors no longer need to carry out inspections in their own municipality.

The Flemish High Enforcement Council for Spatial Planning and Environment therefore attaches importance to mapping out the activities of these intermunicipal associations, which is why these intermunicipal associations who are known to handle or who will be handling duties in the area of environmental enforcement were digitally queried.

For the present environmental enforcement report, the VHRM received a completed questionnaire from nine intermunicipal associations. Seven of these nine intermunicipal associations had appointed at least one supervisor in their association. The other two intermunicipal associations reported staff had been enrolled for the supervisor training course in 2018 or would be taking the course in 2019. This chapter discusses the activities in the area of environmental enforcement of the seven intermunicipal associations with an appointed supervisor.

One intermunicipal association delivers support to 28 municipalities. In 2018, 6 supervisors were appointed within these intermunicipal association and 0.2 FTEs were committed to environmental enforcement by these supervisors. In addition, the equivalent of 0.1 FTE was committed by non-supervisors to deliver administrative support for environmental enforcement duties. A total of 27 inspections were carried out. As part of these inspections, 17 recommendations were issued and 23 offences were established. In respect of these offences, 2 exhortations were issued and 1 non-priority official report was raised.

A second intermunicipal association delivers support to 7 municipalities. In 2018, 1 supervisor was appointed who spent the equivalent of 0.5 FTE on environmental enforcement duties. 49 inspections were carried out in response to complaints and reports along with a further 42 self-initiated inspections. For 5 inspections, the intermunicipal supervisor provided assistance to another enforcement body. As part of these inspections, 14 recommendations were issued and 47 offences were established. In respect of 2 offences, no further action was taken. Other than this, 40 exhortations, 1 priority official report and 4 non-priority official reports were raised for the offences established. No administrative measures or safety measures were imposed.

A third intermunicipal association delivers support to 30 municipalities. In 2018, 6 intermunicipal supervisors were appointed who spent the equivalent of

1.7 FTEs on environmental enforcement duties. The equivalent of 0.2 FTE was committed to deliver administrative support. A total of 293 environmental enforcement inspections were conducted in 2018, of which 66% were in response to complaints and reports and 30% were self-initiated. As part of these inspections, 33 recommendations were raised and

54 offences were established. In respect of these offences, 29 exhortations and 15 priority official reports were raised. No administrative or safety measures were imposed.

A fourth intermunicipal association provides support to 17 municipalities. In 2018, 3 supervisors were appointed within these intermunicipal association and the equivalent of 1.4 FTEs were committed to environmental enforcement by these supervisors. In addition, 0.1 FTE was committed by non-supervisors to deliver administrative support for environmental enforcement duties. 97 inspections

were carried out, all at the request of another public authority. As part of these inspections, 76 offences were established. In respect of one offence, no further action was taken. 38 exhortations were raised. In addition, 10 priority and 3 non-priority official reports were raised. No administrative or safety measures were imposed.

A fifth intermunicipal association delivers support to 35 municipalities. In 2018, 1 supervisor was appointed within this intermunicipal association and 0.4 FTE was committed by these supervisors to deliver environmental enforcement. In addition, the equivalent of 0.05 FTE was committed by non-supervisors to deliver administrative support for environmental enforcement duties. 24 inspections were carried out at the request of another public authority. In addition, in the case of 4 inspections the intermunicipal supervisor provided assistance to other enforcement services by. In half of the inspections, an offence was established. 10 exhortations were raised. No administrative measures or safety measures were imposed.

A sixth intermunicipal association delivers support to 25 municipalities. In late 2018, 1 supervisor was appointed who spent the equivalent of 0.07 FTE on environmental enforcement duties. In addition, the equivalent of 0.01 FTE was assigned to deliver administrative support for the enforcement duties. 1 inspection was carried out at the request of another public authority. One offence was established for which a exhortation was raised. No administrative measures or safety measures were imposed. A seventh intermunicipal association provides support to 22 municipalities. In 2018, one intermunicipal supervisor was appointed who spent the equivalent of 0.3 FTE on environmental enforcement duties. 10 environmental enforcement inspections were carried out in 2018, in each of which an offence was established. In respect of these offences, 6 exhortations and 2 priority official reports were raised. No administrative or safety measures were imposed. Based on the response received in recent years, this paints the following picture of the organisation of environmental enforcement at intermunicipal level.

	Number of intermunicipal associations which carry out enforcement duties	Number of intermunicipal associations that have at least one intermunicipal supervisor	Number of intermunicipal supervisors
2012	5	4	13
2013	5	5	14
2014	4	3	4
2015	5	4	15
2016	5	4	15
2017	7	3	14
2018	9	7	19

Table 22 Organisation environmental enforcement at intermunicipal level

Since the 2012 Environmental Enforcement Report, the VHRM has also queried the intermunicipal associations which carry out environmental enforcement duties regarding their activities. The finding is that an increasing number of intermunicipal associations have included environmental enforcement as part of their range of duties. However, the number of inter- municipal associations that have at least one inter- municipal supervisor remained stable, only showing a rise in 2018. The same can be said for the number of appointed intermunicipal supervisors (except for 2014).



Afbeelding van kangbch via Pixabay

3 ASSESSMENT OF THE USE OF THE INDIVIDUAL ENVIRONMENTAL ENFORCEMENT INSTRUMENTS AND SAFETY MEASURES

Whereas the previous chapter discusses the individual enforcement bodies and their efforts under the Environmental Enforcement Decree, this chapter focuses on the environmental enforcement instruments.

The aim is to gain insight into the use of all the resources given to supervisors to achieve their objectives.

This report provides an overview of the total number of inspections in relation to the number of inspections where an offence was established. This makes it possible to put forward statements regarding the degree of compliance and the targeted enforcement by the authorities. In addition, in this report the enforcement instruments are compared to the number of enforcement inspections carried out where an offence was established. It was decided to opt for this weighting because most of the instruments that are assessed can be used as part of the establishment of an offence.

Given the fact that this report is an anniversary report, the use of the various instruments in recent years will be rendered in graphs, per instrument.

In parallel with chapter 2 'Assessment of the environmental enforcement policy conducted', the information received from the supervisors to assessment of the individual enforcement instruments, i.e. the recommendation, the exhortation, the identification report, the official report and the administrative measures is set out. The use of these figures implies that all comments and remarks put forward earlier on also apply here.

In the previous chapter, the supervisors of the Local Police and the municipal supervisors were divided into different categories based on the number of residents. In this chapter, the supervisors of the Local Police on the one hand and the municipal supervisors on the other hand are included as a single actor, alongside the various regional bodies.

Just like in the previous environmental enforcement report, this chapter will be concluded with a number of practical examples. These examples provide a qualitative picture of the manner in which the enforcement instruments are used in the field.

3.1 INSPECTIONS WHERE AN OFFENCE WAS ESTABLISHED

In order to carry out a correct assessment of the environmental enforcement instruments, the correct parameters must be compared against each other. The table below breaks down the total number of inspections carried out in 2018 into the number of 'inspections where no offence was established' and the number of 'inspections where an offence was established'. The definition of an inspection is as follows: "An inspection in the context of environmental enforcement is to seek to establish, at the premises of a legal person and/or a natural person bound by statutory environmental law obligations, whether the said legal person or natural person effectively acts in compliance with the said statutory obligations". In principle, to avoid double counting, one inspection is linked to one offence or one non-offence. An inspection in case of an offence consequently encapsulates the entirety of inspections in respect of these offences as established.

As an instrument can only be used as part of the establishment of an environmental crime or an environmental infringement, the number of times an instrument was used will be compared to the number of 'inspections where an offence was established'. The exception to this rule is the 'recommendation' instrument. In principle, the recommendation can only be applied if an environmental crime or environmental infringement is at risk of occurring although no offence has yet been established.

The table below shows an overview of the total number of environmental enforcement inspections carried out per supervisory authority, the number of inspections where no offence was found and the number of inspections where an offence was established in 2018.

Enforcement BODY	Total number of inspections	Number of inspections where no offence was established	% share in 2018	Number of inspections where an offence was established	% share in 2018
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON)	175	173	99%	2	1%
Department of Environment and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI)	11,147	10,583	95%	564	5%
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)	169	103	61%	66	39%
Agency for Nature and Forests (ANB)	9,144	7,726	84%	1,418	16%
De Vlaamse Waterweg NV (Flemish Waterways plc)	20	0	0%	20	100%
Agency for Roads and Traffic (AWV)	1,642	1,446	88%	196	12%
Flemish Agency for Care and Health (VAZG)	8,712	7,986	92%	726	8%
Public Waste Agency of Flanders (OVAM)	1,187	955	80%	232	20%
Flemish Land Agency (VLM)	6,193	5,618	91%	575	9%
Flemish Environment Agency (VMM)	/	/	/	/	/
Department of Mobility and Public Works (MOW)	0	0	0%	0	0%
Agency for Maritime Services and Coast;	0	0	0%	0	0%
Provincial supervisors	117	16	14%	101	86%
Municipal supervisors	3,672	1,664	45%	2,008	55%
Supervisors intermunicipal partnerships	548	325	59%	223	41%
Local Police supervisors	4,044	2,097	52%	1,947	48%
Total	46,770	38,692	83%	8,078	17%

Table 23 Comparison of the number of inspections where no offence was established with the number of inspections where an offence was established in 2018

In 2018, the responding supervisory bodies carried a total of 46,770 environmental enforcement inspections. The striking thing however is the fact that in more than 80% of the inspections carried out, i.e. 83%, no offence was established, whereas only an offence was established as part of just 8,078 inspections. Considering the various bodies separately, for some bodies the percentage inspections where no offence was established is even higher, for instance with the Enforcement Division – Environmental Inspectorate where only 5% of the environmental enforcement inspections carried out could actually be found to be a violation.

This high percentage of inspections where no offences are established may point to a high degree of compliance and/or a strong focus on inspectors/ supervisors maintaining a strong presence in the field whereby the fact that inspections are being conducted acts as a deterrent in itself. Another explanation however could be that there is a lack of a risk-focused approach and targeted supervision.

Municipal supervisors, the supervisors of the intermunicipal partnerships and the supervisors of the Local Police are closer to the percentages of inspections with and inspections without established offences which may be explained by the fact that the majority of those enforcement inspections carried out by these bodies were conducted in response to complaints and reports.

The graph below shows the number of environmental enforcement inspections carried out with and without offence over the 2010-2018 time frame.



Graph 37 Inspections where no offence was established and inspections where an offence was established over the 2010-2018 time frame

The above graph shows that the total number of environmental enforcement inspections carried out has globally speaking been on the rise since 2010, even though this may be related to the response rate. What is clear from this graph however is that the proportion between the number of inspections where no offence was established became increasingly removed from the number of inspections where an offence was established. Up until 2013, an offence was still being established in approximately 1/3 of the inspections carried out. In 2014-2015, this fell to 1/4 of the inspections carried out. From 2016 forward, offences were established in just 1/5 of the environmental enforcement inspections. As stated earlier, this may be indicative of a higher degree of compliance. On the other hand, it may point to a lack of targeted use of the enforcement resources and a lack of risk-focused supervision.

3.2 INSPECTIONS WITHOUT FURTHER ACTION

The survey conducted among the supervisory bodies inquired about the number of inspections carried out in which an offence – an environmental infringement or an environmental crime – with respect to the environmental legislation was established in 2018, but

no action was taken. The table below shows the number of 'inspections without further action' in proportion to the number of 'inspections where an offence was established' by supervisors in 2018.

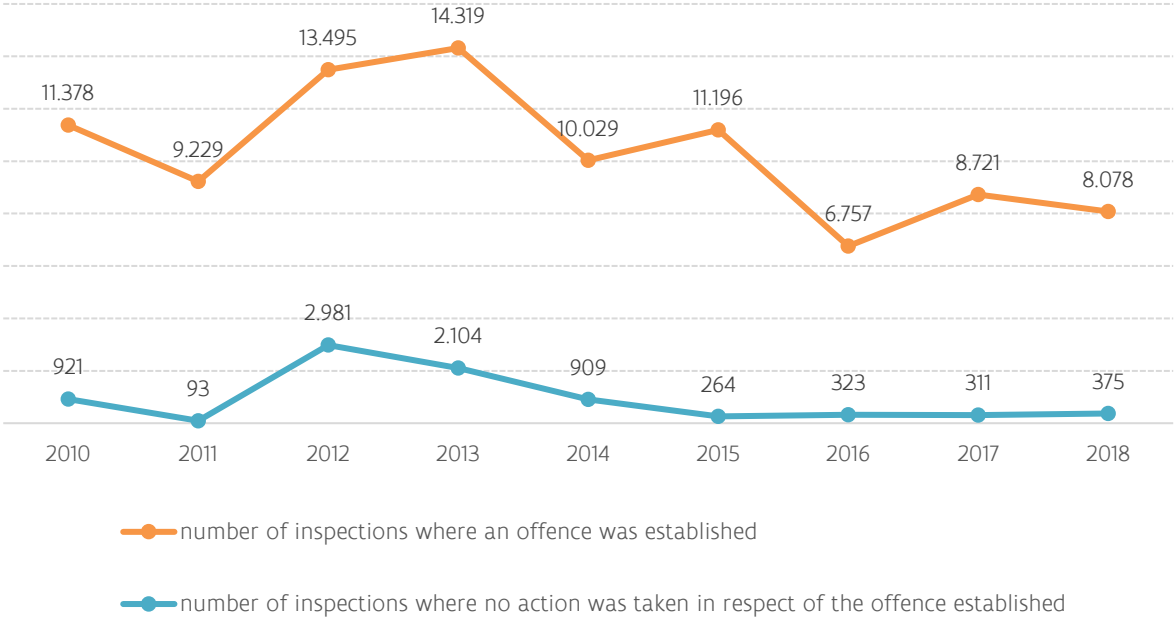
ENFORCEMENT BODY	Number of inspections where an offence was established	Number of inspections without further action	% share in 2018
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON)	2	0	0%
Department of Environment and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI)	564	0	0%
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)	66	0	0%
Agency for Nature and Forests (ANB)	1,418	0	0%
De Vlaamse Waterweg NV (Flemish Waterways plc)	20	0	0%
Agency for Roads and Traffic (AWV)	196	0	0%
Flemish Agency for Care and Health (VAZG)	726	161	22%
Public Waste Agency of Flanders (OVAM)	232	56	24%
Flemish Land Agency (VLM)	575	0	0%
Flemish Environment Agency (VMM)	/	/	/
Department of Mobility and Public Works (MOW)	0	0	0%
Agency for Maritime Services and Coast	0	0	0%
Provincial supervisors	101	0	0%
Municipal supervisors	2,008	142	7%
Supervisors intermunicipal partnerships	223	3	1%
Local Police supervisors	1,947	12	1%
Total	8,078	374	5%

Table 24 Number of inspections without further action compared to the number of inspections where offences were established in 2018

The table above shows that in 5% of the total number of 8,078 environmental enforcement inspections performed in which an offence was established, no further action was taken with regard to the offence established. The striking thing is that this overall high percentage was mainly due to the fact that two regional bodies, i.e. the Flemish Agency for Care and Health and the Public Waste Agency of Flanders, did not take action with regard to the offence in more than 1/5 of the inspections where an offence was established. In the municipalities, in 7% of the inspections where an offence was able to be established, no further action was taken in respect to the offence established. However, one possible explanation for such inspections without further action could be that the offences established are environmental infringements, for which the Environmental Enforcement Decree leaves supervisors free to decide whether or not to raise an identification report at their own discretion.

Among the other enforcement bodies, only in a limited number of inspections no action was taken in respect to the offence established or action had already been initiated for the offence.

The graph below shows the number of 'inspections without further action' in proportion to the number of 'inspections where an offence was established' over the 2010-2018 time frame.



Graph 38 Inspections where no action was taken in respect to the offence established over the 2010-2018 time frame

This shows that the number of inspections where no action was taken in respect to the offence established has remained more or less steady since 2015. The percentage ratio against the total number of inspections where an offence was established appears to have been stabilising since 2015. In 2012, this percentage rate stood at 22%, at 15% in 2013 and at 9% in 2014. In 2015, the percentage fell to 2%, only to hover between 4% and 5% in the years that followed. The trend in recent years can therefore be considered as positive. This shows that an increasing number of established offences have consequences (appropriate or otherwise) through the use of the instruments which the Environmental Enforcement Decree has given the supervisors. This could indicate that supervisors have become quite familiar with the use of these instruments.

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3.3 INSPECTIONS WHOSE RESULT IS UNKNOWN

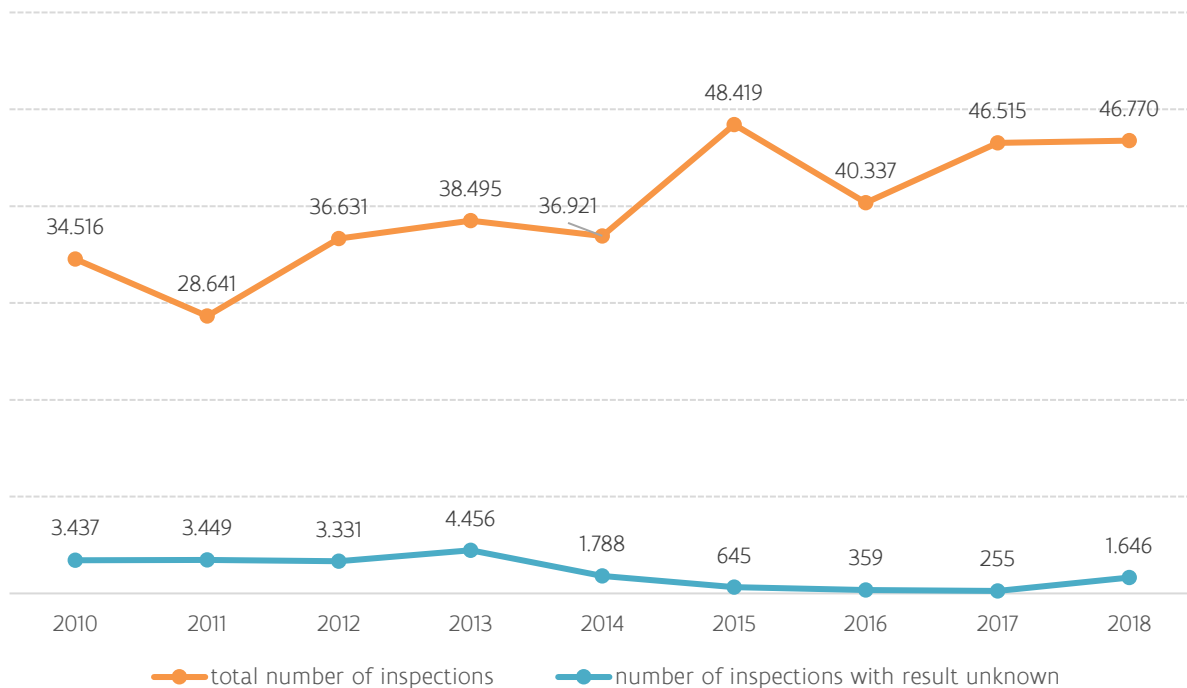
Based on the survey of supervisory authorities, it is examined how many inspections had been conducted in 2018 with 'result unknown'. This was achieved by determining the difference between, on the one hand, the total number of inspections carried out, and – on the other hand – the number of inspections where no offence was found, the number of inspections where no action was taken with regard to the offence established, the number of recommendations, the number of exhortations, the number of identification reports and the number of official reports. In other words, in all cases this relates to a minimum number, as several instruments may be used as part of a single inspection. The table below shows the number of 'inspections whose result is unknown' in proportion to the total number of environmental enforcement inspections carried out by the supervisor.

Enforcement body	Total number of inspections	Number of inspections with result unknown	% share in 2018
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON)	175	0	0%
Department of Environment and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI)	11,147	0	0%
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)	169	40	24%
Agency for Nature and Forests (ANB)	9,144	0	0%
De Vlaamse Waterweg NV (Flemish Waterways plc)	20	0	0%
Agency for Roads and Traffic (AWV)	1,642	0	0%
Flemish Agency for Care and Health (VAZG)	8,712	0	0%
Public Waste Agency of Flanders (OVAM)	1,187	0	0%
Flemish Land Agency (VLM)	6,193	0	0%
Flemish Environment Agency (VMM)	/	/	/
Department of Mobility and Public Works (MOW)	0	0	0%
Agency for Maritime Services and Coast	0	0	0%
Provincial supervisors	117	15	13%
Municipal supervisors	3,672	798	22%
Supervisors intermunicipal partnerships	548	29	5%
Local Police supervisors	4,044	764	19%
Total	46,770	1,646	4%

Table 25 Number of inspections with result unknown in 2018 and percentage ratio in relation to the total number of environmental enforcement inspections carried out in 2018

For 1,646 out of a total of 46,770 environmental enforcement inspections that were carried out, the result was unknown in 2018. This equals 4% of the total number of inspections. The table above shows that this shortcoming, which could be the result of ineffective monitoring, is mainly seen to occur among the local supervisors. In addition, in 24% of the inspections carried out by the Department of Environment and Spatial Development – Territorial Development, Environmental Planning and Projects Division (formerly AMV), the outcome is unknown.

The graph below shows the number of 'inspections with outcome unknown' in correlation to the total number of environmental enforcement inspections conducted by the supervisors over the 2010-2018 time frame.



Graph 39 Inspections with outcome unknown over the 2010-2018 time frame

Over the 2010-2013 period, the percentage rate of inspections with outcome unknown in relation to the total number of environmental enforcement inspections carried out varied between 9% and 12%. From 2014 forward, this percentage rate diminished, varying between 1% and 5%. This improvement in recent years could indicate better monitoring. Effective monitoring is crucial to efficiently prepare environmental enforcement reports. Complete and accurate data should be used as much as possible. Especially as each inspection with outcome unknown can only result in an incomplete assessment of the bodies concerned and the instruments available.

3.4 ASSESSMENT OF THE 'RECOMMENDATION' INSTRUMENT

Article 16.3.22 of DABM defines the 'recommendation' instrument as follows: "Where supervisors consider that an environmental infringement or an environmental crime is likely to occur, they may give any recommendation they consider useful to prevent it".

Since 'recommendation' is one of the preventive instruments and can therefore only be used in the event no crime or infringement was established, the number of recommendations has been compared against the number of inspections where no offence was established. However, when interpreting the data below, due account must be taken of the fact that during an inspection an offence may be established and that, alongside resorting to a exhortation, an

identification report or an official report, the supervisor can also put forward a recommendation during the course of that self-same inspection to prevent a prospective future offence. Recommendations may also be given verbally which explains why they may not be recorded. Consequently, a percentage underestimation of the number of recommendations put forward in relation to the number of inspections where no offence was established cannot be ruled out.

The table below shows an overview of the use of the 'recommendation' instrument by the various super- vising authorities in 2018.

Enforcement body	Number of inspections where no offence was established	Number of recommendations by supervisor	% share in 2018
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON)	173	4	2%
Department of Environment and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI)	10,583	257	2%
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)	103	0	0%
Agency for Nature and Forests (ANB)	7,726	10	0%
De Vlaamse Waterweg NV (Flemish Waterways plc)	0	0	0%
Agency for Roads and Traffic (AWV)	1,446	34	2%
Flemish Agency for Care and Health (VAZG)	7,986	3,218	40%
Public Waste Agency of Flanders (OVAM)	955	43	5%
Flemish Land Agency (VLM)	5,618	87	2%
Flemish Environment Agency (VMM)	/	/	/
Department of Mobility and Public Works (MOW)	0	0	0%
Agency for Maritime Services and Coast	0	0	0%
Provincial supervisors	16	1	6%
Municipal supervisors	1,664	1,694	102%
Supervisors intermunicipal partnerships	325	66	20%
Local Police supervisors	2,097	1,118	53%
Total	38,692	6,532	17%

Table 26 Number of recommendations used by the supervisors compared to the total number of inspections where no offence was established

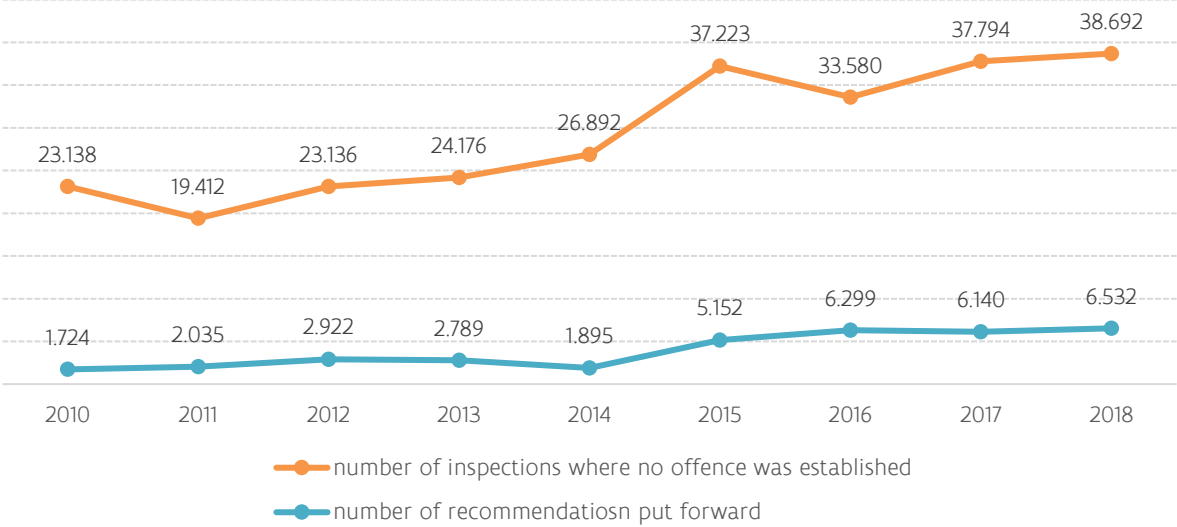
The table above shows that a total of 6,532 recommendations were put forward in a total of 38,692 inspections for which no offence was established. This corresponds to 17% of these inspections.

Please note that the recommendation instrument is not used equally by every supervisory authority. Among the regional supervisors, a large proportion of the percentage share is to be attributed to the number of recommendations (absolute number and percentage ratio in relation to the number of inspections where no offence was established) delivered by the VAZG supervisors. In 2018, VAZG put forward 3,218 recommendations for 7,986 inspections where no offence was established, which means that in 4 out of every 10 inspections for which no offence was established, the VAZG supervisors adopted a preventive approach by putting forward recommendations

to prevent an imminent environmental infringement or an environmental crime. Same as in previous years, the Local Police and municipal supervisors issued a high percentage rate of recommendations for inspections where no offences were established. This means that the data for 2018 also show a difference between the regional supervisory authorities on the one hand and the municipal supervisors and the Local Police supervisors on the other hand. The regional supervisory authorities – with the exception of VAZG – use the 'recommendation' instrument significantly less than the municipal and the Local Police supervisors. One possible explanation for this could be that verbal recommendations are not always recorded.

The graph below shows an overview of the number of recommendations put forward compared to

the total number of inspections where no offence was established over the 2010-2018 time frame.



Graph 40 Number of recommendations put forward in relation to the number of inspections where no offence was established over the 2010- 2018 time frame

The total number of recommendations delivered has increased since 2015. Percentagewise too, in relation to the total number of inspections where no offence was established, there is a difference between the number of recommendations put forward between

the 2010-2014 time frame when this percentage rate fluctuated between 7% and 13% and the 2015-2018 time frame when this percentage rate hovered between 14% and 19%.

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3.5 ASSESSMENT OF THE INSTRUMENT 'EXHORTATION'

The DABM also provides a clear definition of the instrument 'exhortation'. Article 16.3.27 of DABM specifies: "Where supervisors establish an environmental infringement or an environmental crime in the course of their supervisory duties, they may require the suspected offender and any other involved persons to put in place the relevant measures to put an end to the environmental infringement or crime, to rectify its consequences in whole or in part, or to prevent its recurrence." The supervisor may therefore choose whether or not to use the instrument 'exhortation'.

The table below shows the figures for the use of the instrument 'exhortation' in relation to the total number of inspections where offences were established in 2018, as obtained from the various supervisory authorities.

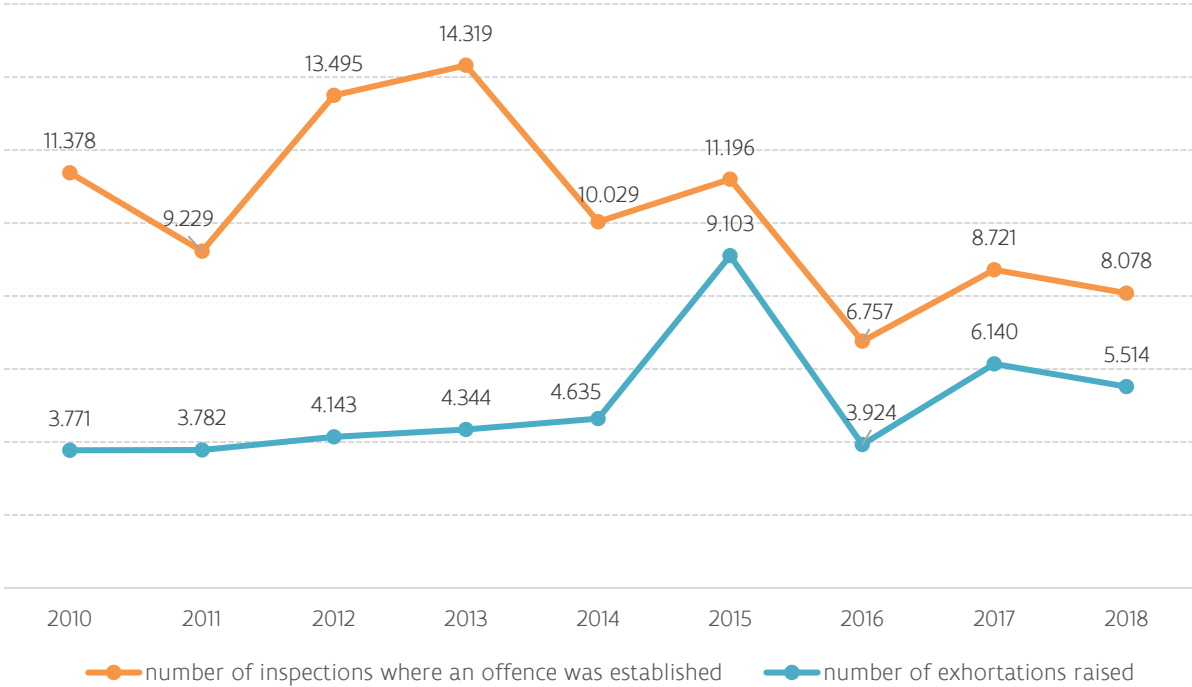
Enforcement body	Number of inspections where an offence was established	Number of exhortations by supervisors	% share in 2018
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON)	2	2	100%
Department of Environment and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI)	564	1,157	205%
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)	66	17	26%
Agency for Nature and Forests (ANB)	1,418	818	58%
De Vlaamse Waterweg NV (Flemish Waterways plc)	20	1	5%
Agency for Roads and Traffic (AWV)	196	0	0%
Flemish Agency for Care and Health (VAZG)	726	565	78%
Public Waste Agency of Flanders (OVAM)	232	134	58%
Flemish Land Agency (VLM)	575	371	65%
Flemish Environment Agency (VMM)	/	/	/
Department of Mobility and Public Works (MOW)	0	0	0%
Agency for Maritime Services and Coast	0	0	0%
Provincial supervisors	101	82	81%
Municipal supervisors	2,008	1,374	68%
Supervisors intermunicipal partnerships	223	126	57%
Local Police supervisors	1,947	867	45%
Total	8,078	5,514	68%

Table 27 Number of exhortations raised by supervisors in relation to the total number of inspections where an offence was established

The table above shows that exhortations were a widely used instrument in 2018. A warning was issued in 68% of all inspections where an offence was established.

The above data also show that every regional supervisory body which carried out inspections where an offence was established, except for the Roads and Traffic Agency, used the exhortation as an instrument. 2018 saw the Enforcement Division – Environmental Inspectorate issue twice as many exhortations as the number of inspections where an offence was established. Among the local enforcement bodies too, the instrument was abundantly used. In anticipation of the figures to be presented in the chapters that follow, it even appears that several bodies prefer to issue an exhortation for an established offence rather than raise an official report or an identification report.

The graph below shows an overview of the use of the instrument 'exhortation' in relation to the total number of inspections where offences were established over the 2010-2018 time frame.



Graph 41 Number of exhortations raised in respect to the number of inspections where an offence was established over the 2010-2018 time frame

The above graph shows that the total number of exhortations was increasing until 2015, peaking at 9,103 warnings in that same year. From 2016 forward, the number of exhortations started to fluctuate more. The percentage ratio in respect to the number of inspections where an offence was established is similarly fluctuating in nature. In the early days (2010-2014), this percentage was somewhere between 31% and 47%. From 2015 forward, the percentage fluctuated between 58% and 81%. In a general sense, it is safe to say that since 2015 more exhortations have been issued in respect of the offences established.

3.6 ASSESSMENT OF THE 'IDENTIFICATION REPORT' INSTRUMENT

The 'identification report' is an enforcement instrument that was created when the Environmental Enforcement Decree came into force on 1 May 2009. One of the important amendments to the Environmental Enforcement Decree is the depenalizations of certain offences of environmental legislation; these offences have a limited impact on the environment and must meet a number of cumulative criteria. This resulted in a list of behaviours that qualify as an environmental infringement. This list is included in the various Schedules to the Order of 12 December 2008. These behaviours are consequently no longer punishable. The identification report is the tool for reporting environmental infringements, which means they can subsequently only be sanctioned administratively. The supervisor may raise such an identification report, but is not obligated to do so. The supervisors has a discretionary power in this respect and is therefore free to decide whether or not to use it.

The table below shows the number of identification reports raised by the individual supervisory authorities compared to the number of inspections where an offence was established in 2018.

Please note that the 'identification report' is an instrument that is used by the supervisor to establish an environmental infringement. The figure with which the instrument is compared to is the number of inspections where an offence was established – environmental crimes as well as environmental infringements. For this reason, the data below does not reflect the number of times an environmental infringement was established and the number of times an incident report was raised.

Enforcement body	Number of inspections where an offence was established	Number of identification reports by supervisors	% share in 2018
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON)	2	0	0%
Department of Environment and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI)	564	4	1%
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)	66	0	0%
Agency for Nature and Forests (ANB)	1,418	84	6%
De Vlaamse Waterweg NV (Flemish Waterways plc)	20	0	0%
Agency for Roads and Traffic (AWV)	196	0	0%
Flemish Agency for Care and Health (VAZG)	726	0	0%
Public Waste Agency of Flanders (OVAM)	232	23	10%
Flemish Land Agency (VLM)	575	1	0%
Flemish Environment Agency (VMM)	/	/	/
Department of Mobility and Public Works (MOW)	0	0	0%
Agency for Maritime Services and Coast	0	0	0%
Provincial supervisors	101	0	0%
Municipal supervisors	2,008	20	1%
Supervisors intermunicipal partnerships	223	0	0%
Local Police supervisors	1,947	16	1%
Total	8,078	148	2%

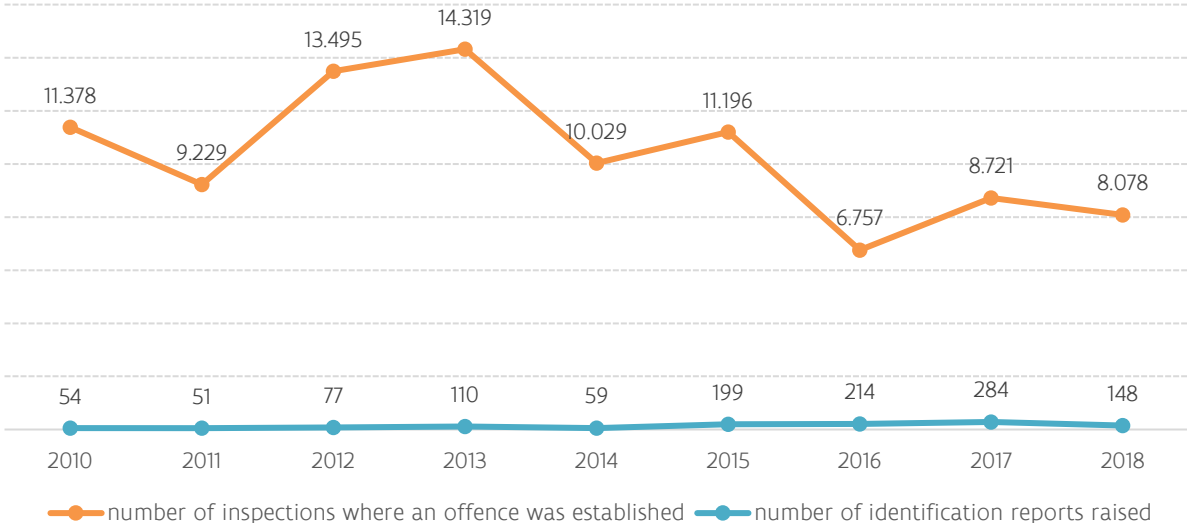
Table 28 Number of identification reports raised by the supervisors compared to the number of inspections where an offence was established

Compared to the other instruments, generally speaking, for 2018 too it is safe to say that the identification report instrument is not used very often, whether in absolute numbers or percentage-wise. In all, just 148 identification reports were raised. The majority thereof, i.e. 57%, were raised by the Agency for Nature and Forests.

In addition, 16% and 14% of the total number of identification reports raised were respectively imposed by OVAM and the municipal supervisors.

In anticipation of the figures in the next chapter, for 2018 too – same as in the previous reports – a discrepancy is found to exist between the number of identification reports raised and reported by the supervisory bodies and the number of identification reports that were actually referred to the regional entity of the Enforcement Division of the Department of Environment (formerly LNE-AMMC). The supervisory bodies reported they had raised a total of 148 identification reports, whereas the regional entity reported having received just 116 identification reports. This discrepancy could point to inaccurate monitoring or to the fact that the supervisors have raised incident reports but ultimately did not end up referring them to the regional entity.

The graph below shows an overview of the number of identification reports raised over the 2010-2018 time frame compared to the number of inspections where an offence was established.



Graph 42 Number of identification reports raised in relation to the number of inspections where an offence was established over the 2010-2018 time frame

The above graph shows that a total of 1,196 incident reports has been raised since 2010. However, the annual number is seen to fluctuate, showing a strong increase since 2015. This rise in the number of identification reports does not necessarily mean that the number of environmental infringements that have been established since has gone up. Especially as the supervisors can decide for themselves whether or

not an identification report is to be raised for the environmental infringement established. In 2018 however, the number of raised identification reports dropped again.

3.7 EVALUATION OF THE 'OFFICIAL REPORT' INSTRUMENT

Where an environmental offence can be identified by means of an identification report, supervisors can²⁸ use an official report to report environmental crimes to the public prosecutor. The table below gives an overview of the initial official reports drawn up by each supervisor in 2018, in relation to the number of inspections where an infringement was found.

The limitations of the available figures also apply here just like in the discussion of the 'identification report' instrument. The proportion of the number of official reports drawn up in relation to the number of inspections for which an infringement was found does not provide an entirely accurate picture of how environmental crimes are established. After all, the number of inspections where an infringement has been established may cover environmental crimes and environmental offences. In addition, supervisors are not obliged to establish the crime in an official report.

In March 2013, the 'Priority Memorandum on the Prosecution Policy for Environmental Law in the Flemish Region' protocol was signed by the Minister for the Environment and the Minister for Justice. This protocol sets out the priorities for supervision and criminal/ administrative treatment/prosecution so that the two can be reconciled. This protocol also provides that official reports drawn up for environmental crimes included in the priority memorandum are referred to as 'priority official reports'. For the survey on which this Environmental Enforcement Report 2018 is based, the VHRM therefore asked for a distinction to be made between the number of priority and non-priority official reports. The following table shows this.

²⁸ Since 2018, supervisors have no longer been obliged to establish an environmental crime in an official report.

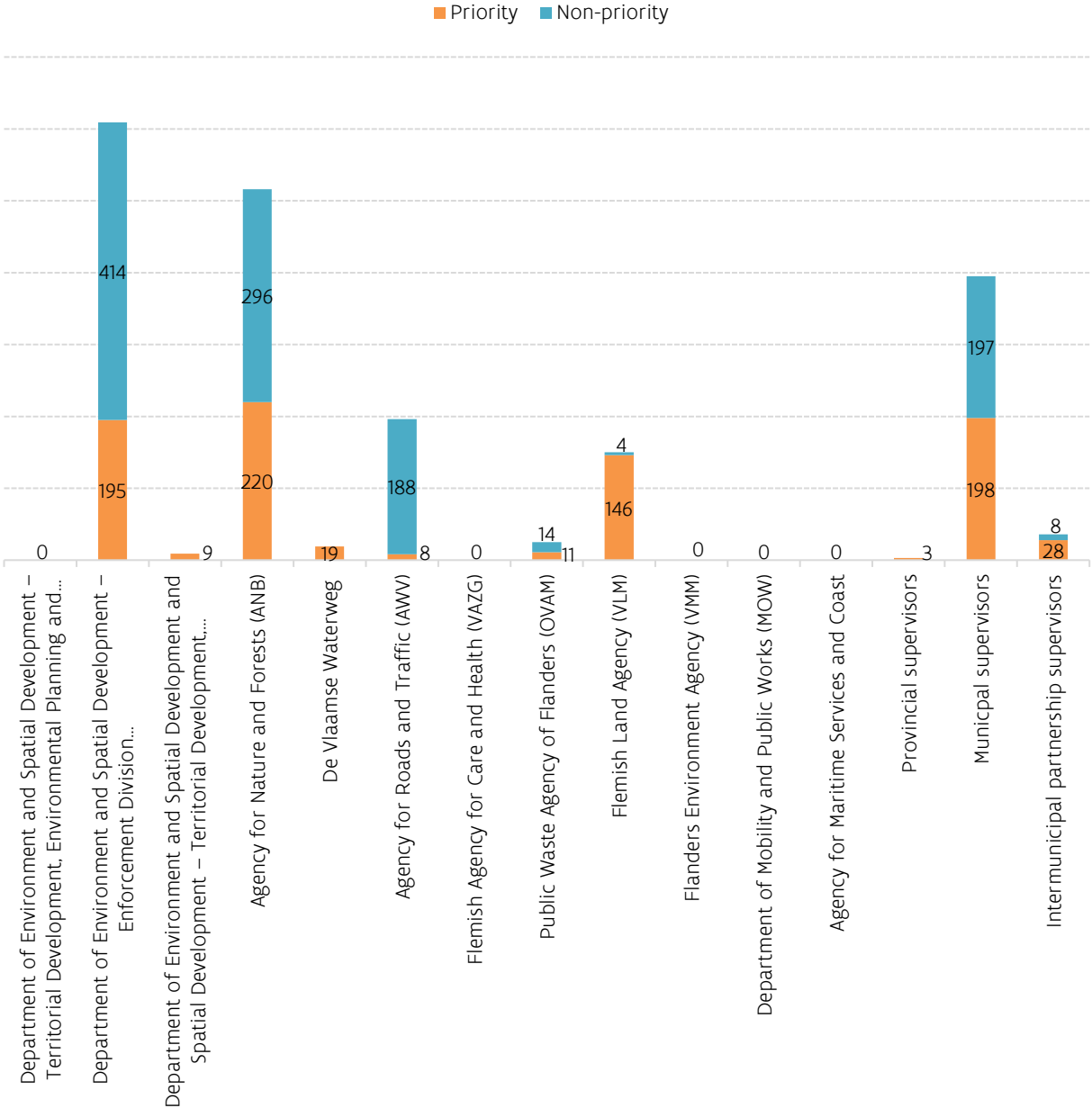
Enforcement actor	number of inspections where an infringement was identified	priority	% share of priority ORs	non-priority	% share of non-priority ORs
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON)	2	0	0%	0	0%
Department of Environment and Spatial Development and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI)	564	195	35%	414	73%
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)	66	9	14%	0	0%
Agency for Nature and Forests (ANB)	1418	220	16%	296	21%
De Vlaamse Waterweg	20	19	95%	0	0%
Agency for Roads and Traffic (AWV)	196	8	4%	188	96%
Flemish Agency for Care and Health (VAZG)	726	0	0%	0	0%
Public Waste Agency of Flanders (OVAM)	232	11	5%	14	6%
Flemish Land Agency (VLM)	575	146	25%	4	1%
Flemish Environment Agency (VMM)	/	/	/	/	/
Department of Mobility and Public Works (MOW)	0	0	0%	0	0
Agentschap Maritieme Dienstverlening en Kust (Agency for Maritime Services and Coast)	0	0	0%	0	0%
Provincial supervisors	101	3	3%	0	0%
Municipal supervisors	2,008	198	10%	197	10%
Intermunicipal partnership supervisors	223	28	13%	8	4%
Local Police supervisors	1,947	210	11%	790	41%
Total	8,078	1,047	13%	1,911	24%

Table 29 Number of official reports drawn up by supervisors of the number of inspections where an infringement was identified

An official report was drawn up in 2018 for 2,958 of a total of 8,078 inspections where an infringement was established. This represents a percentage ratio of almost 37%. As in the previous reports, this points to the existing pragmatic approach of article 29 of the Criminal Procedure Code, which stipulates that an official report must be drawn up when a crime is established and that this official report must be submitted to the Public Prosecutor. Taking into account the limitations of the figures and the fact that the identified violations could also constitute environmental offences, it may be concluded that the majority of the supervisory authorities also use other instruments, as already demonstrated in the section on exhortations, than the official report in order to achieve the intended objective, without always having to initiate criminal proceedings. In 2018, the Environmental Enforcement Decree adapted this framework in the sense that supervisors are no longer obliged to draw up an official report when identifying a crime, but this instrument has become optional.

In March 2013, the 'Priority Memorandum on the Prosecution Policy for Environmental Law in the Flemish Region' protocol was signed by the Minister for the Environment and the Minister for Justice.

This protocol sets out the priorities for supervision and criminal/administrative treatment/prosecution so that the two can be reconciled. This protocol also provides that official reports drawn up for environmental crimes included in the priority memorandum are referred to as 'priority official reports'. For the survey on which this Environmental Enforcement Report 2018 is based, the VHRM therefore asked for a distinction to be made between the number of priority and non-priority official reports. The following graph shows this ratio – in addition to the figures in the previous table.

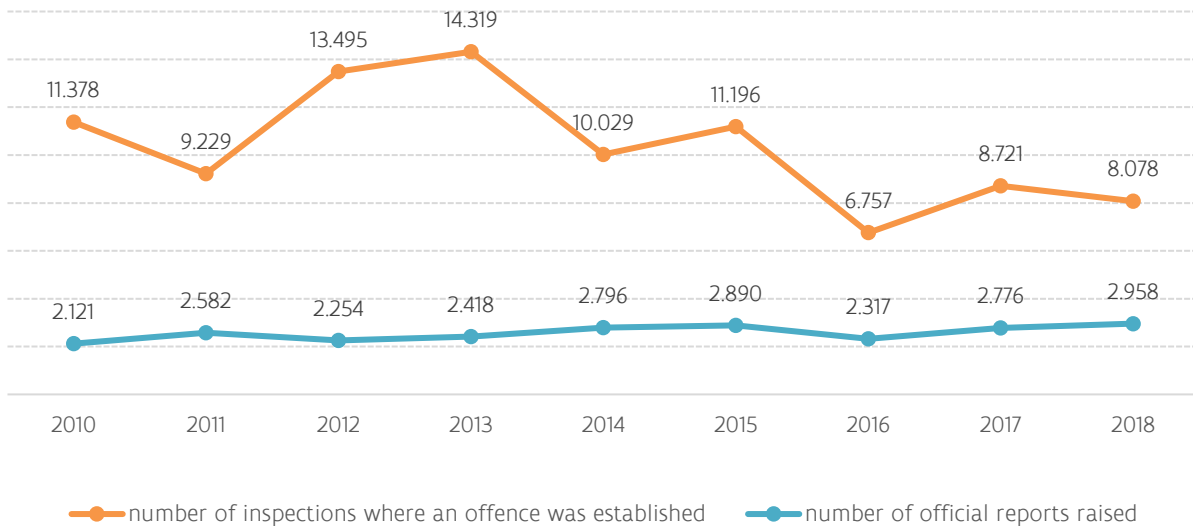


Graph 43 The ratio between priority and non-priority official reports in 2018

The graph above shows the ratio between the number of priority and non-priority official reports drawn up in 2018 for each supervisor. In general, this ratio was 35% for priority official reports compared with 65% for non-priority official reports. In general, it can therefore be said that 1/3 of the official reports drawn up were categorised by the supervisors as priorities pursuant to the Priority Memorandum.

However, a distinction can be made between the various supervisory authorities: Certain bodies, such as the VLM and De Vlaamse Waterweg, (almost) only draw up priority official reports. On the other hand, other bodies such as the Enforcement Division – Environmental Inspectorate and the Agency for Roads and Traffic mainly draw up non-priority official reports or draw up both priority and non-priority official reports.

Based on the data from previous reports, the graph below gives an overview of the total number of official reports drawn up in relation to the total number of inspections in which an infringement was established for the period 2010-2018.



Graph 44 The number of official reports made in relation to the number of inspections where an infringement was identified for the period 2010-2018

It can be determined that the number of official reports drawn up by supervisors for the identification of environmental crimes fluctuated in the period 2010- 2018. It is striking, however, that in 2018 almost 3,000 official reports were drawn up, which is the largest number in the period studied, whereas just that year the drawing up of an official report for an identified environmental crime became an option for supervisors. Previously this was a requirement. This is also visible in the percentage ratio of the number of official reports to the number of inspections during which an infringement was identified. In 2018 the ratio was 37%, whereas in previous years it had been decreasing, with the lowest percentage ratio, 17%, in 2012 and 2013. This may indicate that, even though the drawing up of an official report has become optional, supervisors feel increasingly familiar with the use of this instrument.

3.8 EVALUATION OF THE 'ADMINISTRATIVE MEASURES' INSTRUMENT AND 'APPEALS AGAINST DECISIONS IMPOSING ADMINISTRATIVE MEASURES'

3.8.1 Evaluation of the 'administrative measures' instrument

Articles 16.4.2 to 16.4.18quater of the DABM regulate the imposition, lifting, execution, appeal and requests to impose administrative measures, as well as the possibility of imposing an administrative penalty payment in the event that administrative measures are not implemented on time or not at all. The appeal against decisions imposing administrative measures is discussed in more detail in chapter 3.8.2.

According to article 16.4.7 of the DABM, administrative measures may take the form of:

- ▶ an order to take measures to end the environmental offence or crime, to remedy its effects in whole or in part, or to prevent its recurrence (regularisation order);
- ▶ an order to cease activities, works or the use of certain objects (injunction);
- ▶ an actual action by the persons referred to in article 16.4.6, at the expense of the person against whom the administrative measures were imposed, to end the environmental offence or the environmental crime, to remedy the consequences of the environmental offence or the environmental crime in whole or in part, or to prevent its recurrence (administrative order);
- ▶ a combination of these measures.

The supervisor, the mayor and the provincial governor may therefore choose whether or not to use the administrative measure instrument in a specific situation. The regularisation order has the same purpose as the exhortation; supervisors may choose the most appropriate instrument. When choosing the instrument, the principle of proportionality must be respected in accordance with art. 16.4.4 of the DABM.

The following table gives an overview of the total number of imposed administrative measures in relation to the number of inspections where an infringement was identified by supervisory authority in 2018.

Regional enforcement body	number of inspections where an infringement was identified	number of administrative measures imposed by supervisors	% share in 2018
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON)	2	0	0%
Department of Environment and Spatial Development and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI)	564	36	6%
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)	66	0	0%
Agency for Nature and Forests (ANB)	1418	227	16%
De Vlaamse Waterweg	20	0	0%
Agency for Roads and Traffic (AWV)	196	0	0%
Flemish Agency for Care and Health (VAZG)	726	0	0%
Public Waste Agency of Flanders (OVAM)	232	13	6%
Flemish Land Agency (VLM)	575	12	2%
Flemish Environment Agency (VMM)	/	/	/
Department of Mobility and Public Works (MOW)	0	0	0%
Agentschap Maritieme Dienstverlening en Kust (Agency for Maritime Services and Coast)	0	0	0%
Provincial supervisors	101	0	0%
Municipal supervisors	2,008	187	9%
Intermunicipal partnership supervisors	223	0	0%
Local Police supervisors	1,947	198	10%
Total	8,078	673	8%

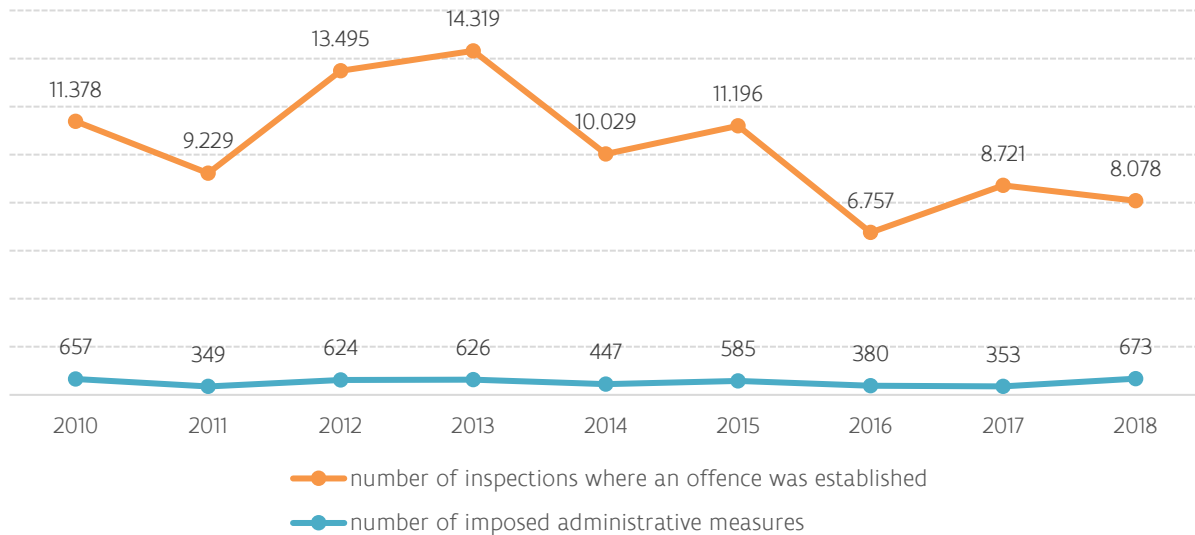
Table 30 The number of imposed administrative measures in relation to the number of inspections where an infringement was identified in 2018

In 2018, a total of 673 administrative measures were imposed by the supervisory authorities. In percent- age terms, compared with the number of inspections where an infringement was detected, this equates to 8%.

Table 30 shows that, as in previous years, not all supervisors make use of the administrative measures instrument. The majority of imposed administrative

measures were imposed by the ANB (Agency for Nature and Forests), i.e. 34%, followed by Local Police supervisors, who imposed 28% of the total number of administrative measures imposed in 2018.

The graph below gives an overview of the total number of administrative measures imposed in the period 2010-2018.



Graph 45 The number of imposed administrative measures in relation to the number of inspections where an infringement was identified for the period 2010-2018

The graph above shows that the number of administrative measures imposed since the entry into force of the Environmental Enforcement Decree has remained at the same level, which means that there is no question of a “learning curve”, as supervisors have used this instrument from the start, and in a constant manner over the past years. The percentage ratio of the number of imposed administrative measures in relation to the number of inspections where an infringement was detected fluctuated only moderately between 4% and 8% in the period 2010-2018.

The data below look in more detail at the administrative measures imposed in 2018. Thus, the following table gives an overview of the share of the various types of administrative measures for each supervisor in 2018. In addition, the survey for this environmental enforcement report also included a question about the number of administrative measures imposed in response to a request. Article 16.4.18. of title XVI of the DABM states that persons who meet one of the following definitions may apply for an administrative measure:

- ▶ natural and legal persons who suffer directly as a result of the environmental offence or the environmental crime;
- ▶ natural and legal persons with an interest in curbing the environmental offence or the environmental crime;
- ▶ legal persons within the meaning of the Act of 12 January 1993 on a right of action for the protection of the environment.

Any request to impose an administrative measure must be addressed to persons authorised to impose it. Article 16.4.6 of the DABM stipulates that supervisors, for environmental legislation to which their supervisory duties relate; the governor of a province or his deputy, for environmental offences or environmental crimes designated by the Government of Flanders; and the mayor or his deputy, for environmental offences or environmental crimes designated by the Government of Flanders, are all authorised to respond to requests by imposing an administrative measure. Table 31 therefore shows, in addition to the type of administrative measure, the number of administrative measures imposed in response to a request.

To gain insight into the proportion of administrative measures that were not implemented within

the imposed period, the various bodies were also asked to provide this number for this environmental enforcement report. These figures are also shown in the following table together with the different kinds of imposed administrative measures.

Since 2014, regional supervisors have been able to impose an administrative penalty payment together with administrative measures in the event that the administrative measures are not implemented or are not implemented in time. The regional supervisors were therefore asked in how many cases the imposed administrative measures were linked to an administrative penalty payment and in how many cases this administrative penalty payment was actually collected. The following table shows this.

Regional enforcement body	Administrative measures													
	Injunction		Regularisation order		Administrative order		Combination of the aforementioned administrative measures		Imposed in response to a request		it was not possible to have the AM carried out within the imposed time frame		In how many cases were the imposed administrative measures linked to an administrative penalty payment?	In how many cases has this administrative penalty payment been collected?
	#	%	#	%	#	%	#	%	#	%	#	%	#	#
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON)	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0
Department of Environment and Spatial Development and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI)	13	36%	17	47%	2	6%	4	11%	2	6%	6	17%	6	3
Department of Environment and Spatial Development and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0
Agency for Nature and Forests (ANB)	8	4%	132	58%	78	34%	9	4%	0	0%	17	7%	13	0
De Vlaamse Waterweg	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0
Agency for Roads and Traffic (AWV)	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0
Flemish Agency for Care and Health (VAZG)	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0
Public Waste Agency of Flanders (OVAM)	0	0%	2	0%	8	0%	3	0%	0	0%	4	0%	2	1
Flemish Land Agency (VLM)	0	0%	10	83%	0	0%	2	17%	0	0%	3	25%	0	0
Flemish Environment Agency (VMM)	/	/	/	/	/	/	/	/	/	/	/	/	/	/
Department of Mobility and Public Works (MOW)	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0
Agentschap Maritieme Dienstverlening en Kust (Agency for Maritime Services and Coast)	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0
Provincial supervisors	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0
Municipal supervisors	46	25%	93	50%	13	7%	35	19%	19	10%	41	22%	0	/
Intermunicipal partnership supervisors	0	0%	0	0%	0	0%	0	0%	0	%	0	0%	/	/
Local Police supervisors	4	2%	188	95%	3	2%	3	2%	1	1%	100	51%	/	/
Total	71	11%	442	66%	104	15%	56	8%	22	3%	171	25%	21	4

Table 31 The type of imposed administrative measures

Table 31 shows that the majority of all 673 imposed administrative measures were regularisation orders in 2018, namely 66% of the total number of imposed administrative measures. In previous years, this was also the most commonly used type of administrative measure. In 2018, the administrative measure took the form of an administrative order 104 times, which means that 15% of the total number of administrative measures involved administrative orders. A total of 71 injunctions were issued, representing 11% of the total number of imposed administrative measures. Approximately 3% of all administrative measures imposed in 2018 were imposed in response to a request.

The data in the table show that in no fewer than 171 of the total of 673 imposed administrative measures it was not possible to have these implemented within the required period. This represents 1/4 of the total number of imposed administrative measures. It was mainly the administrative measures imposed by local supervisors (municipal supervisors and local police supervisors) that could not be implemented within the imposed deadline. For municipal supervisors, this was 1/5 of the imposed administrative measures, and for local police supervisors, this was even the case for more than half of the imposed administrative measures. A necessary condition for the effectiveness of an administrative measure is that it must also be implemented within an imposed period. Postponing this measure may lead to more damage and increased risks. The 'administrative penalty payment' instrument can offer a solution to exert additional pressure for those administrative measures that are not implemented on time. In 2018, only 21 cases of an administrative penalty payment were linked to an administrative measure. The administrative penalty payment was actually collected in four of these cases.

3.8.2 Appeals against administrative measures

Number of appeals lodged against decisions regarding administrative measures and against the administrative penalty payment and decisions relating thereto

Article 16.4.17 of the DABM provides that a person on whom administrative measures have been imposed, including administrative penalty payments, may appeal to the minister against a decision regarding administrative measures, including administrative penalty payments that may have been imposed. The appellant may also lodge an appeal against the administrative penalty payment alone. The appeal must be submitted to the minister at the address of the Department of Environment and Spatial Development and Spatial Development, Enforcement Division within fourteen days of the notification of the decision regarding the administrative measures or the administrative penalty payment.

In 2018, 55 appeals were lodged against decisions regarding administrative measures. Of these appeals, 22 related to environmental hygiene and 33 to environmental management. Five of the appeals were appeals lodged against a decision on administrative measures to which a penalty payment was linked.

The Enforcement Division of the Department of Environment and Spatial Development (formerly LNE-AMMC) is responsible for preparing the appeal case; in other words, the Enforcement Division examines its admissibility, organises a hearing if necessary and formulates a recommendation for the minister. The figures obtained via the Enforcement Division survey report that that 10 appeals were ruled inadmissible and 45 admissible.

Upon receipt of the appeal, the minister must decide on the admissible appeals within 90 days. Provided that the appellant and the person who imposed the administrative measure are notified of this, the minister may extend this period once by 90 days.

Since the administrative measure may expire if the decision is taken too late, it is important that the minister decides within the time limit provided in the decree. The following table gives an overview of the minister’s decisions for admissible appeals against decisions involving administrative measures in the period 2010-2018.

	2018	2017	2016	2015	2014	2013	2012	2011	2010
total number of appeals	55	53			60	38	38	44	39
Total number of admissible appeals	45	44	31	39	52	32	26	34	29
Decision of the minister within the time limit laid down by decree	30	36	26	36	45	28	26	34	29
Number of times the minister requested an extension of the deadline	3	0	2						
Number of cases in which the minister has not yet made a decision because the term was still running at the time of reporting	12	7	5	3					
Number of appeals fully upheld	6	3	3	5	14	3	4	4	6
Number of appeals partially upheld	8	14	9	9	12	5	4	5	8
Number of appeals declared unfounded	14	18	9	15	15	18	18	19	15
Number of appeals void of purpose	2	1	5	7	4	2	2	6	0

Table 32 A comparison of the minister’s decisions for admissible appeals in relation to decisions involving administrative measures from 2018-2010

The table above shows that, in 2018, a decision was taken on 30 admissible appeals within the time limit set by the decree. For 12 appeals, the period within which the minister had to take a decision had not yet expired at the time of the report. An extension of the deadline was requested for three appeals.

Almost half of the minister’s decisions in 2018 concerned a dismissal of the appeal as unfounded, while 27% were partially upheld and 20% were fully upheld. Moreover, 7% of the minister’s decisions concerned appeals devoid of purpose²⁹. In 2017 and 2016, the minister’s decisions concerned appeals justified in full in 12% and 14% of cases respectively; 35% and 25% justified in part; 35% and 42% of appeals were based on an unfounded statement of grounds.

It can be determined that, in recent years, the majority of the minister’s decisions, namely 44% of the total number of admissible appeals, on whether the appeals concerning administrative measures were admissible have been dismissed on the grounds that they were unfounded; this constitutes an integral confirmation of the administrative measure.

The following table shows the number of appeals against decisions involving administrative measures in relation to the total number of imposed administrative measures for the period 2009-2018.

²⁹ The difference between an inadmissible appeal and an appeal devoid of purpose can be illustrated by a few examples. An inadmissible appeal does not meet the conditions for admissibility. For example, the time limits for appeal were not respected or a copy of the contested decision was not attached to the appeal case. Appeals declared devoid of purpose, for example, appeals in which the administrative measure was lifted by the supervisor himself, after all the conditions contained in the decision on administrative measures had been met by the offender. The purpose of the appeal no longer exists because the offender has amended his situation but after the appeal has been declared admissible.

Type of imposed administrative measure	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009
Injunction	16.90%	19.51%	14%	5%	15%	9.18%	20.83%	6.09%	9.33%	9.09%
Regularisation order	7.47%	17.39%	10%	12%	16%	4.25%	3.26%	19.48%	6.51%	1.48%
Administrative order	0.96%	0%	2%	2%	10%	14.29%	3.13%	25.00%	0.00%	0.00%
Combination of the aforementioned administrative measures	16.07%	8.82%	3%	4%	0%	9.21%	24.02%	4.12%	1.64%	10.64%
In how many cases was an administrative penalty payment linked to it?	1.32%	0.26%	0.26%							

Table 33 The percentage share of the number of appeals against decisions involving administrative measures in relation to the total number of imposed administrative measures by type from 2018-2009

The table shows that, in the period 2009-2018, in most years the appeals lodged were mainly related to injunctions. The percentage of appeals for the different types of administrative measures fluctuates during the period studied.

Number of appeals lodged against dismissed requests to impose administrative measures and decisions relating thereto

Article 16.4.18 §4 of the DABM stipulates that an appeal may be lodged with the minister against a refusal to impose an administrative measure. The minister will decide on the appeal within sixty days of its receipt. The Enforcement Division of the Department of Environment and Spatial Development (formerly LNE-AMMC) advises the minister on these appeals.

The following table gives an overview of the number of appeals lodged against dismissed requests to impose administrative measures.

	2018	2017	2016	2015	2014	2013	2012	2011	2010
Total number of appeals lodged against dismissed requests to impose administrative measures	7	18	11	5	10	7	6	11	8
Number of appeals declared admissible	7	12	9	3	8	5	4	10	8
Number of appeals fully upheld	1	3	3	2	0	0	0	1	1
Number of appeals partially upheld	0	0	0	/	0	2	1	3	1
Number of appeals declared unfounded	4	8	3	1	6	1	3	6	6
Number of appeals void of purpose	0	1	2	0	1	0	0	6	6
Appeals for which a decision was taken within the period of 60 days as laid down by decree	5	11	7	3	7	7	6		
Appeals in respect of which no decision has yet been given because the time limit is still running (even if this is a non-mandatory time limit)	2	0	0	/		0	0	0	1
Number of appeals related to environmental hygiene	7	12	11	/					
Number of appeals related to environmental management	0	0	0	/					

Table 34 The number of appeals lodged against refused requests to impose administrative measures from 2018-2010

Table 34 shows that, in 2018, 7 appeals were lodged against dismissed requests for the imposition of administrative measures. All the appeals lodged in 2018, all of which were related to environmental hygiene, were declared inadmissible. In five appeals, the minister took a decision within the time limit provided for in the decree. In the other two cases, the deadline had not yet been reached. Only 1 request was granted. The other four appeals were unfounded.

In the period 2010-2018, a total of 83 appeals were lodged against dismissed requests for the imposition of administrative measures. 80% of these were declared admissible. Of the 64 admissible appeals for the period 2010-2018 in which the minister has already ruled, 28% were upheld in part or in full.

3.9 EVALUATION OF THE 'SAFETY MEASURES' INSTRUMENT

Chapter VII of title XVI of the DABM discusses, inter alia, the procedure for taking safety measures with regard to persons responsible for significant risks, as well as for lifting safety measures. For a better understanding of the figures below and the accompanying evaluation, articles 16.7.1 and 16.7.2 of the Environmental Enforcement Decree are reproduced below.

Article 16.7.1 defines the 'Safety Measures' instrument as: "Safety measures are measures whereby persons as specified in §1 can take or impose all actions that they deem necessary in the given circumstances to eliminate, reduce to an acceptable level or stabilise a significant risk to man or the environment." The following article, article 16.7.2, provides that safety measures may include, inter alia:

- ▶ the suspension or execution of works, operations or activities immediately or within a specified period;
- ▶ the prohibition on the use or the sealing of buildings, installations, machinery, apparatus, means of transport, containers, land and anything therein or thereon;
- ▶ the total or partial closure of an establishment;
- ▶ the confiscation, storage or removal of relevant items, including waste materials and animals;
- ▶ the prohibition or evacuation of certain areas, grounds, buildings or roads.

Taking a safety measure is therefore an administrative act for which supervisors, mayors and provincial governors have a discretionary power.

Unlike supervision and the enforcement instruments discussed in this chapter, the use of safety measures is not part of the enforcement process. Safety measures may be imposed where there is a significant risk to man or the environment. This means that safety measures are a completely separate category within the Environmental Enforcement Decree, so they do not constitute an administrative measure nor an administrative fine or a criminal sanction. Although they are restrictive measures, they do not presuppose any fault on the part of the person to whom they are addressed, nor are they intended to punish. A safety measure focuses on the public interest and in particular on safeguarding public health, order, rest and safety³⁰. Since safety measures can be imposed by, among others, supervisors as described in the Environmental Enforcement Decree, they are included as instruments in this chapter. However, it is not the goal to weigh the number of imposed safety measures against the total number of performed environmental enforcement inspections, as was the case with the previous instruments. It will only be investigated how many and which safety measures were taken by which bodies.

The following table gives an overview for 2018 of the number and type of imposed safety measures, broken down by supervisory body. The supervisory authorities were also asked to report the number of safety measures for which it was not possible to enforce the measure within the imposed time limit. The security measures imposed by the governors and the mayors have already been discussed separately in chapters 2.3.1 and 2.3.4 respectively.

³⁰ Explanatory Memorandum, Parliamentary Proceedings, Session 2006-2007, 13 June 2007, document 1249 (2006-2007)- no. 1, p. 12 and p. 15

Enforcement actor	Suspension or execution of works, operations or activities	the prohibition on the use or the sealing of buildings, installations, machinery, apparatus, means of transport, containers, land and anything therein or thereon;	the total or partial closure of an establishment	the confiscation, storage or removal of relevant items, including waste materials and animals	the prohibition or evacuation of certain areas, grounds, buildings or roads	Other	Combination	Total 2018	it was not possible to have the safety measures carried out within the imposed time frame
Department of Environment and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON)	0	0	0	0	0	0	0	0	0
Department of Environment and Spatial Development – Enforcement Division – Environmental Inspectorate (formerly AMI)	1	0	0	1	0	0	0	2	1
Department of Environment and Spatial Development – Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)	0	0	0	0	0	0	0	0	0
Agency for Nature and Forests (ANB)	0	0	0	1	0	0	0	1	0
De Vlaamse Waterweg	0	0	0	0	0	0	0	0	0
Agency for Roads and Traffic (AWV)	0	0	0	0	0	0	0	0	0
Flemish Agency for Care and Health (VAZG)	61	0	0	0	0	0	0	61	0
Public Waste Agency of Flanders (OVAM)	0	0	0	0	0	0	0	0	0
Flemish Land Agency (VLM)	0	0	0	0	0	0	0	0	0
Flemish Environment Agency (VMM)	/	/	/	/	/	/	/	/	/
Department of Mobility and Public Works (MOW)	0	0	0	0	0	0	0	0	0
Agentschap Maritieme Dienstverlening en Kust (Agency for Maritime Services and Coast)	0	0	0	0	0	0	0	0	0
Provincial supervisors	0	0	0	0	0	0	0	0	0
Municipal supervisors	11	4	1	1	9	2	5	33	3
Intermunicipal partnership supervisors	0	0	0	5	0	0	0	5	0
Local Police supervisors	4	1	1	10	2	0	2	20	0
Total	77	5	2	18	11	2	7	122	4

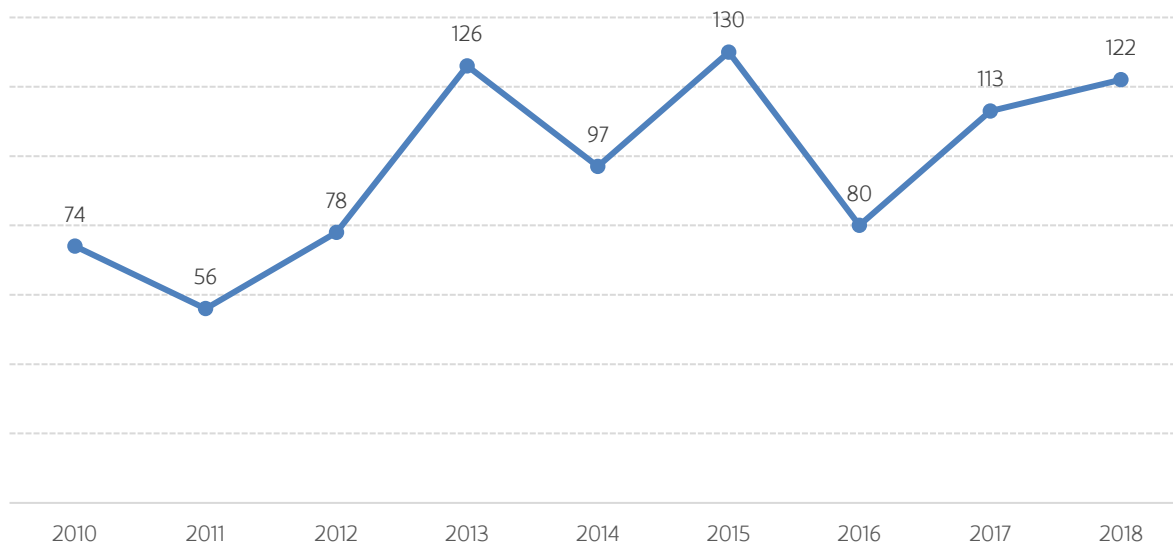
Table 35 Nature of the imposed safety measures

A total of 122 safety measures were imposed in 2018. Half of the total number of imposed safety measures were imposed by the Flemish Agency for Care and Health. In 2018, municipal supervisors imposed 27% of the total number of imposed safety measures.

In 18 out of a total of 122 imposed measures, the safety measure involved confiscating, storing or removing of sensitive items, including waste and animals; in 63% of cases, the suspension or execution of works, operations or activities; and in 9% of cases, the safety measure involved a prohibition or evacuation of certain areas, grounds, buildings or roads.

The data show that in 2018, four imposed safety measures were not implemented within the imposed deadline.

The graph below shows the total number of imposed safety measures for the period 2010-2018.



Graph 46 Total number of imposed safety measures from 2010-2018

It can be determined that the number of imposed safety measures fluctuated in the period 2010-2018. As the imposition of a safety measure is not linked to the number of environmental enforcement inspections carried out, the fluctuating nature is not surprising either.

3.10 CASES

The previous sections provided a statistical picture of the way in which the instruments from the Environmental Enforcement Decree were used. In order to obtain some idea of the way in which environmental enforcement inspections are carried out in practice and in the field and the various instruments are used, the members, representatives and deputies of the VHRM were asked to provide cases for this environmental enforcement report that make the environmental enforcement practice more concrete for the reader. A number of practical examples are presented below.

Case 1: complaint of noise from a rubble crusher

In the summer of 2018, the Enforcement Division received a complaint about noise nuisance, allegedly originating from an excavator. The company in question had only recently obtained a permit for an extension with a rubble crushing installation and had put it into service immediately.



However, the supervisor had not been informed in advance of the commissioning of this new section 2 activity and the time limit for lodging an appeal had not yet expired either.

Immediately after receiving the complaint, the supervisors visited the site and carried out noise measurements, which showed that the standards were being exceeded. In addition, significant quantities of dust were being generated and dispersed during crushing.

The crushing activities were halted by the supervisor and the further operation of the newly licensed section 2 installations was

postponed (in application of Article 5.2.1.8 §1 of Vlare II) by the supervisor, as the conditions of the environmental legislation were not met. An official report was drawn up and the company received an exhortation.

In addition, a detailed review of the file at the office revealed that the authorised extension had been obtained based on incorrect

information provided to the licensing authority. Specifically, the acoustic modelling submitted in the context of the permit application did not correspond to the actual situation on the site. In the noise modelling, the drawing of buildings and the positioning of the crushing installation had clearly been tampered with in order to influence the calculated noise emissions in a favourable way. The supervisor informed the advisory bodies accordingly.

Since the time limit for appeal had not yet expired, the complainant also appealed against the authorised extension. Partly based on the findings of the supervisor and the manipulated acoustic modelling, the extension permit was definitively refused on appeal by the Minister.



Case 2: waste left behind



During a routine inspection in a warehouse at the port of Antwerp, supervisors from the Enforcement Division found approximately 300 tonnes of waste textiles, carpets and plastic. The site was not licensed for the storage of waste, so an official report was drawn up.

The company that was reported had leased part of its warehouse to a company that had said it would temporarily store the waste there and take care of the necessary permits itself but had failed to do so. The temporary storage had apparently also been dragging on for months and, despite repeated insistence by the landlord, no waste had been disposed of. The landlord had therefore also refused a final delivery and had heard from the driver that he would then drive on to a container terminal.



An inspection of this terminal by the supervisors revealed the additional non-licensed storage of 1,100 tonnes of waste in containers. The terminal had also agreed to temporary storage, but the waste was never disposed of and rents had not been paid for months.



All available documents relating to these cargoes were requested and checked in detail. This revealed that an 'old acquaintance' was involved in the supply and abandonment of this waste. As a matter of fact, a few years earlier, the person in question had already left tonnes of waste at the port of Ghent.

For this reason, the supervisor immediately imposed two administrative measures on the waste collector concerned and asked OVAM to revoke the registration as a collector, dealer and broker on the one hand and to open a file for evasion of waste charges on the other. As the waste was found to originate from abroad, the relevant authorities in the country of dispatch were

also informed.

By drawing up 3 initial official reports, 2 administrative measures and 3 exhortations to the various companies involved, the total quantity of textile waste was finally removed to a legal destination. Further criminal prosecution of this waste fraud case will follow.



Case 3 bird trapping



Bird trapping is unfortunately still a relatively common practice today, according to figures from the West inspection region (Nature Inspectorate of East and West Flanders). In 2018, 124 reports were made to that inspection region, resulting in 48 ORs and the seizure of 921 birds, 884 of which were songbirds. In addition, 793 trapping devices were seized by the authorities and destroyed. Most birds are taken to a bird sanctuary to have the rings, which may well be fake, removed after a short rehabilitation period, after which a scientific ring is fitted. The birds are then released back into the wild.

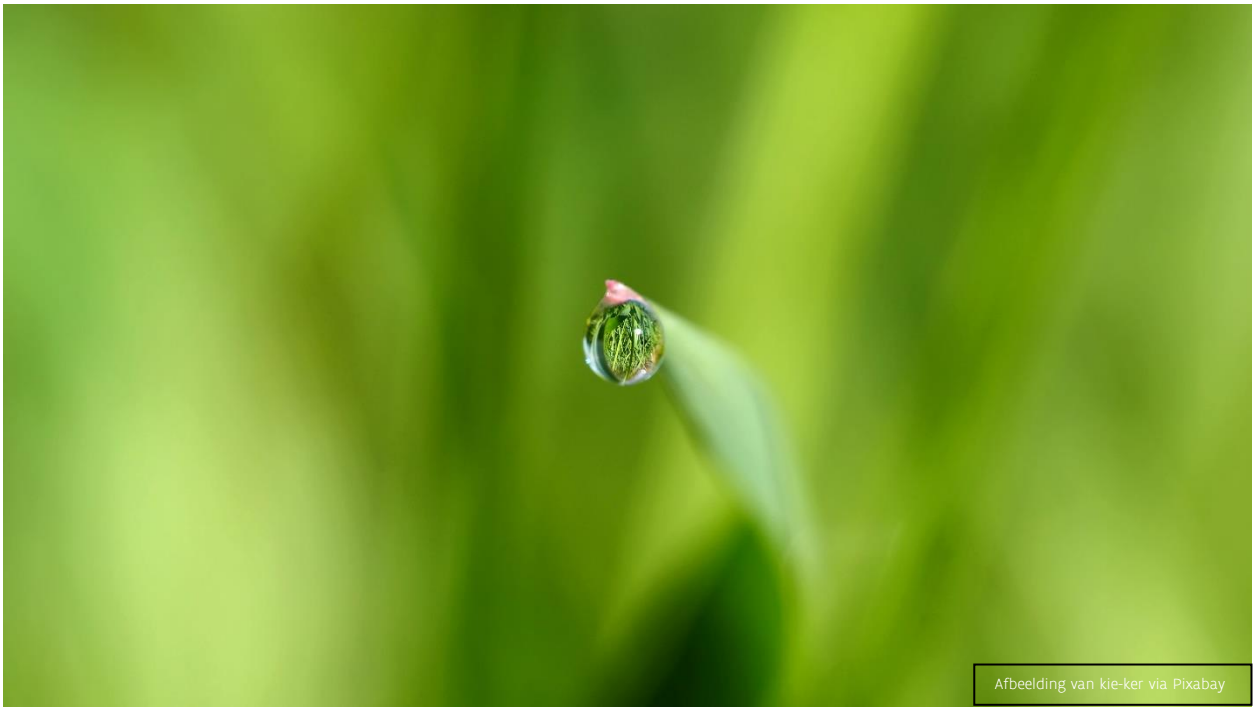
Bird trapping has been banned in Flanders since the 1970s, but it appears that many bird keepers cannot resist the temptation to steal 'fresh blood' from the wild to strengthen their own breeding. Others do it purely for reasons of criminal profit. The most captured species is undoubtedly the finch, with which so-called 'finch sittings' are organised, in which the owner of the strongest singer is eventually crowned finch king. Make no mistake, finches that sing many short songs that end in a perfect 'suske-wiet' change hands for many thousands of euros. So, there is money involved, meaning crime is often lurking around the corner.

Although bird trapping has declined sharply, there is still a lucrative trade, in which bird trappers, specialist ring-fakers and traders unite in a truly organised gang with one goal in mind: to make money at nature's expense. Now that bird stocks are under extreme pressure, with some species threatened with extinction, such crimes are entirely abhorrent. This has also been very well understood by the magistrates, judges and the administrative sanctioning entity: the fines that are issued are high, and where it is proven, assets are confiscated. The Nature Inspectorate is absolutely satisfied with the cooperation with the public prosecutors and the administrative sanctioning entity of the Enforcement Division. After all, it is this

cooperation that has led to a spectacular drop in bird trapping in Flanders! In 2010, 161 ORs for bird trapping and fraud were drawn up in Flanders and 3,727 birds and 1,828 devices were confiscated. Admittedly, the trapping of birds is still mainly practised by an older generation that is gradually dying out, but it is striking that the younger generation that is venturing into bird fraud is doing so on a much larger scale. Recently, professionally made fake leg rings have appeared to allow birds to be placed on the market illegally. Enforcement must therefore continue unabated!



Photo: Unmanipulated leg ring where the leg was "soaked" with a product so that the ring can be slid around the leg of an adult wild bird



4 EVALUATION OF ENVIRONMENTAL SANCTIONING POLICY

The addition of a title XVI “Supervision, enforcement and safety measures” to the decree of 5 April 1995 on the general provisions on environmental policy (DABM) created a framework that, in addition to criminal sanctions, also allows administrative sanctions to be imposed by means of alternative and exclusive administrative fines, with or without expropriation of unlawful material benefits³¹. For this purpose, a distinction is made between environmental crimes and environmental offences. The latter category are fairly mild breaches involving only limited impact on human and environmental health. An exhaustive list of these infringements has been drafted by the Government of Flanders and is included in the Schedules to the implementing order of the Environmental Enforcement Decree³². These environmental offences are not open to criminal penalties. However, they may be penalised by way of exclusive administrative fines imposed by the regional sanctioning entity that operates under the Enforcement Division of the Department of Environment and Spatial Development (referred to below as: regional sanctioning entity), which was established to this end. On the other hand, an alternative administrative fine can only be imposed for environmental crimes. In principle, such offences can be dealt with under criminal law, but if the Public Prosecutor decides not to treat them under criminal law and informs the regional sanctioning entity in time, the environmental crimes can be sanctioned by the regional sanctioning entity with an alternative administrative fine. The decision by the Public Prosecutor whether or not to prosecute the case is made on the basis of guidelines in the ‘Sorting Memorandum’.³³ The objective of the Sorting Memorandum of the Public Prosecutor’s Office is to determine, on the basis of, among other things, social relevance, a number of technical-legal, legal-economic, criminological and practical considerations, which cases will be dealt with under criminal law by the public prosecutor’s offices themselves and which cases will be submitted to the regional sanctioning entity for administrative fines, so that every official report is properly dealt with.

A supervisor has the power to compile an identification report if environmental infringements are encountered. This identification report is immediately transmitted to the regional sanctioning entity. The regional sanctioning entity may impose an exclusive fine, with or without expropriation of unlawful material benefits. Upon receipt of the identification report, the regional sanctioning entity has a 60-day period within which to notify the suspected offender of its intention to impose an exclusive administrative fine (which may or may not involve the expropriation of unlawful material benefits). Within 90 days further to the notification, to the regional sanctioning entity will decide on whether or not to impose an exclusive administrative fine, which may or may not involve the expropriation of unlawful material benefits. The suspected offender is to be notified of this decision within 10 days.

³¹ Expropriation of unlawful material benefits is a sanction whereby an offender is obliged to pay a sum of money, estimated or otherwise, equivalent to the gross amount of the unlawful material benefits derived from the environmental offence or crime (as defined in the environmental glossary).

³² The ‘administrative obligation’ criterion was deleted with a view to further decriminalising certain violations of environmental law (amendment to the Environmental Enforcement Decree 2013).

³³ <https://www.lne.be/sorteernota-van-het-openbaar-ministerie>

When an environmental crime is established, the reporting officer immediately transmits an official report to the Public Prosecutor attached to the court with jurisdiction for the legal district where the environmental offence was committed. Along with the official report, a written petition is to be included in which the Public Prosecutor is requested to pronounce on whether or not the environmental offence is to be criminally prosecuted. The Public Prosecutor has 180 days from the date on which he received the official report to return his reply. Before this time limit has expired it may be extended once only by a further period of no more than 180 days. Any such extensions must be justified. The regional sanctioning entity is to be informed of this extension. Both the decision by the Public Prosecutor to bring the environmental offence before the criminal court, as well as the Public Prosecutor's failure to notify the regional sanctioning entity of his decision in timely fashion, preclude the imposition of an administrative fine by the regional sanctioning entity.

If the Public Prosecutor has informed the regional sanctioning entity in time of his decision not to criminally prosecute the environmental offence, the regional sanctioning entity is to initiate the procedure for the possible imposition of an alternative administrative fine. Upon receipt of this decision, the regional sanctioning entity is to notify the suspected offender within 30 days of its intention to impose an alternative fine (which may or may not include the expropriation of unlawful material benefits). The regional sanctioning entity then has 180 days to decide whether or not to impose an alternative administrative fine (which may or may not include the expropriation of unlawful material benefits). The suspected offender is to be notified of this decision within 10 days.

Both in the case of an alternative and an exclusive administrative fine, the suspected offenders may file an appeal with the Enforcement Court against the decision of the regional sanctioning entity.

In 2012, the administrative transaction was introduced with the Decree of 20 April 2012 containing various provisions relating to the environment and nature³⁴, the procedure for which entered into force on 23 August 2012. The Government of Flanders Order of 6 July 2012 elaborates on the modalities of the administrative transaction³⁵. Since 2012, and to impose an alternative or exclusive administrative fine, the regional sanctioning entity may put forward a proposal for a sum to be paid in certain "simpler cases" in the area of environmental offences or environmental infringements with a limited impact on the natural environment. However, the requirement in all of these cases is that the offences need to be irrefutably established on the part of the offender. If the offender fails to pay this type of "settlement proposal" on time, the regular fining procedure is then resumed. This instrument is mainly aimed at minor environmental and nuisance offences, which have a limited impact on the natural environment, but are socially offensive. For environmental offences, the administrative transaction may not exceed 2,000 euros, whereas for environmental infringements the transaction may not exceed 500 euros.

Prior to the Environmental Enforcement Decree, the Flemish Land Agency was already authorised to impose administrative fines for the violations listed in Article 63 of the Decree of 22 December 2006 on the protection of water against pollution caused by nitrates from agricultural sources (Manure Decree). The decree stipulates who can be fined and the amount of the fine. For serious violations, included in article 71 of the same decree, the Flemish Land Agency could already draw up an official report with possible criminal prosecution by the Public Prosecutor as a consequence.

³⁴ Publication in the Belgian Official Gazette: 22 May 2012.

³⁵ GFO of 6 July 2012, BOG 13 August 2012

This section, which evaluates the Flemish sanctioning policy in 2018, will therefore not only look at the activities of the public prosecutor’s offices, but also at those of the regional sanctioning entity, the Enforcement Court and those of the Flemish Land Agency.

Where possible and relevant, this chapter will also provide an overview of the figures for the past 10 years, since the entry into force of the Environmental Enforcement Decree, based on previous environmental enforcement reports.

4.1 EVALUATION OF THE CRIMINAL SANCTIONING POLICY

As already described above, when an environmental crime is established the reporting officer immediately transmits an official report to the Public Prosecutor attached to the court with jurisdiction for the legal district where the environmental offence was committed. It is therefore important to evaluate, in this environmental enforcement report, the criminal sanctioning policy in 2018. The Flemish High Enforcement Council for Spatial Planning and Environment has therefore asked the Board of Procurators General, to report, among other things, how many cases were submitted to the public prosecutor’s offices of the Flemish Region and how these cases were processed.

As with the other enforcement bodies, the public prosecutor’s offices were also asked how many FTEs were used for environmental enforcement tasks in 2018. The table below gives the number of FTEs for environmental public prosecutors.

Environmental public prosecutor magistrates	VTE
Antwerp	2
Limburg	0.8
Halle-Vilvoorde	0.2
Leuven	0.5
East Flanders	1.9
West Flanders	1.15
TOTAL	6.55

Table 36 The number of FTEs for environmental public prosecutor magistrates

With regard to the table above, the public prosecutors point out that each public prosecutor who is responsible for dealing with criminal cases relating to the environment is also responsible for several other tasks in the context of the schedule. This broad(er) set of tasks, together with the absence of a specifically developed workload measurement, explains why it is not possible to calculate the number of FTEs for the environment with 100% accuracy. The reported FTE figures are therefore an estimating.

It can be observed that the number of FTEs for public prosecutor magistrates in 2018 is slightly higher than in 2017, when 6.3 FTEs were deployed for environmental enforcement cases.

Before the other figures can be discussed, a few comments about the data in this environmental enforcement report must also be made first.

The figures are taken from a central database of the Board of Procurators General. This database is based solely on the registrations made by the criminal divisions of the public prosecutor’s offices at the courts of first instance and does not contain any data on the number of environmental cases

handled by the public prosecutor's offices or cases related to the environment³⁶ handled by the prosecutor's offices of the police.

The VHRM requested figures on the level of environmental enforcement in Flanders. The figures received therefore only relate to cases handled by the Flemish public prosecutors. The data are now presented on the basis of the new judicial landscape, but in order to maintain comparability with data from previous years, the data are presented at both the district and the departmental levels where applicable.

The provided figures are based on the latest data extraction on 6 January 2019. All data relating to the progress of a case are therefore limited to the situation on that extraction date. It should be noted that it is in fact still too early to draw conclusions, based on the data extraction of 6 January 2019, with regard to how the handling of cases differs compared to cases registered in 2018. The figures are only indicative because the progress of these cases may have evolved since the extraction date. Nevertheless, an effort will be made to identify some trends.

Cases brought to the Public Prosecutor's Office are assigned a main indictment code and one or more additional indictment codes (prevention codes) where applicable. A main indictment code must therefore always be assigned to the case as soon as it is entered in the public prosecutors' computerised system. The registration of additional indictment codes does not occur everywhere; some public prosecutor's offices do not register them.

The following statistics are based on all cases for which at least one of the following indictment codes, as used by the public prosecutor's offices, was registered, with a breakdown by topic (environmental management law, waste, manure, permit and emissions)³⁷ as proposed by the VHRM.

► Environmental management law:

- 63A – Hunting
- 63B – Fishing
- 63M – Forest decree
- 63N – Washington Convention – protected animal species, plants and ivory
- 64J – Decree on nature conservation and the natural environment, including the prohibition and authorisation requirement for changes to vegetation and small landscape features

³⁶ It should be noted that some cases relating to environmental management law fall under the competence of the prosecutor's offices of the police and the police courts (e.g. the official reports drawn up for violations of forest or fisheries legislation, even if the violations are considered to be misdemeanours). These environmental cases are therefore not all included in the reported figures.

³⁷ It should be noted that the final selection also includes cases pertaining to infringements that do not strictly fall under the Environmental Enforcement Decree. It should also be noted that cases registered under code '63N' fall under regional jurisdiction, except import, export and transit of exotic plant and animal species, which is a federal competence. To clarify the above data, it should be stated that, strictly speaking, code 63N (Washington Convention – protected species, plants and ivory) does not fall under environmental management since environmental management law is defined in the Environmental Enforcement Order as the set of legal rules for the management of the environment and nature on the one hand, and nature conservation and the promotion of biological and landscape diversity on the other hand, more specifically the regulations referred to in article 16.1.1, first paragraph, 2°, 3°, 4°, 7°, 14°, 15° and 16° of the Environmental Enforcement Decree. Finally, it should be noted that, in addition to cases relating to the manure decree (code 63O), cases with code "63I – Fertilisers" were also selected; the latter were also included because there is a real chance that some of the cases registered by the public prosecutor's office with code 63I are in fact infringements that are followed up regionally. While the deliberate choice to make a fairly wide selection may have led to a number of cases being wrongly counted in this contribution to the environmental enforcement report, it is also the case that there is no specific indictment code for other infringements that may concern both federal and regional matters (for example, infringements relating to certain product standards).

- ▶ Waste:
 - 64E – Unauthorised dumping
 - 64F – Waste management
 - 64L – Import and transit of waste (L 09.07.1984)

- ▶ Manure:
 - 63I – Fertilisers
 - 63O – Manure decree

- ▶ Permit:
 - 64D – Commodo-Incommodo (environ- mental permit)
 - 64H – Operation of an establishment without a permit
 - 64I – Non-compliance with VLAREM legislation

- ▶ Air/water/soil/noise (emissions):
 - 64A – Air and water pollution
 - 64B – Carbon oxide (CO)
 - 64C – Noise nuisance, decibels in urban environment (R.D. 24/02/1977)
 - 64G – Illegal water extraction
 - 64M – Surface water pollution
 - 64N – Groundwater pollution

When more than one of the selected codes occurs in the same case, this case is presented in the data on the basis of the main code of those selected charges.

Cases that have not yet reached the public prosecutor's office in their entirety at the time of data extraction will not be considered. This concerns in particular the 'simplified official reports on listing'³⁸, the 'autonomous police investigations still in progress', the 'simplified autonomous police investigations' and the 'autonomous police investigations into unknown perpetrators. In most public prosecutor's offices, the simplified official reports drawn up by the police forces are not recorded in the system. As such, they were not considered in the following figures (as opposed to data from ANG and presented in 2.2.1). However, if the official report was requested by the public prosecutor's office, this will be considered.

It must be remembered that, in general, some environmental offences transmitted to the public prosecutor's offices in a normal official report do not appear in the statistics because, for example, there is another primary offence in the case (e.g. theft), as a result of which the environmental aspect is not recorded in the system, or because new offences are often grouped into initial official reports if an investigation has been started (e.g. one initial report with the reporting of five new offences of illegal dumping), and as a result the phenomenon of environ- mental crime is underestimated. It should therefore be stressed that the figures only reflect the number of cases of environmental crime according to what is recorded in the public prosecutors' system, and therefore are not an indication of the extent of the criminal phenomenon. The introduction of municipal administrative sanctions for minor nuisances also has an impact on the influx of environmental cases into the public prosecutor's offices.

³⁸ A simplified official report means that the most important data of certain minor breaches of the law are recorded on an electronic medium. The police only perform superficial acts of investigation or missing persons announcements. This reduces the number of unnecessary items entering the public prosecutor's office.

It was also requested that a distinction be made between priority official reports³⁹ and non-priority official reports, in the same way as for the survey of the supervisory bodies, in order to be able to make an analysis of the implementation of the 'Priority Memorandum on the Prosecution Policy for Environmental Law in the Flemish Region 2013'. However, it was indicated that responding to this question pre-supposes the creation of specific codes involving technical adaptations and new registration guidelines. To date, the database of the Board of Procurators General does not allow a distinction to be made between priority and non-priority cases within the selected cases. However, it was indicated that a solution was being sought.

Reference can also be made in this section to the various partnerships between public prosecutor's offices. Within the jurisdiction of Ghent, a partnership has existed between the former public prosecutors (currently departments) of Ypres and Kortrijk in West Flanders since 1 January 2008. Cases relating to specialised matters are handled by one of the two departments/public prosecutor's offices. This is relevant for this analysis given that the former public prosecutor of Kortrijk is responsible for dealing with all cases received in Ypres relating to the indictment codes 63A, 63N, 63O, 64A, 64D, 64F, 64G, 64H, 64I, 64J, 64L, 64M, and 64N. Since 1 November 2010, this partnership has also been extended to the entire province of West Flanders, resulting in all cases from the former districts of Ypres, Bruges and Veurne with the aforementioned indictment codes being handled by the former public prosecutor's office (current department) of Kortrijk. The so-called quality of life offences (indictment codes 63B, 63K, 63M, 64B, 64C, and 64E) are handled exclusively by (the department of) Kortrijk since 1 June 2015. When reading the figures, consider that some of the decisions in West Flanders were taken by magistrates attached to the former public prosecutor's office in Kortrijk (now the Kortrijk department). As from 1 December 2011, a similar partnership was started up in East Flanders, whereby the specialised magistrates attached to the (former) public prosecutor's office in Ghent are responsible for dealing with these cases. When reading the figures, bear in mind that some of the decisions in the East Flanders departments/public prosecutor's office were taken by magistrates attached to the current Ghent department of the public prosecutor's office in East Flanders.

Within the jurisdiction of Antwerp, the case distribution regulation of the Antwerp Court of First Instance was established by Royal Decree of 16 February 2016 and entered into force on 1 March 2016. From that date, the Antwerp division has exclusive jurisdiction over all criminal cases of the district with regard to the environment and urban planning and without the aforementioned distinction. When reviewing the table on case progress, it should therefore be noted that the magistrates of the Antwerp division are responsible for decisions taken in the other divisions of the district of Antwerp.

Since 2017, cases relating to the environment and urban planning in the district of Limburg have also been centralised in the Hasselt division. So also, when reviewing this table on case progress, take into account that the magistrates of the Hasselt division are responsible for the decisions taken in the Tongeren division of the district of Limburg.

The unit of measure in the tables is always equal to one case. Each case corresponds to one unique reference number. A case may, of course, concern several suspects and/or several crimes. A relatively large number of cases are referred to another public prosecutor for territorial reasons. Since an indication is given of the number of cases entering the public prosecutor's offices and a referral case

³⁹ Priority cases refer to the official reports intended for establishing offences and included in the protocol 'Priority Memorandum on the Prosecution Policy for Environmental Law in the Flemish Region 2013'.

is often received, within the reference period, by both the original public prosecutor's office as well as the destination office, both the original reference number and the reference number of the referral case are included in the figures. The public prosecutor's statistics do not relate to crime or fact statistics and should therefore not be interpreted in this way.

Initially, an overview will be given of the influx of cases at the public prosecutor's offices in 2018. This will be done on the basis of the selected indictment codes and, if possible, by the reporting authority. Then, the latest progress (i.e. 6 January 2019) of the cases received by the public prosecutor's offices in 2018, after which the reasons for the dismissal of environmental enforcement cases will be discussed in more detail. We mention once again that, because the reference date for the data is 6 January 2019, it is important that data regarding case progress are interpreted with care. The data and percentages in this respect only refer to the situation on 6 January 2019 and do not represent the final status of a case. Consequently, only trends can be established and certainly no definitive conclusions can be drawn yet.

4.1.1 Inflow

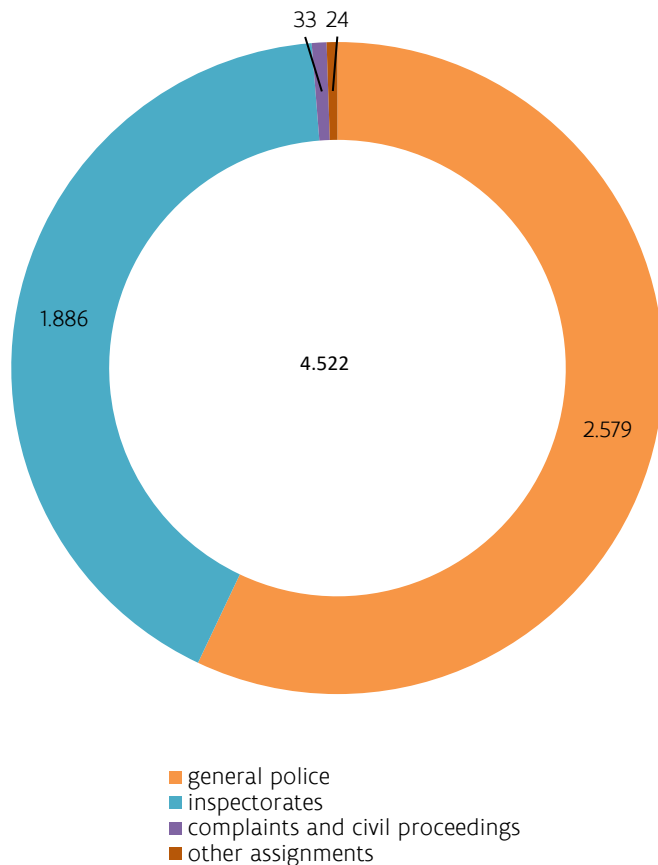
The following graph shows the number of 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2018, per reporting authority, sub-divided into four different categories, namely general police; inspectorates; complaints and civil proceedings; and other cases.⁴⁰

the supervisors of the inter-municipal associations also fall under this category. In addition, 33 cases related to complaints and civil proceedings. These are complaints from private individuals, as well as complaints from bailiffs or from private organisations and civil parties.

More than half of the cases received by the public prosecutor's offices in 2018 were drawn up by the general police. As already mentioned in chapter 2, the general police drew up 9,783 official reports on the environment in 2018. This number not only includes the initial official reports but also the simplified reports, so this may explain the difference with the number of cases received by the public prosecutor's offices in 2018. It should be noted that no distinction can be made here between official reports drawn up by the local police in their general reporting capacity on the one hand and official reports drawn up by local police supervisors on the other.

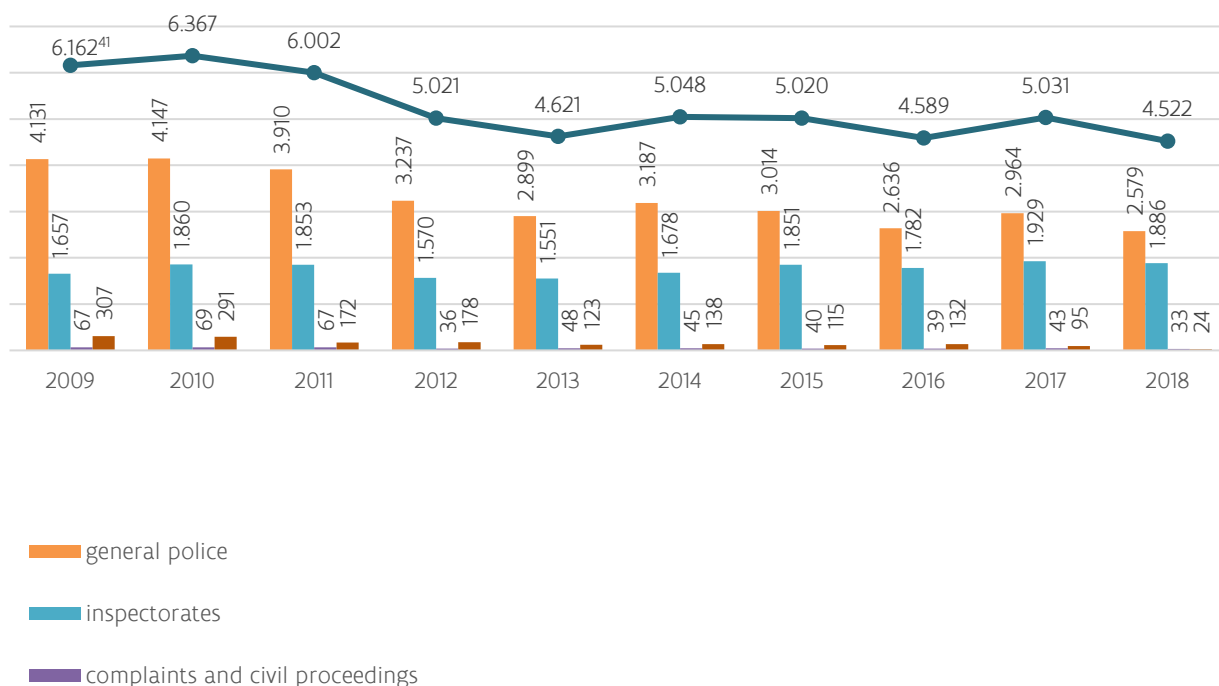
Based on the data in the previous environmental enforcement reports, the following graph provides an overview of the total number of 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region per reporting authority in the period 2009-2018.

⁴⁰ The cases registered with the public prosecutor's office of the police courts are not included in the reported figures



Graph 47 The number of 'environmental enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2018 per reporting authority

In total, the public prosecutor's offices received 4,522 cases relating to the environment in 2018, of which approximately 57% – or 2,579 cases – came from the general police and 42% – or 1,886 cases – came from the inspectorates. The section on the general police includes both the Local and the federal police services. However, the inspectorates are the administrative services with limited reporting powers, such as the regional environmental administrations (supervisors). A small proportion of the total number of cases received, namely 24 cases, were 'other cases'. These are cases referred from other public prosecutor's offices and courts, also from other sections of the same public prosecutor's office, from foreign public prosecutor's offices/courts and from the courts of the same judicial district that give rise to the creation of a new case. This category is also a residual category for all cases that could not be classified in any of the other three categories. The cases received from the municipal supervisors and



Graph 48 The number of 'environmental enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region from 2009-2019 per reporting authority

It can be determined that the number of 'environmental enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region has steadily decreased since 2010. For 2018, a percentage reduction in the number of cases can be calculated of 29% compared with 2010. The ratio of reporting authorities remains more or less stable.

In 2003, a technical working group was set up with the Prosecution Policy Commission⁴² with the aim of improving the recognisability of the cases submitted by the environmental services of the Flemish Region to the public prosecutor's offices. The only code that was foreseen at the time within the environmental services of the Flemish Region was M2. However, it was decided to use, as from 1 January 2005, specific codes within the reference numbers provided by the environmental services to the public prosecutor's offices. The following codes were assigned:

- ▶ H1: Department of Environment and Spatial Planning – Enforcement Division – Environmental Inspectorate (MI) (Environmental Inspectorate)
- ▶ H2: ANB (Agency for Nature and Forests)⁴³
- ▶ H4: Water – VMM
- ▶ H5: Manure Bank – VLM
- ▶ H6: OVAM
- ▶ H7: other⁴⁴

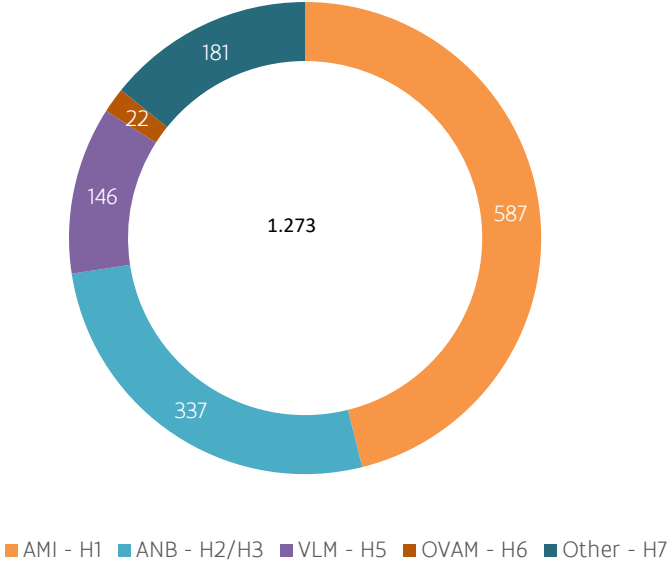
⁴¹ For 2009, only cases recorded as from 1 May 2009 were counted (cf. entry into force of Environmental Enforcement Decree)

⁴² The Prosecution Policy Commission is the predecessor of the VHRM, and its objective was to be a working platform on environment and spatial planning at regional level, where priorities were set and agreements were made between the official level and the public prosecutor's offices. However, unlike the VHRM, the Prosecution Policy Committee did not have a legally established framework.

⁴³ Until 2008, the codes H2/H3 were used by the legal predecessors of the ANB (department for Forests and Green, and Nature respectively). Since then, the ANB has only used the code H2.

⁴⁴ H7 consists mainly of official reports from the 'Roads and Traffic Agency' and the 'Waterways and Marine Affairs Agency'. Since there was a chance that these services would be modified without a clear idea of the exact nature of the change, it was decided to allow both to use the code H7. The 'Roads and Traffic Agency' would no longer make use of the code 'WG' that was previously reserved for them. [The

The use of these specific reference numbers made it possible to produce the following graph in which a further subdivision is made of the ‘Environmental Enforcement’ cases recorded by the criminal divisions of the public prosecutor’s offices in the Flemish Region in 2018 per Flemish environmental enforcement agency. This clearly shows how many cases were delivered per Flemish environmental service as reporting authority.



Graph 49 The number of ‘environmental enforcement’ cases coming from the Flemish environmental services as recorded by the criminal divisions of the public prosecutor’s offices in the Flemish Region in 2018

In total, 1,273 cases that originated from the Flemish inspection services and that used the codes were recorded by the criminal divisions of the public prosecutor’s offices in the Flemish Region in 2017. The majority (46.11%) of these cases originate from the Enforcement Division – Environmental Inspectorate. The ANB also represents a considerable share of the total number of cases originating from the Flemish inspection services, namely 26.47%. OVAM and the VLM are responsible for 1.73% and 11.47% respectively.

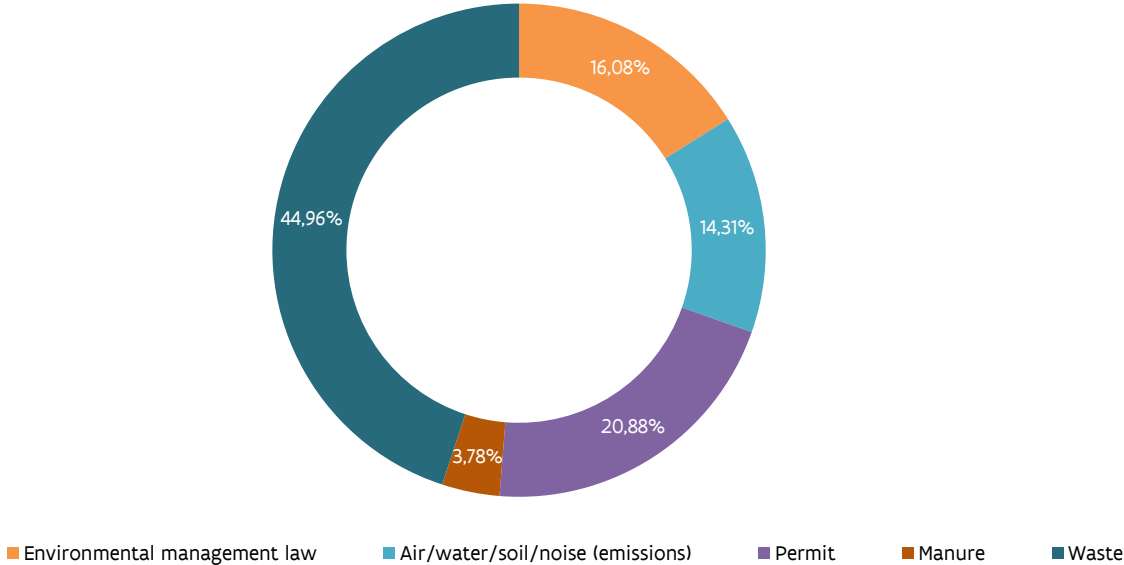
In comparison with the chapter ‘Evaluation of the official report instrument’, a number of differences can be noted between the number of official reports drawn up and reported by the regional enforcement bodies and the number received by the criminal divisions of the public prosecutor’s offices of the Flemish Region. For example, the ANB indicated that 516 initial official reports were drawn up in 2018, even though the public prosecutor’s offices only received 337 in 2018. This is explained by the fact that this agency also draws up official reports that are handled by police prosecutors. The number reported by the Environmental Inspectorate, OVAM and the VLM, 609, 25 and 150 respectively, was approximately equal to the number received by the public prosecutor’s offices, namely 587, 22 and 146 respectively in 2018. The other regional regulatory bodies indicated that they drew up a total of 224 official reports in 2018, whereas the public prosecutor’s offices received 181 cases categorised as ‘other’. The figures from the public prosecutor’s offices may be an underestimation, as not all Flemish environmental administrations seem to be aware that they can use a specific code. As a result, some cases are not identified correctly in the figures. For this reason, the VHRM once again recommends that the various environmental administrations use these codes

Waterways and Maritime Affairs Agency is a term used prior to the Better Administrative Policy. These are now the following agencies: Waterwegen en Zeekanaal (Waterways and Sea Canal), De Scheepvaart NV, Maritime Services and Coast.]

consistently to ensure correct data collection and reporting. In its 2018 newsletter, the VHRM reminded the enforce-bodies of the agreement regarding these codes.

An overview has already been provided of the various indictment codes used to record Environmental Enforcement cases. Once again, this makes it possible to provide an overview for 2018 in the following graphs and tables of the proportion of each indictment code in the total number of 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2018.

The graph below shows the percentages of the number of cases recorded with the indictment codes for waste, manure, permit, air/water/soil/noise (emissions), and environmental management law in relation to the total number of cases recorded with one of these indictment codes in 2018, namely 4,522 cases.



Graph 50 The percentage of 'environmental enforcement' cases recorded by the criminal divisions of the public prosecutors' offices in the Flemish Region in 2018 per main indictment code

In almost 45% of the total number of 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutors of the Flemish Region in 2018, the main indictment code related to the waste theme. This concerned 2,033 cases. Cases connected to environmental management law and emissions represented around 16% and 14.31% respectively of the total number of cases in 2018, i.e. 727 and 647 cases respectively. In addition, 944 cases, or more than 20%, were related to permits, and 171 cases, representing just under than 4% of the total number of 'Environmental Enforcement' cases were related to manure.

The following table further subdivides the main indictment codes of environmental management law, emissions, permit, manure and waste.

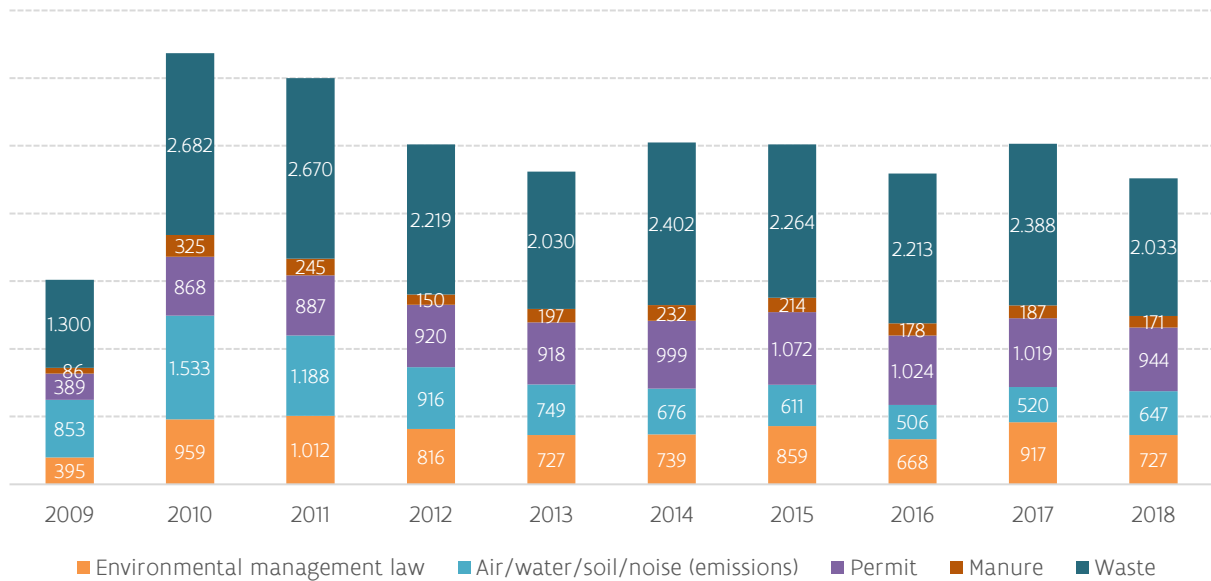
		2018	
		%	n
Environmental management law	63A – Hunting	145	3.21
	63B – Fishing	173	3.83
	63M – Forest Decree	113	2.5
	63N – Protected species of animals, plants and ivory (Washington Convention, 9 March 1973)	133	2.94
	64J – Flemish decree on nature conservation and the natural environment (21 October 1997)	163	3.6
	Total for section	727	16.08
Air/water/soil/noise (emissions)	64A – Air and water pollution	322	7.12
	64B – Carbon monoxide (CO)	5	0.11
	64C – Noise standards in the urban environment (Royal Decree of 24 February 1977)	43	0.95
	64G – Illegal water extraction	7	0.15
	64M – Surface water pollution	203	4.49
	64N – Groundwater pollution	67	1.48
Total for section	647	14.31	
Permit	64D – Commodo – incommodo (environmental permit)	51	1.13
	64H – Operation of an establishment without a permit	235	5.2
	64I – Non-compliance with Vlare legislation	658	14.55
	Total for section	944	20.88
Manure	63I – Fertilisers	66	1.46
	63O – Manure Decree	105	2.32
	Total for section	171	3.78
Waste	64E – Illegal dumping	1,513	33.46
	64F – Waste management	473	10.46
	64L – Import and transit of waste (Act of 12 May 2011)	47	1.04
	Total for section	2,033	44.96
Total		4,522	100

Table 37 The number of 'environmental enforcement' cases recorded by the criminal divisions of the public prosecutor's offices of the Flemish Region, per main indictment code of cases in 2018

As already mentioned, the largest share (almost 45%) of 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutor's offices of the Flemish Region concerned waste in 2018, as in previous years. The table above shows that, within the theme of waste, most cases were recorded under indictment code 64E. These 1,513 cases were all related to illegal dumping. The cases concerning illegal dumping not only form the largest part within the theme of waste (74.5%), but also within the total number of 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in 2018. Nearly 33.5% of all cases in 2018 related to illegal dumping. This trend was also visible in the previous environmental enforcement reports, where it could be observed that the number of cases relating to illegal dumping was always between 27% and 35% of the total number of 'Environmental Enforcement' cases.

In 2018, cases with indictment codes 63I 'Fertilisers' and 63O 'Manure Decree' also accounted for only a small proportion of the total number of 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, i.e. approximately 4%. This could be explained by the fact that the Flemish Land Agency is authorised to issue administrative fines for some of the violations under the Manure Decree since 2006 (see below).

The graph below gives an overview of the number of 'Environmental Enforcement' cases per main indictment code for the period 2009-2018.



Graph 51 The number of 'environmental enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region per main indictment code from 2009-2018

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
environmental management law	13%	15%	17%	16%	16%	15%	17%	15%	18%	16%
emissions	28%	24%	20%	18%	16%	14%	12%	11%	10%	14%
permit	13%	14%	15%	18%	20%	20%	21%	22%	20%	21%
manure	3%	5%	4%	3%	4%	5%	4%	4%	4%	4%
Waste	43%	42%	44%	44%	44%	48%	45%	48%	47%	45%

Table 38 Proportion between the different types of themes (per main indictment codes) in relation to the total number of 'Environmental Enforcement' cases recorded

It can be determined that the ratio of the different types of themes (per main indictment codes) to the total number of 'Environmental Enforcement' cases recorded did not fluctuate significantly and remained fairly stable in the period 2009-2018. For instance, the number of environmental management law cases always represented between 13% and 18% of the total number of 'Environmental Enforcement' cases recorded. This percentage fluctuated between 3 and 5% for manure and between 42 and 48% for waste.

A shift can be determined with regard to cases involving permits and cases involving emissions. In 2009, cases involving emissions still accounted for 28% of the total number of 'Environmental Enforcement' cases recorded. This percentage decreased gradually to 10% in 2017 and 14% in 2018. A reverse movement can be determined in cases involving permits. Whereas the ratio to the total number of 'Environmental Enforcement' cases recorded in 2009 was 13%, this percentage rose steadily to 21% in 2018. For the period 2009-2018, it can thus be established that the proportion of cases involving emissions decreased in favour of the proportion of cases involving permits. This could possibly be explained by the so-called GAS rules in municipalities and cities which often include noise nuisance (emissions), or the difficulties experienced by reporting officers when establishing crimes related to the new noise regulations. The purely technical explanation for the decrease in the proportion of emissions can be found in the fact that these findings are in many cases recorded as violations of VLAREM II, as opposed to previously, when a separate code was foreseen for infringements of the now abolished 1977 Royal Decree. A number of findings will therefore be included in a more comprehensive crime code.

4.1.2 Progress state

In addition to the inflow of 'Environmental Enforcement' cases, it was once again possible to obtain figures for this environmental enforcement report on the progress state of Environmental Enforcement cases for the study period. However, it should be recalled that the data extraction dates from 6 January 2019. This means that it is not yet possible to draw any firm conclusions as to the handling of cases. In addition, it should be noted that in most cases the full 360-day period is used to seek general regularisation. As a result, very few cases are subpoenaed within the year, so the following figures give a somewhat distorted picture. Nevertheless, an effort will be made to describe a number of trends. The classification is based on the following states of progress:

PRELIMINARY INVESTIGATION

The cases that were still in preliminary investigation on 6 January 2019.

WANTED PERPETRATOR

This heading includes cases in which a suspect was reported as wanted on 6 January 2019. As long as the suspect is not found, this progress state will continue to apply.

WITHOUT FURTHER ACTION/DISMISSAL

Cases without further action or dismissals are provisionally not prosecuted and the preliminary investigation is terminated. As long as the criminal proceedings do not lapse, the case may be reopened.

REFERRAL CASES

This section consists of the cases that were referred on 6 January 2019 to another public prosecutor's office or other (judicial) bodies. Insofar as they do not return to the initial public prosecutor's office, the referred cases remain here in this progress state. They can therefore be regarded as closed for the initial public prosecutor's office. They are reopened under a different reference number at the receiving public prosecutor's office.

PRAETORIAN PROBATION

This heading covers cases which, on 6 January 2019, have not (yet) been the subject of criminal proceedings, provided that certain measures imposed by the public prosecutor's office have been complied with.

MUNICIPAL ADMINISTRATIVE SANCTION

This heading covers cases that were transferred to a public administration on 6 January 2019 with a view to a possible municipal administrative sanction.

NON-MUNICIPAL ADMINISTRATIVE SANCTION

This heading covers cases that were transferred to a public administration⁴⁵ on 6 January 2019 for a possible non-municipal administrative sanction.

AMICABLE SETTLEMENT

The amicable settlement category includes cases in which an amicable settlement was proposed, cases

⁴⁵ In the context of the Environmental Enforcement Decree and the Manure Decree, these are the regional sanctioning entity and the VLM Manure Bank respectively.

in which an amicable settlement has not yet been paid (in full), cases which were concluded by the payment of the amicable settlement and in which the criminal proceedings lapse and finally cases in which the amicable settlement was refused but which have not yet moved to the next progress state.

MEDIATION IN CRIMINAL CASES

The mediation in criminal cases section consists of cases in which the Public Prosecutor's Office has decided to propose a procedure for mediation in criminal cases to the parties involved. This category includes cases for which a mediation in criminal cases was proposed and for which a decision still has to be made, cases which were concluded as a result of successful mediation of criminal cases and for which the criminal proceedings lapse, and finally cases for which the perpetrator did not meet the required conditions but which have not yet moved to the next progress state.

INVESTIGATION

The investigation section consists of cases that have been the subject of judicial investigation and that have not yet been brought before the court in chambers for legal proceedings.

SUMMONS & FURTHER STEPS

This section consists of the cases where a summons or subsequent decision was taken. These are cases in which a summons, a determination before the criminal court, a judgment, an objection, an appeal, etc. occur.

UNKNOWN/ERROR

This section covers cases where it has not been possible to identify the progress state. These are often merged cases for which the registrations do not allow the ascertaining of the progress state of the case to which they were merged.

As a result of the entry into force of circular COL 16/2014, decisions that were previously considered devoid of purpose are now included below as a separate final decision in the figures. This concerns the (new) progress states, 'wanted perpetrator', 'praetorian probation', and '(municipal) administrative sanction'.

Previous environmental enforcement reports also reported on the progress state of the 'Court in chambers. This section contains cases in the phase of legal proceedings up to the moment when findings may be brought before the criminal court. Cases which are no longer prosecuted have maintained this progress state. From 2015, this progress state was no longer reflected in the figures provided by the public prosecutor's offices.

The following table gives an overview of the latest progress states as of 6 January 2019 for 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2018. Both the total cases in Flanders are shown as well as the cases per public prosecutor's office. In addition, the percentage share of the various progress states in relation to the total number of 'Environmental Enforcement' cases is given.

When reading the table below, the existing public prosecutor partnerships must also be considered (see 4.1).

	preliminary investigation		wanted perpetrator		without further action		referral case		praetorian probation		municipal administrative sanction		non-municipal administrative sanction		administrative sanction (not specified)		amicable settlement		mediation in CC		investigation		summons & further		referral to chief of police		TOTAL
	n	%	n	%	N	%	n	%	n	%	n	%	n	%	n	%	n	%	N	%	n	%	n	%	n	%	n
	DISTRICT OF ANTWERP	267	27.41	12	1.23	248	25.46	7	0.72	31	3.18	2	0.21	322	33.06	3	0.31	49	5.03	.	.	9	0.92	21	2.16	3	0.31	974
Antwerp Public Prosecutor's Office – Antwerp division	263	27.98	11	1.17	225	23.94	7	0.74	31	3.3	2	0.21	321	34.15	.	.	49	5.21	.	.	9	0.96	19	2.02	3	0.32	940
Antwerp Public Prosecutor's Office – Mechelen division	3	11.11	1	3.7	19	70.37	.	.	.	.	.	.	1	3.7	3	11.11	.	.	.	.	.	.	.	.	.	.	27
Antwerp Public Prosecutor's Office – Turnhout division	1	14.29	.	.	4	57.14	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	2	28.57	.	.	7
DISTRICT OF LIMBURG	116	18.01	1	0.16	161	25	14	2.17	10	1.55	22	3.42	287	44.57	1	0.16	15	2.33	1	0.16	1	0.16	15	2.33	.	.	644
Limburg Public Prosecutor's Office – Hasselt division	46	15.7	.	.	86	29.35	4	1.37	3	1.02	2	0.68	138	47.1	.	.	3	1.02	.	.	1	0.34	10	3.41	.	.	293
Limburg Public Prosecutor's Office – Tongeren division	70	19.94	1	0.28	75	21.37	10	2.85	7	1.99	20	5.7	149	42.45	1	0.28	12	3.42	1	0.28	.	.	5	1.42	.	.	351
DISTRICT OF BRUSSELS	120	30.85	.	.	136	34.96	8	2.06	2	0.51	1	0.26	78	20.05	29	7.46	8	2.06	.	.	2	0.51	5	1.29	.	.	389
Halle-Vilvoorde Public Prosecutor's Office	120	30.85	.	.	136	34.96	8	2.06	2	0.51	1	0.26	78	20.05	29	7.46	8	2.06	.	.	2	0.51	5	1.29	.	.	389
DISTRICT OF LEUVEN	51	18.41	.	.	74	26.71	3	1.08	1	0.36	.	.	98	35.38	5	1.81	33	11.91	.	.	1	0.36	11	3.97	.	.	277
DISTRICT OF EAST FLANDERS	289	21.33	25	1.85	369	27.23	9	0.66	6	0.44	.	.	633	46.72	1	0.07	1	0.07	.	.	.	.	22	1.62	.	.	1,355
East Flanders Public Prosecutor's Office – Ghent division	262	21.42	19	1.55	338	27.64	9	0.74	6	0.49	.	.	566	46.28	1	0.08	1	0.08	.	.	.	.	21	1.72	.	.	1,223
East Flanders Public Prosecutor's Office – Dendermonde division	26	19.85	6	4.58	31	23.66	.	.	.	.	.	.	67	51.15	.	.	.	.	.	.	.	.	1	0.76	.	.	131
East Flanders Public Prosecutor's Office – Oudenaarde division	1	100	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	1
DISTRICT OF WEST FLANDERS	327	37.03	3	0.34	122	13.82	1	0.11	1	0.11	.	.	406	45.98	.	.	10	1.13	.	.	6	0.68	7	0.79	.	.	883
West Flanders Public Prosecutor's Office – Bruges division	8	36.36	.	.	2	9.09	.	.	.	.	.	.	4	18.18	.	.	8	36.36	.	.	.	.	.	.	.	.	22
West Flanders Public Prosecutor's Office – Kortrijk division	312	37.55	3	0.36	117	14.08	1	0.12	1	0.12	.	.	384	46.21	.	.	2	0.24	.	.	5	0.6	6	0.72	.	.	831
West Flanders Public Prosecutor's Office – Ypres division	7	25.93	.	.	3	11.11	.	.	.	.	.	.	15	55.56	.	.	.	.	.	.	1	3.7	1	3.7	.	.	27
West Flanders Public Prosecutor's Office – Veurne division	.	.	.	.	.	.	.	.	.	.	.	.	3	100	.	.	.	.	.	.	.	.	.	.	.	.	3
Flanders 2018	1,170	25.87	41	0.91	1,110	24.55	42	0.93	51	1.13	25	0.55	1,824	40.34	39	0.86	116	2.57	1	0.02	19	0.42	81	1.79	3	0.07	4,522

Table 39 The number of 'Environmental Enforcement' cases recorded by the criminal public prosecution offices of the Flemish Region in 2018, whether or not by transfer to a parent case, by judicial district

The data in table 39 show that almost 26% of the total number of 'Environmental Enforcement' cases recorded by the criminal public prosecutors of the Flemish Region were still in the preliminary investigation stage on 6 January 2019. In addition, it can be determined that almost 1/4 of the total number of 'Environmental Enforcement' cases recorded had already been dismissed without further action. The next section, 'Grounds for dismissal', will go into more detail about the reasons for these 'no further actions'. Almost 2% of the total number of recorded cases had already been subpoenaed by 6 January 2019.

Since 2015, the progress states 'wanted perpetrator', 'praetorian probation', 'municipal administrative sanction' and 'non-municipal administrative sanction' have been separate progress states. Until 2014, these cases were included in the 'no further action' progress state; they were discussed in detail in section 4.1.3 'Reasons for dismissal'. One of the reasons why specific reference was made in the environmental enforcement reports to these grounds for dismissal is the fact that the public prosecutor's offices

have the opportunity to refer cases to the regional sanctioning entity with a view to imposing an administrative fine. This information is shown in table 39 under the progress state 'non-municipal administrative sanction'. It can also be determined that by the extraction date, 1,824 cases, or more than 40% of the total number of 'Environmental Enforcement' cases recorded, had already been submitted to a public authority with a view to the possible imposition of a non-municipal administrative sanction. In the context of the Environmental Enforcement Decree and the Manure Decree, these are the regional sanctioning entity and the VLM Manure Bank respectively. The following table shows these figures since the Environmental Enforcement Decree came into force in 2009. In order to ensure the comparability of data, cases that were in the 'municipal administrative sanction' progress state as well as those in the 'non-municipal administrative sanction' and 'administrative sanction' progress state on the date of the extraction are added together. In fact, in previous reports these cases were together under 'cases dismissed with a view to imposing an administrative fine'.

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
number of cases dismissed with a view to imposing an administrative fine (up to 2014)/with progress states 'non-municipal administrative sanction', 'municipal administrative sanction' and 'administrative sanction (not specified)' (2015)	299	975	1,536	1,384	1,248	1,128	1,580	1,736	1,903	1,888
% share of cases dismissed with a view to imposing an administrative fine in relation to the number of recorded cases (up to 2015)/with progress states 'non-municipal administrative sanction', 'municipal administrative sanction' and 'administrative sanction (not specified)' (2016)	9.89	15.31	25.6	27.56	27	22.34	31.47%	37.83%	37.83%	41.75%

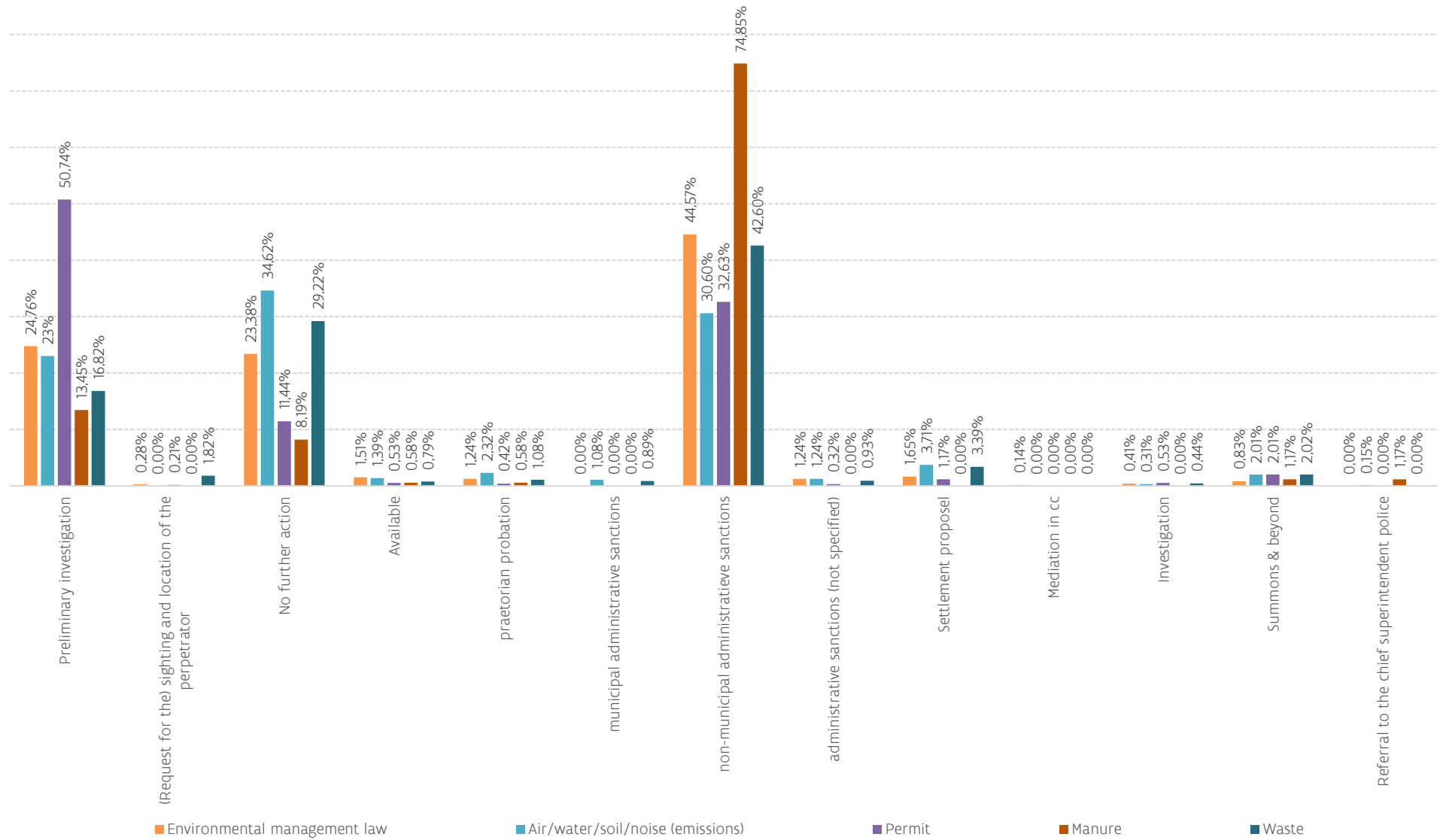
Table 40 Cases dismissed with a view to imposing an administrative fine (up to 2014)/with progress states 'non-municipal administrative sanction', 'municipal administrative sanction' and 'administrative sanction (not specified)' (2015) from 2009-2018

The table above shows that 1,888 cases, or 41.75% of the total number of recorded 'Environmental Enforcement' cases, had already been submitted to the competent authority on the extraction date for the imposition of an administrative sanction. This includes the municipal administrative sanctions and the alternative administrative fines of the regional sanctioning entity.

It can be deduced from the table that – except in 2014 – the percentage share of cases dismissed with a view to the imposition of an administrative fine has steadily increased since the entry into

force of the Environmental Enforcement Decree. In fact, since 2016 more than 1/3 of the total number of 'Environmental Enforcement' cases as recorded on the extraction date have been transferred to the authorised government body with a view to the imposition of an administrative sanction.

The following graph illustrates the different headings of indictment codes (waste, manure, permit, emissions and environmental management) in 2018 and the progress state (preliminary investigation, wanted perpetrator, dismissed without further action, referral cases, praetorian probation, municipal administrative sanction, non-municipal administrative sanction, amicable settlement, mediation in criminal cases, investigation, summons, etc., unknown/error) of these cases as of 6 January 2019.



Graph 52 Progress states as of 6 January 2019 of the Environmental Enforcement cases recorded by the criminal prosecution offices in the Flemish Region in 2018, broken down by indictment type (waste, manure, permit, emissions and environmental management) – source: database of the Board of Procurators General – statistical analysts)

It can be established that more than half of the permit cases were still under preliminary investigation on 6 January 2019. In addition, almost 1/3 of these files were transferred to the competent public authority with a view to the imposition of a non-municipal administrative fine. Slightly more than 1/10 have already been dismissed without further action and 2% have already been subpoenaed.

With regard to the files relating to environmental management law, 1/5 were still under preliminary investigation as of 6 January 2019, 1/4 had already been dismissed without further action and almost 45% were transferred to the competent public authority with a view to the imposition of a non-municipal administrative fine.

Graph 52 shows that as of 6 January 2019, 23% of the files relating to emissions were in the preliminary investigation stage and almost 35% were dismissed without further action. In addition, 30% have already been transferred with a view to the imposition of a non-municipal administrative sanction. An amicable settlement was proposed in almost 4% and 2% were subpoenaed.

In percentage terms, it can be seen that as of 6 January 2019, the files relating to manure were at least under preliminary investigation (13% of the total number of manure files) and only 8% were dismissed without further action. Most of these cases, namely 3/4, have already been submitted for the imposition of a non-municipal administrative sanction.

With regard to the files relating to waste, it can be deduced from the graph that by the extraction date, almost 30% had already been suspended and 42% had been transferred to the competent public authority for the imposition of a non-municipal administrative sanction. In addition, 3% of these files were in the “amicable settlement” progress state and 2% had been subpoenaed.

4.1.3 Grounds for dismissal

In the previous section on the progress state of ‘Environmental Enforcement’ cases, it was established that, on 6 January 2018, 24.55% had already been dismissed without further action by the public prosecutor’s offices in the Flemish Region. However, for the preparation of this environmental enforcement report, figures were also made available to the Flemish High Enforcement Council for Spatial Planning and Environment that provide further insight into the cases that were dismissed without further action.

Indeed, in cases where no further action has been taken, it is important to consider the grounds for dismissal. The Criminal Procedure Code, article 28 c para. 1, introduced by the Act of 12 March 1998, imposes on the Public Prosecutor the obligation to motivate their decisions. The public prosecutor’s offices have a detailed list of grounds for ‘no further action’ which have been standardised throughout the country and formalised as a result of the Franchimont reform. The sections are reproduced in appendix 1 of circular COL16/2014 of the Board of Procurators General concerning the application of the Act of 12 March 1998. The entry into force of COL 16/2014 also includes some new grounds, of which ‘priority to civil settlement’ appears in the data below.

The following classification was used for these figures:

- ▶ Dismissal for reasons of expediency:
 - limited social impact
 - situation regularised
 - reasonable term exceeded
 - absence of criminal record
 - accidental cause

- young age
- imbalance between criminal proceedings and social disruption
- victim's attitude
- victim compensation
- insufficient investigation resources
- other priorities
- priority to civil settlement

► Technical dismissal:

- no crime
- insufficient evidence
- limitation
- decease of the perpetrator
- final decision
- perpetrator(s) unknown

The following table shows the type of 'no further action' (dismissal for expediency and technical dismissal) reported by the various public prosecutor's offices in the Flemish Region with regard to 'Environmental Enforcement' cases that were in the 'without further action' progress state on 6 January 2019.

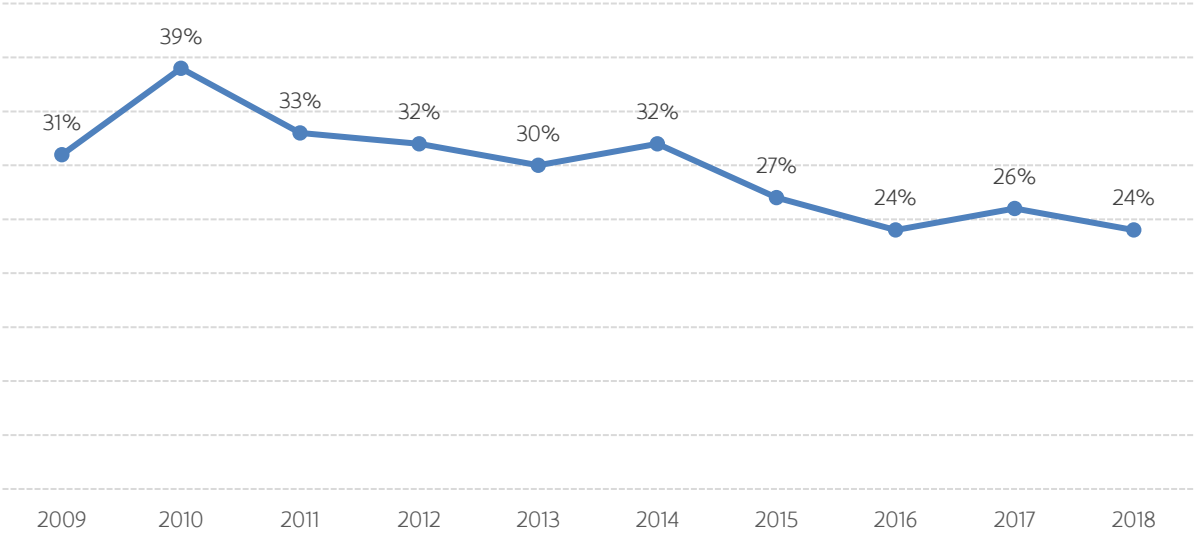
		Dismissal of a technical nature		Dismissal for reasons of expediency		Total	
		n	%	n	%	n	%
DISTRICT OF ANTWERP	Antwerp Public Prosecutor's Office – Antwerp division	117	52	108	48	225	100
	Antwerp Public Prosecutor's Office – Mechelen division	12	63.16	7	36.84	19	100
	Antwerp Public Prosecutor's Office – Turnhout division	3	75	1	25	4	100
	Total for section	132	53.23	116	46.77	248	100
DISTRICT OF LIMBURG	Limburg Public Prosecutor's Office – Hasselt division	46	53.49	40	46.51	86	100
	Limburg Public Prosecutor's Office – Tongeren division	49	65.33	26	34.67	75	100
	Total for section	95	59.01	66	40.99	161	100
DISTRICT OF BRUSSELS	Halle-Vilvoorde Public Prosecutor's Office	83	61.03	53	38.97	136	100
	Total for section	83	61.03	53	38.97	136	100
DISTRICT OF LEUVEN	Total for section	45	60.81	29	39.19	74	100
DISTRICT OF EAST FLANDERS	East Flanders Public Prosecutor's Office – Ghent division	267	78.99	71	21.01	338	100
	East Flanders Public Prosecutor's Office – Dendermonde division	21	67.74	10	32.26	31	100
	Total for section	288	78.05	81	21.95	369	100
DISTRICT OF WEST FLANDERS	West Flanders Public Prosecutor's Office – Bruges division	2	100	.	.	2	100
	West Flanders Public Prosecutor's Office – Kortrijk division	100	85.47	17	14.53	117	100
	West Flanders Public Prosecutor's Office – Ypres division	2	66.67	1	33.33	3	100
	Total for section	104	85.25	18	14.75	122	100
Total		747	67.3	363	32.7	1,110	100

Table 41 Reasons for dismissing 'Environmental Enforcement' cases, received in 2018, in which no further action was taken on 6 January 2019, whether or not by merging with a parent case, by district Source: database of the Board of Procurators General – statistical analysts.

The table shows that 1,110 out of a total of 4,522 'Environmental Enforcement' cases received by public prosecutors on 6 January 2019 had already been dismissed. This corresponds to 24.35% of the total number of 'Environmental Enforcement' cases.

Of the 1,110 cases, 32.70% were dismissed for reasons of expediency and 67.30% for technical reasons.

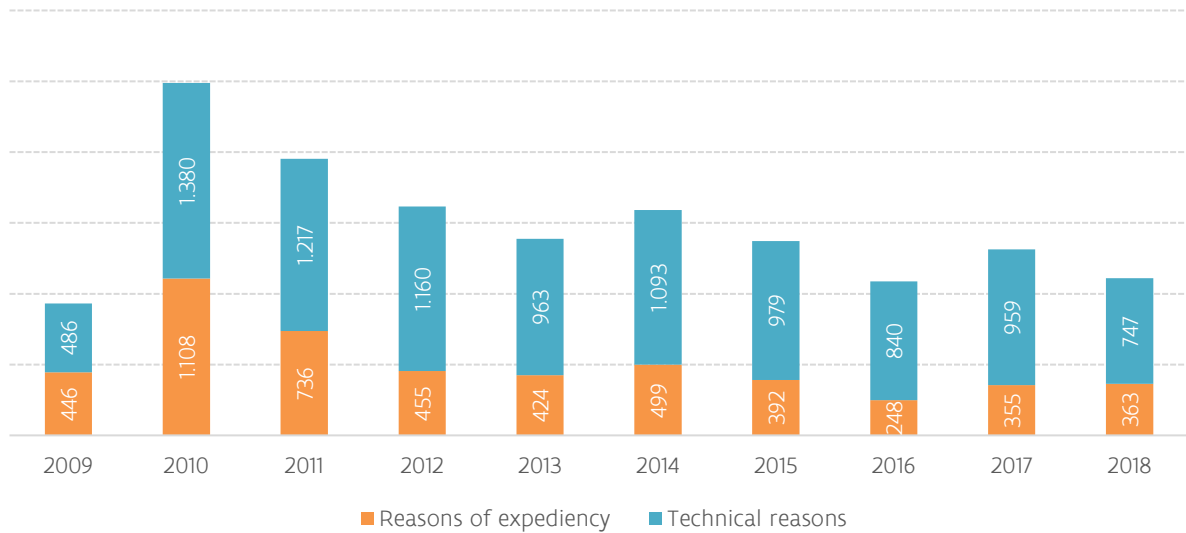
The graph below shows the dismissal percentage since the entry into force of the Environmental Enforcement Decree in 2009, on the extraction dates. This only concerns cases that were dismissed for reasons of expediency and technical reasons compared with the total number of 'Environmental Enforcement' cases recorded in those years.



Graph 53 Dismissal rate (reasons of expediency and technical reasons) since the entry into force of the Environmental Enforcement Decree

In general, it can be determined that the dismissal rate (reasons of expediency and technical reasons) has decreased since the entry into force of the Environmental Enforcement Decree. For 2015, approximately 1/3 of the total number of 'Environmental Enforcement' cases recorded had already been dismissed by the extraction date. In 2018, this had dropped to less than 1/4 of the total number of recorded 'Environmental Enforcement' cases. This can possibly be explained by the fact that more and more 'Environmental Enforcement' cases were referred to the competent public services with a view to the imposition of non-municipal administrative sanctions. After all, in the previous section it was indicated that the share of this progress state in relation to the total number of recorded 'Environmental Enforcement' cases increased.

The graph below shows the ratio between the number of cases dismissed for reasons of expediency and the number of cases dismissed for technical reasons, since the entry into force of the Environmental Enforcement Decree.



Graph 54 The number of cases dismissed for reasons of expediency and for technical reasons, since 1 May 2009-2018

The graph above shows that not only did the percentage ratio of cases dismissed for reasons of expediency and technical reasons decrease compared with the total number of 'Environmental Enforcement' cases recorded; a decrease in the number of dismissed cases since 2010 can also be determined with respect to the absolute numbers.⁴⁶ In addition, it can be determined that the proportion of cases dismissed for reasons of expediency is lower than that of cases dismissed for technical reasons.

The following table shows the detailed grounds for dismissal per section of the indictment codes (waste, manure, permit, emissions and environmental management) for 2018. This makes it possible, among other things, to form a picture of which types of cases are dismissed for which reasons.

⁴⁶ The 2009 figures relate only to cases recorded after 1 May 2009 (cf. entry into force of Environmental Enforcement Decree)

	Environmental management law		Air/water/soil/noise (emissions)		Permit		Manure		Waste		Total	
	n	%	n	%	N	%	N	%	n	%	n	%
	Dismissal of a technical nature	101	59.41	139	62.05	65	60.19	5	35.71	437	73.57	747	67.3
no crime	10	5.88	26	11.61	12	11.11	1	7.14	37	6.23	86	7.75
insufficient evidence	33	19.41	64	28.57	38	35.19	2	14.29	294	49.49	431	38.83
criminal proceedings dropped	1	0.59	.	.	2	1.85	.	.	3	0.51	6	0.54
Limitation	.	.	.	.	1	0.93	.	.	.	.	1	0.09
decease of the perpetrator	1	0.59	.	.	1	0.93	.	.	3	0.51	5	0.45
inadmissibility of criminal proceedings	.	.	7	3.13	8	7.41	.	.	8	1.35	23	2.07
final decision	.	.	7	3.13	8	7.41	.	.	8	1.35	23	2.07
perpetrator(s) unknown	57	33.53	42	18.75	5	4.63	2	14.29	95	15.99	201	18.11
Dismissal for reasons of expediency	69	40.59	85	37.95	43	39.81	9	64.29	157	26.43	363	32.7
grounds specific to the nature of the facts	21	12.35	9	4.02	11	10.19	3	21.43	44	7.41	88	7.93
limited social impact	5	2.94	2	0.89	1	0.93	.	.	6	1.01	14	1.26
situation regularised	14	8.24	7	3.13	9	8.33	.	.	33	5.56	63	5.68
reasonable term exceeded	2	1.18	.	.	1	0.93	3	21.43	5	0.84	11	0.99
grounds specific to the person of the perpetrator or of the victim	20	11.76	40	17.86	7	6.48	5	35.71	76	12.79	148	13.33
absence of criminal record	7	4.12	5	2.23	1	0.93	3	21.43	13	2.19	29	2.61
accidental cause	3	1.76	16	7.14	2	1.85	1	7.14	21	3.54	43	3.87
young age	.	.	.	.	.	.	.	.	1	0.17	1	0.09
imbalance between criminal proceedings and social disruption	10	5.88	11	4.91	3	2.78	1	7.14	23	3.87	48	4.32
victim's attitude	.	.	1	0.45	.	.	.	.	.	.	1	0.09
victim compensation	.	.	7	3.13	1	0.93	.	.	18	3.03	26	2.34
policy	28	16.47	36	16.07	25	23.15	1	7.14	37	6.23	127	11.44
insufficient investigative capacity	2	1.18	.	.	.	.	.	.	9	1.52	11	0.99
other priorities	14	8.24	13	5.8	18	16.67	1	7.14	6	1.01	52	4.68
priority to civil settlement	12	7.06	23	10.27	7	6.48	.	.	22	3.7	64	5.77
TOTAL	170	100	224	100	108	100	14	100	594	100	1,110	100

Table 42 Reasons for dismissing the environmental enforcement cases, received between 1 January 2018 and 31 December 2018, in which no further action was taken on 6 January 2018, whether or not by merging with a parent case, by indictment code heading (n and %). Source: database of the College of Procurators General database – statistical analysts.

As mentioned above, 24.35% of all 'Environmental Enforcement' cases recorded by the criminal prosecution offices in the Flemish Region in 2018, had already been dismissed on the extraction date. This represents almost 1/4 of the total number of cases recorded in 2018. The majority, namely 747 cases, were dismissed for technical reasons. More than 57% of these 747 cases were dismissed because of insufficient evidence; 27% because the perpetrators were unknown, and 11.5% because no crime had taken place.

Several grounds can be found for dismissal due to expediency. A ground specific to the nature of the facts may, for example, be the limited social impact of the case, but also, for example, the fact that the situation was regularised, that the disadvantage was insufficient, or because the reasonable period had been exceeded. A total of 88 cases were dismissed in

2018 for reasons peculiar to the nature of the facts, 63 of them because the situation had been regularised. In addition, 148 cases were dismissed on grounds specific to the person of the perpetrator or of the victim. This may include, but is not limited to, lack of a criminal record, accidental cause or imbalance between criminal proceedings and social disruption, victim's attitude or compensation to

the victim. In addition, on 6 January 2019, 127 cases were dismissed for reasons of expediency related to the policy. This may be due to a lack of investigative capacity, or because priority was given to civil proceedings or disciplinary proceedings, or because other priorities were set within the public prosecutor's office. A total of 363, or 8% of the total number of 'Environmental Enforcement' cases recorded by the criminal public prosecutors in the Flemish Region in 2018, were already dismissed on the extraction date, on the grounds of expediency.

Looking at the various themes,

170 cases relating to environmental management law were already dismissed on the extraction date. This represents 23% of the total number of recorded cases concerning environmental management law. Almost 59% were dismissed for technical reasons, mainly because the perpetrators are unknown, and 41% for reasons of expediency. With regard to cases relating to emissions, approximately 62% of the total of 224 dismissed cases were dismissed for technical reasons. More specifically, it can be concluded that almost 28.5% of the cases were dismissed because there was insufficient evidence. In total, 108 of the 944 cases relating to permits

were dismissed. This equates to 11%. With regard to dismissals in permit cases, the majority, namely 35%, were dismissed because there was insufficient evidence. In addition, almost 40% were dismissed for reasons of expediency. Of the 14 manure cases already dismissed on the extraction date, 5 of the cases were dismissed for technical reasons. On the date of extraction, 29% of the total number of recorded cases relating to waste had already been dismissed. Nearly half, i.e. 49.49%, of these dismissed cases were closed without further action because there was insufficient evidence.

4.2 EVALUATION OF THE SANCTIONING POLICY PURSUED BY THE REGIONAL SANCTIONING ENTITY

The DABM specifies that the exclusive and alternative administrative fines are imposed by the regional entity designated by the Government of Flanders, namely the regional sanctioning entity. In 2012, in addition to the exclusive and the alternative administrative fine, a new instrument was introduced, namely the administrative transaction. This administrative transaction can be considered as a kind of ‘amicable settlement’ that the regional sanctioning entity can propose for certain cases (both environmental crimes and environmental offences). Given the role of this body, the regional sanctioning entity was also surveyed about its environmental enforcement activities for the Environmental Enforcement Report 2018.

4.2.1 Processing of environmental crimes

In the context of the processing of environmental crimes by the regional sanctioning entity in 2018, they were asked how many official reports the regional sanctioning entity received between 01 January 2018 and 31 December 2018 and from which public prosecutor’s office. This is presented in the following table. A distinction is also made between the number of priority and non-priority official reports. Based on the ‘Priority Memorandum on the Prosecution Policy for Environmental Law in the Flemish Region in 2013’, the reporting offices are responsible for applying this classification to their official report. When reviewing the figures, the effect of public prosecutor partnerships should also be considered. In order to improve the readability of the following tables, the numbers of official reports received by the regional sanctioning entity are shown per partnership insofar as such a partnership exists⁴⁷.

		Priority ORs	Non-priority ORs	Total
East Flanders Public Prosecutor’s Office	Dendermonde	0	0	0
	Ghent	12	787	799
	Oudenaarde	0	0	0
West Flanders Public Prosecutor’s Office	Bruges	0	0	0
	Ypres	0	0	0
	Kortrijk	19	511	530
	Veurne	0	0	0
Antwerp Public Prosecutor’s Office	Antwerp	8	300	308
	Mechelen	0	0	0
	Turnhout	0	0	0
Limburg Public Prosecutor’s Office	Hasselt	4	184	188
	Tongeren	2	114	116
Leuven		8	79	87
Halle-Vilvoorde		6	147	153
Total		59	2122	2,181

Table 43 Official reports received by the regional sanctioning entity of the public prosecutor’s offices in the Flemish Region in 2018

⁴⁷ The following divisions belong to a partnership: the divisions of Dendermonde, Ghent and Oudenaarde; the divisions of Bruges, Ypres, Kortrijk and Veurne; and the divisions of Antwerp, Mechelen and Turnhout.

The table shows that the regional sanctioning entity received a total of 2,181 official reports in 2018 from the criminal divisions of the public prosecution offices in the Flemish Region with a view to imposing an alternative administrative fine.⁴⁸ The majority of these official reports, namely 97%, are non-priority official reports. This could show that the public prosecutor's offices prefer to handle priority cases under criminal law.

The following table not only shows the number of cases received by the regional sanctioning entity from the public prosecutor's offices in 2018, but also the number of 'Environmental Enforcement' cases recorded by the (criminal divisions of the) public prosecutor's offices in the Flemish Region in 2018. This makes it possible to calculate the percentage of cases sent to the regional sanctioning entity by each public prosecutor's office or public prosecutor partnership. It should be noted that not all official reports recorded by public prosecutors in 2018 were also dealt with in 2018. The public prosecutor's office has a period of 180 days (extendible once by 180 days) within which to decide whether or not to send the case to the regional sanctioning entity.

		ORs received by the regional entity of the public prosecutor's offices	Number of 'environmental enforcement' cases registered by the criminal prosecutor's office	% share of ORs forwarded to the regional entity
East Flanders Public Prosecutor's Office	Dendermonde	799	1,355	58.97%
	Ghent			
	Oudenaarde			
West Flanders Public Prosecutor's Office	Bruges	530	883	60.02%
	Ypres			
	Kortrijk			
	Veurne			
Antwerp Public Prosecutor's Office	Antwerp	308	974	31.62%
	Mechelen			
	Turnhout			
Limburg Public Prosecutor's Office	Hasselt	304	644	47.20%
	Tongeren			
Leuven		87	277	31.41%
Halle-Vilvoorde		153	389	39.33%
Total		2,181	4,522	48.23%

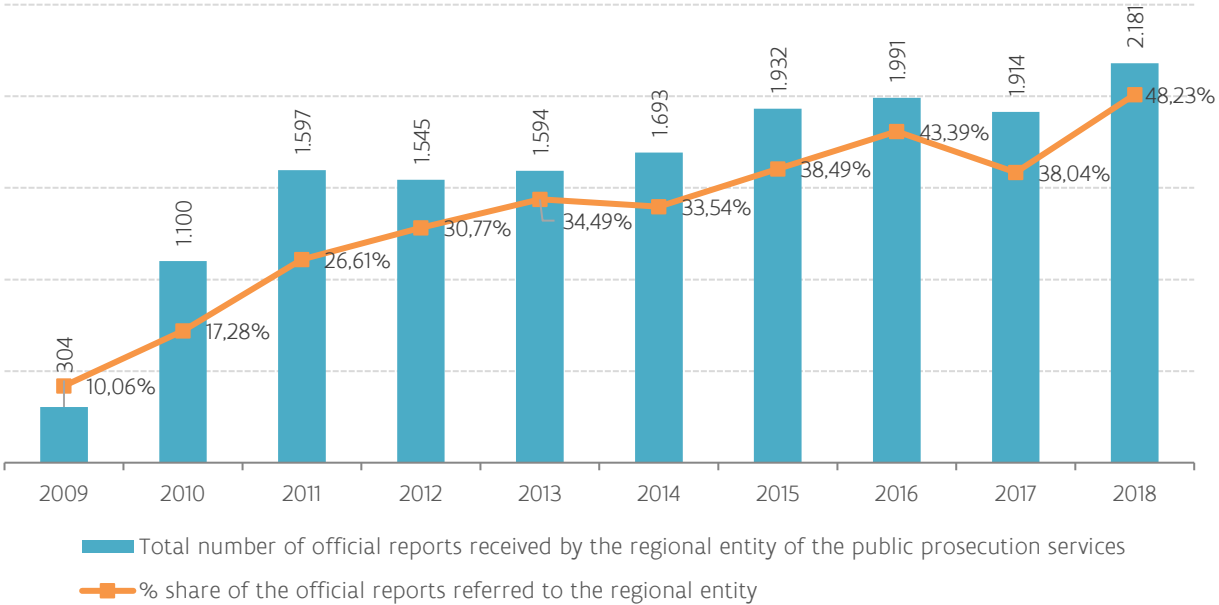
Table 44 Percentage share of official reports received by the public prosecutor's offices in the Flemish Region in 2018, sent to the regional entity

Based on the data, it can be concluded that in 2018 the regional sanctioning entity received an average of 48.23% of the total number of 'Environmental Enforcement' cases recorded by the public prosecutor's offices in 2018. The public prosecutor's office in West Flanders recorded a total of 883 'Environmental Enforcement' cases in 2018. The regional sanctioning entity received a total of 530 cases via the partnership of the various divisions of the public prosecutor's office in West Flanders. This means that 60% of the cases recorded by the public prosecutor's office of West Flanders on the extraction date, 6 January 2019, had already been submitted to the regional sanctioning entity with a view to imposing an alternative administrative fine. This ratio is almost 59% for the public prosecutor's office in East Flanders, 31.62% for the public prosecutor's office in Antwerp, and 47.20%

⁴⁸ This is the number of official reports received by the regional sanctioning entity in 2018. It should be taken into account that some of these official reports were drawn up in 2017 and possibly also in 2016, and the Public Prosecutor decided in 2018 to transfer these cases to the regional sanctioning entity with a view to imposing an administrative fine.

for the public prosecutor’s office in Limburg. Table 44 shows a ratio of 31.41% for the public prosecutor’s offices in Leuven and 39.33% for Halle-Vilvoorde.

The following graph shows the number of cases received by the regional sanctioning entity from the public prosecutors since the entry into force of the Environmental Enforcement Decree and the percent- age of the total number of ‘Environmental Enforcement’ cases recorded by the public prosecutors that were submitted to the regional sanctioning entity.



Graph 55 The number of cases received by the regional entity from the public prosecutors

Since the implementation of the Environmental Enforcement Decree in 2009, the number of cases received by the regional sanctioning entity has increased significantly. In 2009, the regional sanctioning entity received 304 cases (the low number can be explained by the fact that the Environmental Enforcement Decree did not enter into force until May 2009). The number of cases subsequently rose sharply in 2010 and 2011, to 1,100 and 1,597 respectively. This figure initially remained quite stable, with 1,545 cases in 2012, 1,594 cases in 2013 and 1,693 cases in 2014, and has continued to increase further since then to more than 2,000 cases in 2018.

Generally speaking, since 2013, the regional sanctioning entity always received at least 1/3 of the total number of ‘Environmental Enforcement’ cases recorded by public prosecutor’s offices with a view to imposing an alternative administrative fine. In 2018, almost half of the files were transferred to the regional sanctioning entity.

On the basis of previous environmental enforcement reports, these figures are presented per public prosecutor’s office since the entry into force of the Environmental Enforcement Decree in the following table⁴⁹.

⁴⁹ Except data for 2016 and 2017, which are shown per public prosecution partnership if one exists.

		% proportion of ORs sent to the regional entity in									
		2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
East Flanders Public Prosecutor's Office	Dendermonde	19.24%	34.28%	49.18%	37.39%	28.42%	39.62%	16.98%	50.32%	52.72%	58.97%
	Ghent	13.55%	17.43%	35.61%	50.73%	52.74%	53.60%	66.58%			
	Oudenaarde	5.21%	3.90%	6.75%	6.30%	7.86%	2.84%	6.27%			
West Flanders Public Prosecutor's Office	Bruges	9.09%	12.60%	12.41%	21.68%	30.04%	33.11%	9.44%	60.80%	49.29%	60.02%
	Ypres	6.80%	15.93%	15.76%	17.50%	19.02%	9.45%	1.76%			
	Kortrijk	18.29%	20.35%	42.65%	60.10%	77.88%	81.71%	102.90 ⁵⁰ %			
	Veurne	4.55%	15.38%	14.68%	4.96%	21.71%	49.54%	13.64%			
Antwerp Public Prosecutor's Office	Antwerp	6.80%	12.55%	25.25%	11.68%	18.62%	21.33%	34.90%	28.05%	26.46%	31.62%
	Mechelen	4.81%	9.39%	18.00%	14.58%	26.42%	10.42%	12.56%			
	Turnhout	16.03%	25.61%	32.08%	29.92%	49.32%	41.24%	55.31%	22.38%		
Limburg Public Prosecutor's Office	Hasselt	1.88%	2.79%	7.76%	18.21%	37.10%	19.56%	32.13%	50.78%	31.61%	47.20%
	Tongeren	3.95%	20.29%	19.45%	32.30%	26.16%	19.51%	26.61%	31.31%		
Leuven		5.59%	14.47%	15.93%	24.57%	25.86%	23.40%	25.43%	26.84%	17.47%	31.41%
Brussels		1.32%	10.85%	17.22%	34.75%	24.85%	5.35%	/	/	/	/
Halle-Vilvoorde		/	/	/	/	/	/	44.23%	30.65%	17.97%	39.33%
Total		10.06%	17.28%	26.61%	30.77%	34.49%	33.54%	38.49%	43.39%	38.04%	48.23%

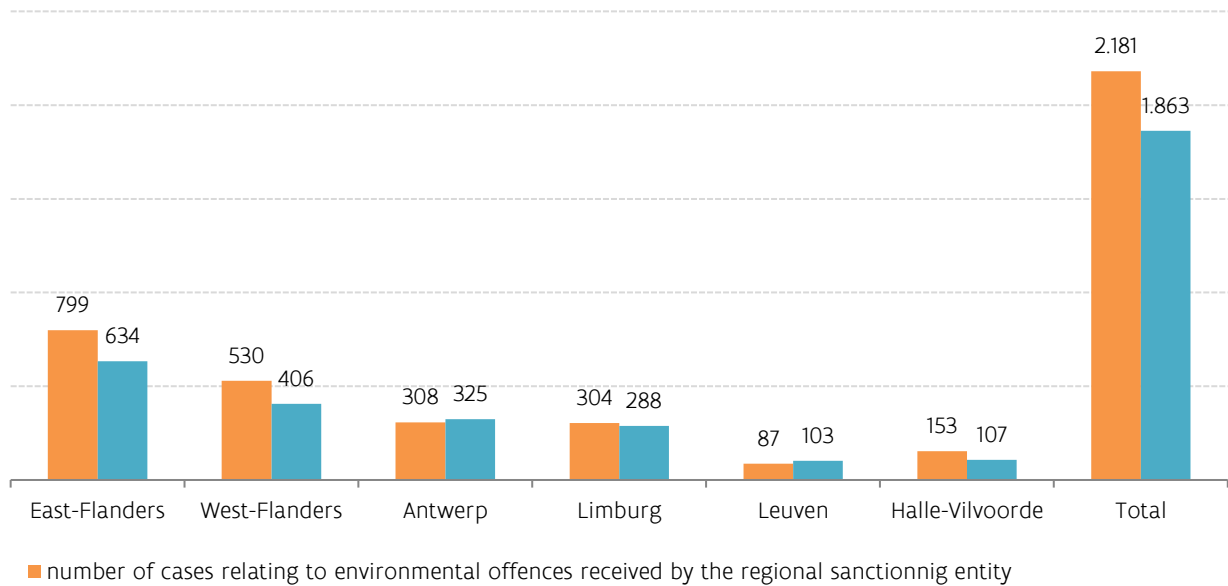
Table 45 Percentage share of 'Environmental Enforcement' cases sent to the regional sanctioning entity since the Environmental Enforcement Decree came into force in 2009

The above table points to ongoing regional differences in the percentage share of official reports sent to the regional sanctioning entity since the implementation of the Environmental Enforcement Decree. For example, there are divisions that transfer half of the official reports they record to the regional sanctioning entity with a view to imposing an administrative fine, while other public prosecutor's offices make more limited use of this option. However, these shifts and regional differences can partially be explained, as mentioned above, by the existing public prosecutor partnerships and by the fact that the previous years were presented according to the division that sent the case to the regional sanctioning entity and not according to the division of the public prosecutor's office that drafted the report.

COMMENT

The data on the number of cases delivered by the public prosecutor's offices and received by the regional sanctioning entity are based on the figures that the Flemish High Enforcement Council for Spatial Planning and Environment received from the regional sanctioning entity. On the basis of the figures that the VHRM received from the public prosecutors, a discrepancy can be established if this is compared with cases in the 'non-municipal administrative sanction' progress state on the extraction date. This is illustrated in the following graph for 2018.

⁵⁰ This figure shows that in 2015 the LNE-AMMC received more cases from the West Flanders Public Prosecutor's Office in Kortrijk than were recorded by this division. This can be explained by the public prosecution partnership. Kortrijk also sends cases from Bruges/Ypres/ Veurne, so that may explain why the LNE-AMMC received more cases from Kortrijk than the latter received itself.



■ number of cases relating to environmental offences received by the regional sanctioning entity

■ Number of 'environmental enforcement' cases registered in 2018 by the criminal sections of the public prosecution services in the Flemish Region, the 'non-municipal administrative sanction' and 'unspecified administrative sanction' progress reports

Graph 56 The number of cases concerning environmental crimes received by the regional entity and the number of 'Environmental Enforcement' cases recorded in 2018 by the criminal divisions of the public prosecutor's offices in the Flemish Region, in the 'non-municipal administrative sanction' progress state.

The above graph shows that the regional sanctioning entity received 318 cases more than the number already in the 'non-municipal administrative sanction' and 'administrative sanction (non specified)' progress states with the public prosecutors on the extraction date; this is already an overestimation of the number of cases submitted to the regional sanctioning entity with a view to imposing an administrative fine, considering the proportion of cases transferred to the Manure Bank with a view to imposing an administrative fine. One possible explanation for this is that the extraction date was not exactly the same day for the public prosecutor's offices and the regional sanctioning entity.

Considering the noise in the collected data, the analysis of this component is based on the figures that the Flemish High Enforcement Council for Spatial Planning and Environment received from the regional sanctioning entity.

In line with the previous environmental enforcement reports, more specific data are included on the origin and the theme of the cases that were submitted to the regional sanctioning entity. The following table shows the number of cases that the regional sanctioning entity received from the public prosecutor's offices, drawn up by the various enforcement bodies.

Enforcement actor	OR received by the regional entity in 2018			
	Priority	%	Non-priority	%
Agency for Roads and Traffic	0	0.00%	153	7.21%
Federal police	0	0.00%	24	1.13%
Local police	1	1.69%	991	46.70%
Municipal supervisors	7	11.86%	134	6.31%
Inter-municipal supervisors	1	1.69%	18	0.85%
Provincial supervisors	0	0.00%	1	0.05%
Enforcement Division – Environmental Inspectorate	11	18.64%	340	16.02%
Territorial Development, Environmental Planning and Projects Divisions of the Department of Environment and Spatial Planning (formerly LNE – AMV)	0	0.00%	0	0.00%
ANB	5	8.47%	286	13.48%
Special constables	0	0.00%	64	3.02%
OVAM	0	0.00%	16	0.75%
VLM	34	57.63%	93	4.38%
VMM	0	0.00%	0	0.00%
Territorial Development, Environmental Planning and Projects Divisions of the Department of Environment and Spatial Planning (formerly LNE – ALBON)	0	0.00%	0	0.00%
De Scheepvaart nv	0	0.00%	0	0.00%
Federal Public Service Mobility and Transport	0	0.00%	2	0.09%
Total	59	100.00%	2,122	100.00%

Table 46 The percentage share of official reports received by the regional sanctioning entity in 2018, by enforcement actor

45.48% of the official reports, priority and non-priority, received by the regional sanctioning entity in 2018, were drawn up by the local police. In absolute figures, 990 of official reports were involved. In addition, the table shows that 13.34% of the official reports received were drawn up by the Agency for Nature and Forests and 16% by the supervisors of the Enforcement Division – Environmental Inspectorate. Most of the priority official reports were drawn up by the VLM, i.e. more than 57% of the priority official reports received by the regional entity were drawn up by the VLM.

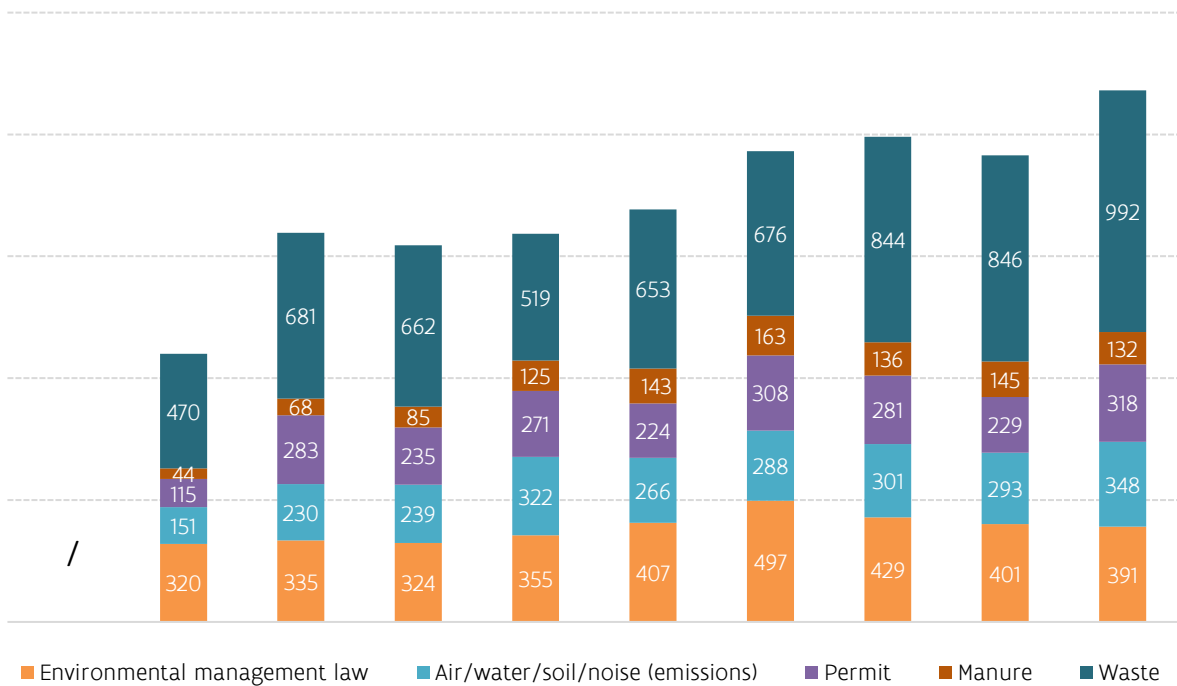
The following table gives an overview of the themes of the cases received by the regional sanctioning entity in 2018. The themes are the same as those used in the evaluation of the sanctioning policy implemented by the public prosecutor's offices.

Environmental themes	OR received by the regional entity in 2018			
	Priority	%	Non-priority	%
Environmental management	6	10.17%	385	18.14%
Air, Water, Soil and Noise	15	25.42%	333	15.69%
Permit	4	6.78%	314	14.80%
Manure	34	57.63%	98	4.62%
Waste	0	0.00%	992	46.75%
Total	59	100.00%	2,122	100.00%

Table 47 The percentage share of official reports received by the regional entity in 2018, by environmental theme

The table shows that 44.2% of the cases concerned waste. In addition, 18% of the cases received by the regional sanctioning entity in 2018 were related to environmental management, 16% to emissions, 14.5% to permits, and 6% to manure.

The following graph gives an overview of the number of cases, and the themes of these cases, received by the regional sanctioning entity since 2010.



Graph 57 The number of ORs received by the regional sanctioning entity by them from 2009-2018

The graph above shows that in the period 2010-2018, the majority of cases, i.e. 40.80%, related to the theme of waste. In addition, more than 22% were related to environmental management and more than 15% to emissions. Of the total number of official reports received in this period, 14.56% were related to permits and almost 7% to manure.

The following table gives an overview of the number and type of decisions that the regional sanctioning entity has taken with regard to the alternative administrative fine since the entry into force of the Environmental Enforcement Decree. As mentioned earlier, since September 2012 the regional sanctioning entity can propose an administrative transaction for certain environmental crimes. This administrative transaction can be considered as a kind of amicable settlement since the fine procedure no longer applies after payment of the proposed amount. However, if the offender does not wish to accept the administrative transaction proposal, the regional sanctioning entity resumes the procedure for imposing an alternative administrative fine.

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018				
ORs received by the regional entity of the public prosecutor's offices	304	1,100	1,597	1,545	1,594	1,693	1,932	1,991	1,914	2,181				
Processing/completion of cases involving alternative administrative fines	5	219	378	1,442	1,543	1,737	2,234	2,297	1,904	2,077				
Decision not to impose a fine	0	6	40	402	258	231	348	371	245	305				
Decision to impose a fine	0	151	279	1,040	966	848	1,356	1,083	847	886				
(Proposed and) paid administrative transaction	/	/	/	(7)	311	658	(912)	530	(1,056)	843	(1,110)	812	(1,241)	886
The official report was not within the scope of section XVI of the DABM.	5	62	59	0	8	0	/	/	/	/				
Decision entailed a fine with (partial) deferment (in accordance with Article 16,4,29 § 2 of the DABM – new modality since 12/07/2018)	/	/	/	/	/	/	/	/	/	/	8			

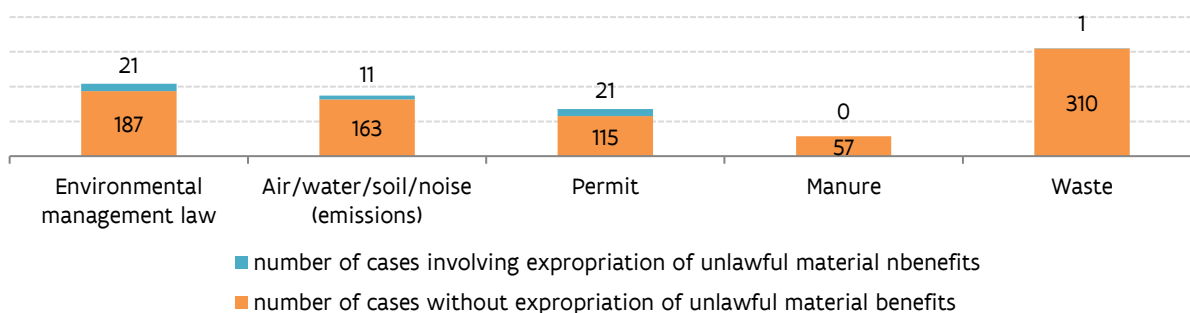
Table 48 Decisions taken in the context of alternative administrative fines by the regional entity since the entry into force of the Environmental Enforcement Decree in 2009

For 2018, it can be seen that the regional sanctioning entity received 2,181 cases and processed 2,077 cases. A total of 886 alternative administrative fines were imposed. In 305 cases it was decided not to impose a fine. In addition, 1,241 administrative transactions were proposed in 2018 and 886 administrative transactions paid in 2018. The 886 decisions that involved a fine also included the fines that were imposed after the administrative transaction proposal was rejected.

In general, since the Environmental Enforcement Decree came into force in May 2009, the regional sanctioning entity has received a total of 15,851 official reports from the public prosecutor's offices. Between 1 May 2009 and 31 December 2018, the regional sanctioning entity processed 13,836 cases in the context of the 15,851 official reports that were received. It should be noted that this is not a 1-to-1 relationship, as the regional entity may take multiple decisions in a single file received (e.g. because there are multiple offenders). The exact processing rate cannot therefore be calculated on the basis of the above data but is in any case less than 87% during the study period.

During this period, 7,456 alternative administrative fines were imposed. In addition, in 2,206 cases it was decided not to impose a fine or it was established that the official report did not fall within the scope of the Environmental Enforcement Decree.

The graph below shows the framework within which the alternative administrative fines were imposed in 2018. It also indicates whether these alternative administrative fines were linked to an expropriation of unlawful material benefits.

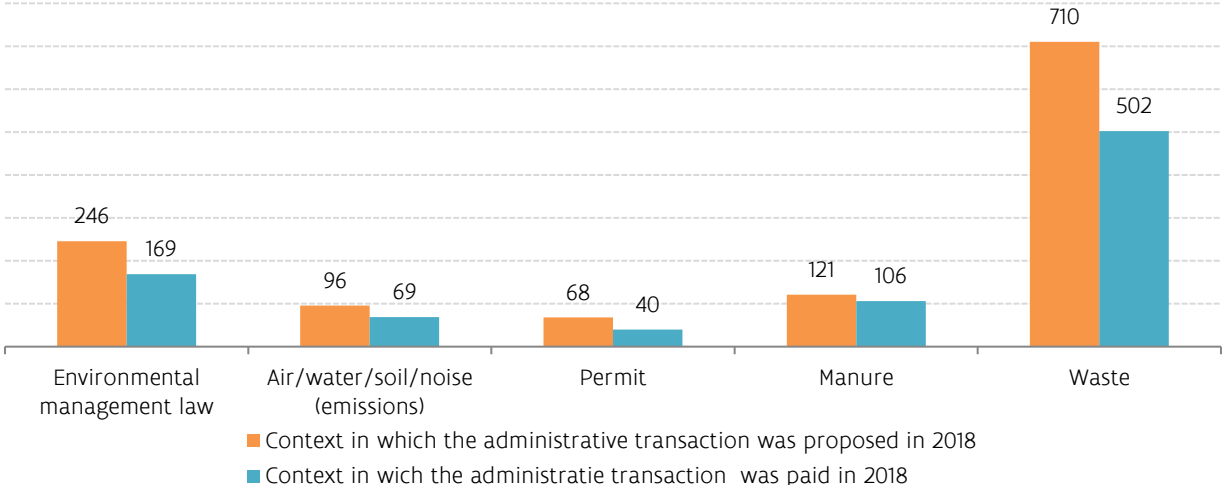


Graph 58 Framework within which alternative administrative fines were imposed by the regional sanctioning entity in 2018, without and with expropriation of unlawful material benefits

The graph shows that an expropriation of unlawful material benefits was imposed in 51 out of a total of 886 alternative administrative fines given in 2018. This equates to 6.09%. Of the 208 decisions imposing fines in relation to environmental management, 21 alternative fines were accompanied by an expropriation of unlawful material benefits. In the case of fines in connection with emissions, 11 out of 174 fines were linked to an expropriation of unlawful material benefits. In terms of percentages, the expropriation of unlawful material benefits generally accompanied fines related to permits, namely 15.44% of the total number of fines related to permits. On the other hand, not a single alternative administrative manure fine was imposed in 2018. Of the 311 waste fines, 1 decision imposing a fine was linked to an expropriation of unlawful material benefits.

For 37.10% of the decisions imposing fines taken in 2018, the official report related to waste. Approximately 23.47% were related to environmental management. 19.63% of the alternative fines in 2018 related to emissions and 6.43% to manure. In addition, 15.34% of the decisions imposing fines related to permit cases.

The graph below shows the framework within which the administrative transactions were proposed in 2018 and the framework within which the administrative transactions were paid in 2018.⁵¹



Graph 59 Framework within which administrative transactions in 2018 were proposed and paid, by environmental theme

The graph shows that the regional sanctioning entity proposed a total of 1,241 administrative transactions in 2018 and that for more than half of these proposals, i.e. more than 57%, the case was related to waste. In addition, for almost 20% of the proposals, the case related to environmental management and almost 10% of the cases to manure.

Furthermore, the graph also shows that, in 2018, a total of 886 payment proposals were accepted as part of the administrative transaction procedure. Given that the payment term for an administrative transaction is 3 months, there are administrative transactions that were proposed in 2017 and were only paid in 2018, and there will be administrative transactions that were proposed in 2018 but were only paid in 2019. So given these payment terms, the above graph does not allow a one-to-one relationship to be established between the proposals and the administrative transactions actually paid. The regional sanctioning entity reports that the overall payment response for the proposed administrative transactions is approximately 75%.

⁵¹ Some of the administrative transactions proposed in 2018 will have been paid in 2019. Moreover, 2018 handled administrative transactions that were proposed in 2017. The matching is therefore not 100% given that the payment term is 3 months

4.2.2 Processing environmental offences

In the context of dealing with environmental infringements, the regional sanctioning entity was asked to indicate how many identification reports it had received in 2018, by whom they were drawn up, and for what reason these identification reports were drawn up and fined.

The regional sanctioning entity reported that a total of 116 identification reports were received in 2018 in relation to identified environmental offences. 88% of these identification reports were drawn up by regional supervisors. Specifically, 77 identification reports were submitted to the regional sanctioning entity by the ANB, 22 by OVAM, and 3 by the Enforcement Division – Environmental Inspectorate. In addition, 4 identification reports were drawn up by municipal supervisors and 10 by local police supervisors.

The section 'Evaluation of the identification report instrument' reports on the use of the instrument by supervisors. For this reason, the various supervisors were therefore asked how many identification reports they had drawn up in 2018. These numbers differ from the numbers received by the regional sanctioning entity in 2018. In total, the supervisory bodies reported having drawn up 184 identification reports, compared to 116 received by the regional sanctioning entity in 2018. The responding municipal supervisors stated that they had drawn up a total of 20 identification reports, whereas in 2018 the regional sanctioning entity received only 4 identification reports from this enforcement body. Local police supervisors reported that they had drawn up a total of 16 identification reports, while the regional sanctioning entity only received 10. On the other hand, it may be noted that the responding regional supervisors drew up 112 identification reports in 2018, while the regional sanctioning entity received 102 identification reports.

The regional sanctioning entity was asked to indicate the framework in which the identification reports were drawn up in 2018. The following table shows this.

Environmental management	77
Emissions	25
Permits	12
Manure	0
Waste	2
Total	116

Table 49 Identification reports received by the regional entity, by subject, in 2018

The table shows that more than 66% of the total number of identification reports dealt with environmental management and 21.5% with emissions. In addition, 10% of the 116 identification reports received concerned permits, and almost 2% concerned waste.

The regional sanctioning entity was asked to indicate which decisions were taken in 2018 with regard to identification reports received. The table below provides an overview of decisions in the context of exclusive administrative fines, taken by the regional sanctioning entity, since the entry into force of the Environmental Enforcement Decree in 2018.

	2009	2010	2011	2012	2013	2014	2015		2016		2017		2018	
Identification report received by the regional entity	18	38	18	47	89	50	137		131		161		116	
Decision taken in the context of Exclusive administrative fine	4	13	36	52	65	31	127		100		170		149	
Decision not to impose a fine	1	0	2	3	0	4	10		6		15		31	
Decision to impose a fine	3	5	32	49	54	20	68		32		74		56	
Proposed administrative transaction was paid	/	/	/	0	11	7	(65)	49	(92)	62	(93)	81	(/)	62
The Identification report was not within the scope of section XVI of the DABM.	0	8	2	0	0	0	/		/		/		/	

Table 50 Decisions taken in the context of exclusive administrative fines by the regional sanctioning entity since the entry into force of the Environmental Enforcement Decree in 2009

The table shows that, in 2018, the regional sanctioning entity received a total of 116 identification reports and took 149 decisions on identified environmental offences. In 37.5% of these decisions an exclusive administrative fine was imposed, while in 31 cases it was decided not to impose a fine. In addition, 62 administrative transactions were paid. The 56 decisions that involved a fine also included the fines that were imposed after the administrative transaction proposal was rejected.

Since the Environmental Enforcement Decree came into force in May 2009 and until 31 December 2018, the regional sanctioning entity received a total of 805 identification reports. A total of 393 exclusive administrative fines were imposed. It can also be seen that 143 files were dealt with by means of the accelerated procedure, namely the administrative transaction.

The following table shows the framework within which the fines were imposed by the regional sanctioning entity in 2018.

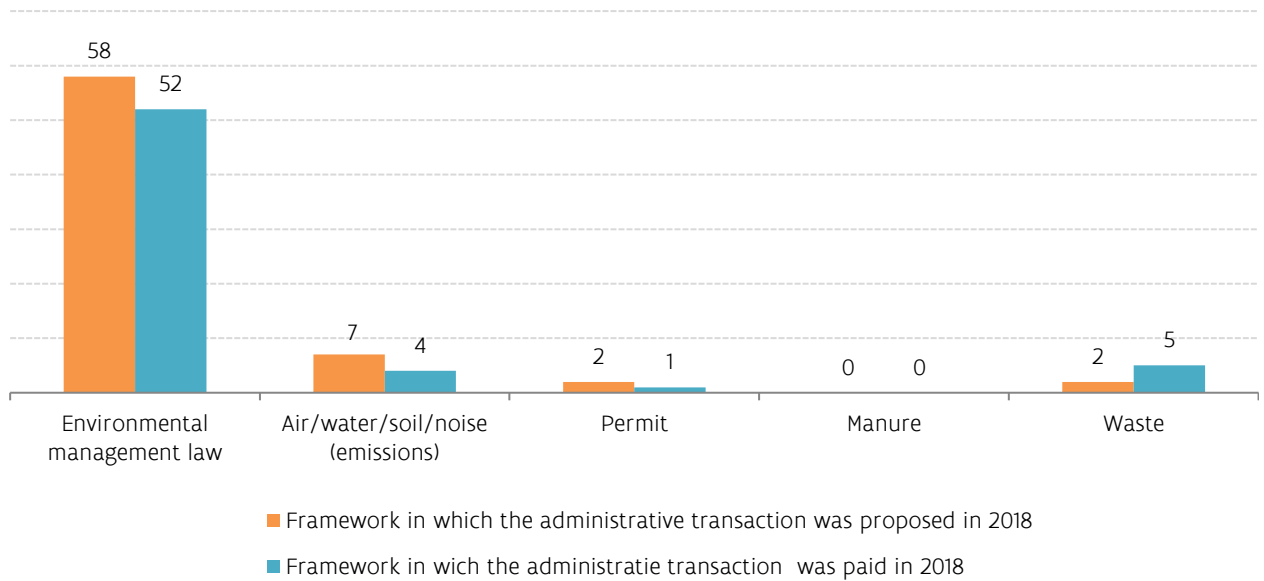
Framework within which an exclusive administrative fine was imposed:	Number of cases
Environmental management	26
Emissions	12
Permits	4
Manure	6
Waste	8

Table 51 Framework within which an exclusive administrative fine was imposed

The table shows that 46% of the cases in which an exclusive administrative fine was imposed related to environmental management and 21% to emissions cases. In addition, slightly more than 14% of the cases concerned waste.

The following graph shows in which framework the administrative transaction was proposed and paid in 2018.⁵²

⁵² Some of the administrative transactions proposed in 2018 will be paid in 2019. Moreover, 2018 handled administrative transactions that were proposed in 2017. The matching is therefore not 100% given that the payment term is 3 months.



Graph 60 Framework within which administrative transactions in 2018 were proposed and paid, by environmental theme

The above graph shows that the regional sanctioning entity proposed a total of 69 administrative transactions in 2018, and that 84% of these proposals related to environmental management. In addition, 10% of the cases related to emissions.

The graph also shows that, in 2018, a total of 62 payment proposals were accepted as part of the administrative transaction procedure. Given that the payment term for an administrative transaction is 3 months, some administrative transactions proposed in 2017 were only paid in 2018. So given this payment term, the graph does not allow a one-to-one relationship to be established between the proposals and the administrative transactions actually paid.

4.3 EVALUATION OF the administration of justice BY THE ENFORCEMENT COURT

The Enforcement Court⁵³ is an independent administrative court that was established in accordance with article 16.4.19 of the DABM. It rules on appeals against decisions of the regional sanctioning entity imposing an alternative or exclusive administrative fine, whether or not accompanied by an expropriation of unlawful material benefits, which were taken after an environmental offence or an environmental crime was established.

The decisions that the Enforcement Court can take in relation to alternative and exclusive administrative fines are stated in Article 16.4.19(3) of the Environmental Enforcement Decree:

- ▶ the Enforcement Court is not competent to hear the appeal, in which case it decides to dismiss the appeal;
- ▶ the appeal is inadmissible. In this case too, the Enforcement Court decides to dismiss the appeal without being able to proceed to examine the merits of the case;
- ▶ the appeal is unfounded. In this case, the Enforcement Council also decides to dismiss the appeal, but after the merits of the case have been examined. That decision confirms the contested decision imposing a fine on the appeal aspect;
- ▶ the appeal is justified. In this case, the Enforcement Court annuls the contested decision in whole or in part, in which case (as a rule) the regional sanctioning entity can take a new decision, except in those cases in which it is not or no longer competent. However, the Enforcement Court itself can also take a decision on the amount of the fine and, where applicable, the expropriation of unlawful material benefits, and determine that its ruling on this matter replaces the annulled decision.

The Enforcement Court was also surveyed by the VHRM about its activities in 2018. They were asked about the number of appeals received against fine decisions by the regional sanctioning entity in the context of both environmental crimes and environmental offences. They were also asked about how these appeals were dealt with.

The table below shows the activities of the Enforcement Court in 2018 related to the appeals lodged against fine decisions of the regional sanctioning entity.

⁵³ With the entry into force of the regulations on the enforcement of the integrated environmental permit, the Environmental Enforcement Court, established in 2009, was renamed the 'Enforcement Court' on 1 March 2018

APPEALS	Environmental crimes	Environmental offences	Total
Received in 2018	48	4	52

JUDGMENTS	Environmental crimes	Environmental offences	Total
Appeal inadmissible (after simplified procedure)	7	1	8
Appeal unfounded, fine confirmed	30	2	32
Appeal well-founded in whole or in part, with reduction/waiver of fine	7	0	7
Appeal well-founded in whole or in part, decision of the regional entity of the Enforcement division of the Department of Environment and Spatial Development annulled without further ado	5	1	6
Granting of a waiver of appeal	1	0	1
Appeal void of purpose	0	0	0
Interlocutory judgment	2	0	2
Total	52	4	56

Table 52 Appeals received against fine decisions of the regional entity in the context of environmental crimes and environmental offences by the Environmental Enforcement Court in 2018 and the results of their processing

In the previous section, it was reported that the regional sanctioning entity imposed 886 alternative administrative fines in 2018. The above table shows that, in 2018, the Enforcement Court received 48 appeals regarding the decisions of the regional sanctioning entity for the imposed alternative administrative fines. This means that almost 5.4% of the regional sanctioning entity's decisions were appealed. However, there is no conclusive one-to-one relationship. Indeed, this percentage cannot be given precisely because the offender has a period of 30 days, starting on the day following the notification of the sanctioning entity's decision, to lodge an appeal with the Enforcement Court. This means that an appeal could still have been lodged against the regional sanctioning entity's decisions taken in the last 30 days of 2018. This in turn may be offset by the fact that appeals received in 2018 may also relate to decisions notified in the last thirty days of 2017.

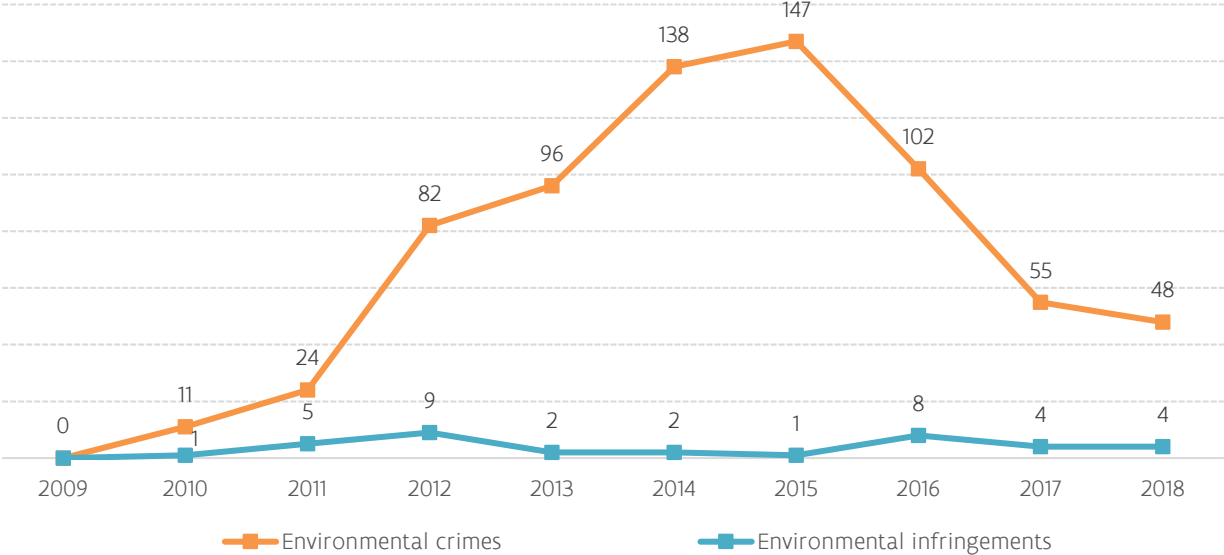
The table shows, among other things, that the Enforcement Court recorded 48 appeals in 2018 and that a total of 52 judgments were handed down in 2018. Of the 52 appeals lodged against the alternative administrative fines imposed, 13.5% were declared inadmissible, 58% of the appeals were declared unfounded with confirmation of the fine imposed by the regional sanctioning entity and 23% of the appeals submitted were declared wholly or partly well founded, with the fine being reduced or waived. In 4% of the judgments in 2018, an interlocutory judgment was handed down.

Furthermore, the table shows that in 2018 the Enforcement Court received 4 appeals against the imposed exclusive administrative fines and, in 2018, it took 4 decisions in this respect. One appeal was declared inadmissible, two appeals were declared unfounded and one appeal was declared fully or partially well founded and the decision of the regional sanctioning entity was overturned.

For the exclusive administrative fines imposed by the regional sanctioning entity in 2018, the above table shows an "appeal rate" of 7%. The previous section indicated that the regional sanctioning entity imposed 56 exclusive administrative fines in 2018, while the Enforcement Court received 4 appeals in 2018 for exclusive administrative fines. However, there is no conclusive one-to-one relationship. The percentage of the appeal rate may indeed differ, since the offender has a period of 30 days, starting on the day following the notification of the sanctioning entity's decision, to lodge an appeal with the Enforcement Court. This means that an appeal could still have been lodged against the regional sanctioning entity's decisions taken in the last 30 days of 2018. This in turn may be offset by the fact

that appeals received in 2018 may also relate to decisions notified in the last thirty days of 2017.

The graph below provides an overview of the number of appeals received by the Enforcement Court relating to exclusive administrative fines and alternative administrative fines since the entry into force of the Environmental Enforcement Decree.



Graph 61 Appeals received against fines imposed by the regional entity in the context of environmental crimes and environmental offences by the Enforcement Court since 2009.

Based on graph 60, with regard to alternative administrative fines, from the entry into force of the Environmental Enforcement Decree up to and including 2018, an appeal percentage of 9.5% can be established, since a total of 705 appeals were recorded with the Enforcement Court and a total of 7,456 alternative administrative fines were imposed by the regional sanctioning entity in that period. The Enforcement College took 672 (interim) decisions in the same period, representing 95.3% of the total number of appeals received against alternative administrative fines imposed.

With regard to exclusive administrative fines, an appeal percentage of 9% can generally be calculated. Indeed, the Enforcement Court registered a total of 36 appeals in the period 2009-2018 and the regional sanctioning entity imposed a total of 393 exclusive administrative fines in that period.

4.4 EVALUATION OF THE SANCTIONING POLICY PURSUED BY THE FLEMISH LAND AGENCY

It is not only the regional sanctioning entity that can impose administrative fines. The Flemish Land Agency (VLM) has already been empowered to impose administrative fines with the entry into force of the Decree of 22 December 2006 on the protection of water against pollution caused by nitrates from agricultural sources – commonly known as the Manure Decree.

Article 63 of the Manure Decree sets out exhaustively the violations for which administrative fines may be imposed by VLM. This article also sets out the calculations for the amounts of the fines. Article 71 of the aforementioned decree then specifies the violations for which an official report must be drawn up.

The administrative fines imposed in 2018 may relate to violations under the previous Manure Decree – Manure Action Plan IV and the current Manure Decree – Manure Action Plan V.

The Flemish Land Agency was therefore not only asked to specify the number of environmental enforcement inspections carried out in 2018 and the follow-up given to these inspections, as described in chapters 2 and 3, but also to specify how many administrative fines the VLM imposed in the context of the inspection reports drawn up by the VLM and for which violations.

The following table shows the number of field incident reports and the number of administrative fines imposed by the VLM in 2018.

ADMINISTRATIVE FINES AND SITE IDENTIFICATIONS IMPOSED BY THE VLM IN 2018 IN ACCORDANCE WITH THE PROVISIONS LAID DOWN IN THE MANURE DECREE	Number of field identification reports	Number of fines
	72	2,637
Fines under the current MAP V Manure Decree imposed in 2018		
63 § 1 Nitrogen and phosphate balance	0	35
63 § 2 More animals than available NER	0	1299
63 § 3 Fulfilment of manure treatment obligation	0	0
63 § 5 Over-fertilisation of a lot (lots with a zero restriction on fertilisation or the application of twice the quantity than that permitted by decree)	5	6
63 § 6 Failure to file or incorrect filing of the declaration	0	684
63 § 9 Not having nitrate residue analysis carried out or not doing so correctly	0	241
63 § 10 Failure to implement measures imposed in accordance with the Manure Decree	5	163
63 § 12 3° Incorrect or lack of subsequent notification or conclusion by the authorised consignor	0	0
63 § 12 5° Incorrect or lack of subsequent notification or conclusion of the neighbour agreement	0	0
63 § 12 6° Transport of fertilisers without documents being prepared by the manure transporter	7	10
63 § 12 7° Failure to draw up the neighbour agreement	21	24
63 § 12 8° Transport of fertilisers without documents being prepared by the manure consignor	1	0
63 § 12 9° The supplier or purchaser of manure who should have known that the required documents had not been drawn up	3	11
63 § 12 10° No or incorrect use of AGR-GPS	16	36
63 § 12 12° The supplier or purchaser of manure who had to use a certain method to determine the manure composition and who has not used it	0	0
63 § 12 13° The manure transporter who should have known that the manure composition was not determined in accordance with the correct method	0	0
63 § 12 14° The supplier or customer who transports manure with an invalid analysis	1	6
63 § 12 15° The manure transporter who should have known that the transport did not have a valid analysis	1	0
63 § 12 17° Manure transporter who carries out a transport without accreditation	1	1
63 § 12 18° Transport is carried out with an unauthorised vehicle	1	1
63 § 13 Minor infringements in connection with transport documents	10	120

Table 53 The number and nature of the administrative fines imposed by the Flemish Land Agency in 2018

The table shows that, in 2018, VLM imposed 2,637 fines as a result of 72 site identification reports. The difference between the number of violations detected in the field and the number of imposed fines is related to the time limit for the imposition of fines. Fines were not imposed in 2018 for all the violations detected in 2018. The fines imposed in 2018 may still relate, on the one hand, to violations detected in previous years and, on the other hand, it is possible that violations detected in 2018 were not fined until 2019. In addition, the fines imposed in 2018 are for both infringements established in the field as well as administrative inspections. This means that some of the fines were imposed administratively as a result of the database audit and are not reflected in the number of field identification reports. A limited number of fines for violations detected in 2018 have not actually been imposed yet and have therefore not been included in the report yet.

5 CONCLUSIONS AND RECOMMENDATIONS

This section will provide an overview of the main findings regarding the evaluation of the implemented environmental enforcement policy, the use of the instruments, and the sanctions policy in 2018. Findings will also be formulated regarding these data since the entry into force of the Environmental Enforcement Decree in 2009.

Based on the formulated findings and insights, this section subsequently formulates recommendations for the further development of the environmental enforcement policy.

5.1 EFFORTS

Regional supervisors

Based on the data in the second chapter, it can be concluded that a total of 629 regional supervisors were appointed in 2018. In 2018, a total of 203 FTEs were deployed for environmental enforcement duties by the regional supervisory bodies, of which 178 FTEs by the supervisors and 25 by non-supervisory bodies for administrative support. In the period 2009-2018, the number of regional supervisors fluctuated between 765 and 625. The number of FTEs dedicated to environmental enforcement duties by the regional supervisory bodies fluctuated during this period, with a maximum of 203 FTEs and a minimum of 165 FTEs.

In 2018, the regional supervisors together carried out 38,389 inspections. Since the entry into force of the Environmental Enforcement Decree, the number of inspections carried out by the regional supervisors has increased. For 2018 an increase of 49% compared with 2009 could be calculated.

With regard to the average number of inspections carried out by supervisors and the average number of inspections per FTE, with the exception of a few fluctuations, increasing trends can be determined since the implementation of the Environmental Enforcement Decree. In 2009 these amounted to 148 inspections and 41 inspections respectively and in 2018 to 189 inspections and 63 inspections respectively.

Local and federal police

The data concerning the local and federal police show that, in 2018, a total of 9,783 official environmental reports were drawn up in the Flemish Region. Approximately 97% of these official reports, which is completely in line with findings of previous environmental enforcement reports, were drawn up by the local police and 3% by the federal police. 17% of these official reports related to 'waste by private individuals'.

In 2018, the Federal Police carried out 440 proactive inspections of waste shipments on the territory of the Flemish Region, as part of the National Safety Plan 2016-2019.

With regard to the local police, the data in chapter 2 show that, in 2018, 36.5% of the 74 responding police districts were able to call upon a supervisor appointed within their own police district. This ratio related to the response – fluctuated considerably in the period 2009-2018. The number of appointed supervisors and the number of FTEs assigned to enforcement activities – 46 and 26.02 respectively in 2018 – has also fluctuated since the Decree came into force. The average number of

supervisors per police district has remained rather stable since 2011, i.e. between 1.88 and 1.65 supervisors per police district with a supervisor. The average number of FTEs per supervisor of the local police shows a fluctuating trend in the period studied, between 0.31 and 0.71. It can be concluded that, since the entry into force of the Environmental Enforcement Decree, local police supervisors have not been active on a full-time basis in environmental enforcement, but rather part-time in general.

The average amount of time spent per supervisor (0.56 FTEs in 2018) has also fluctuated slightly in recent years, but in general it can be concluded that the average local police supervisor is engaged at least half-time – and until 2016 even for 71% of their time in environmental enforcement duties. For 2018 it was also possible to calculate the average time, i.e. 0.93 FTEs spent on environmental enforcement tasks in the police districts that have appointed a supervisor within their own police district. In 2016, the average amount of time for these duties was 1.21 FTE, and in 2015 it was 0.83 FTE.

In 2018, a total of 4,044 environmental enforcement inspections were carried out – 3/4 of which were carried out in response to complaints and reports by the 46 supervisors appointed within the local responding police districts. The average number of environmental enforcement inspections per supervisor was 88 in 2018, and the average number of inspections per FTE was 155 per FTE. Both the total number of annual environmental enforcement inspections carried out by local police supervisors, as well as the average number of inspections per supervisor and the average number of inspections per FTE fluctuated strongly over the years, since the entry into force of the Environmental Enforcement Decree.

Provinces

With regard to the activities of the provincial governors related to imposing administrative measures and safety measures, it can be concluded that the provincial governors received just 2 questions/requests for the imposition of administrative measures in 2018. Since the entry into force of the Environmental Enforcement Decree in 2009, provincial governors have received a total of just 16 such questions/requests. In addition, during the period studied, only one administrative measure was imposed (2011) and only one safety measure was taken (2016) by the provincial governors.

Despite the fact that the provinces have had the option of appointing supervisors since 2009, this was only done by two provinces. Generally speaking, there has been an increase in the number of supervisors in these provinces. In 2018, these two provinces together had 16 appointed provincial supervisors. An upward trend can also be determined in the number of environmental enforcement inspections carried out, with a maximum of 117 inspections in 2018.

Municipalities

Like the provincial governors, the mayors of Flemish cities and municipalities have powers with regard to administrative measures and safety measures pursuant to the Environmental Enforcement Decree. In 2018, 16% of the 244 responding mayors received a request or an enquiry to impose an administrative measure. In addition, 15% of mayors imposed an administrative measure in 2018. The percentage of responding mayors who received a request for the imposition of an administrative measure and the percentage of responding mayors who imposed an administrative measure fluctuated significantly since the entry into force of the Environmental Enforcement Decree. In total, the responding mayors received 77 requests/ enquiries for the imposition of administrative measures in 2018. In addition, a total of 125 administrative measures were imposed by the mayors. These figures

depending on the response, of course – also fluctuated considerably since the entry into force of the Environmental Enforcement Decree.

With regard to the safety measures, it was found that 6.5% of the responding mayors together had received 16 questions about the imposition of a safety measure in 2018. In addition, 16% of the responding mayors also effectively imposed a safety measure in 2018. A total of 39 safety measures were imposed by the mayors in 2018. The percentage share of responding mayors who received a request to impose a safety measure and the percentage share of responding mayors who imposed a safety measure fluctuated since the entry into force of the Environmental Enforcement Decree. In total, the responding mayors received 22 enquiries for the imposition of safety measures in 2018. In addition, a total of 56 safety measures were imposed by the mayors. These figures depending on the response, of course – also fluctuated considerably since the entry into force of the Environmental Enforcement Decree.

With regard to nuisance-causing establishments in Flemish cities and municipalities, the data in chapter 2 show that, in 2018, 188 of the 244 responding municipalities together had 10,541 class 1 establishments and 186 municipalities 34,632 class 2 establishments on their territory. The remaining municipalities reported that they have no information about the number of class 1 establishments (56 municipalities) and class 2 establishments (58 municipalities) on their territory. The number of municipalities that have no insight into the number of class 3 establishments is slightly higher, namely almost 30% of the total of 244 responding municipalities. In 2018, the other municipalities together had 106,139 class-3 establishments on their territory. In addition, almost half of the responding municipalities, namely 121 municipalities, indicated that they were aware of a total of 3,173 establishments that had not been granted a permit while being subject to a permit or reporting requirement. The remaining 123 municipalities indicated that they did not know the number of unlicensed establishments or that they did not have unlicensed establishments on their territory. In comparison with previous years, a somewhat positive trend can be determined despite the fact that the number of known unlicensed establishments subject to a permit or reporting requirement is still very high.

The data on the number of nuisance-causing class 2 establishments revealed whether or not the municipalities complied with the provisions of the Environmental Enforcement Decree concerning the appointment of a minimum number of supervisors within their own municipality, police district and/or the intermunicipal associations. It can be concluded that a minimum of 15% and a maximum of 22.5%⁵⁴ of the responding municipalities still did not have sufficient supervisors at their disposal in 2018. 32 of the 244 responding municipalities even had no supervisor at all at their disposal in 2018. If the number of nuisance-causing establishments is not precisely or insufficiently known, the number of supervisors that a municipality must have at its disposal can also be determined on the basis of the number of inhabitants. If this criterion is applied, 23% of municipalities with more than 30,000 inhabitants did not yet comply with the relevant provisions of the Environmental Enforcement Decree in 2018.

With regard to municipal supervisors, it was found that a total of 237 municipal supervisors were appointed in 2018 within 160 municipalities with only municipal supervisors who together deployed a total of 47.13 FTEs on environmental enforcement duties. There were 84 municipalities without a

⁵⁴ Considering the 18 municipalities that had one supervisor at their disposal and have no idea about the number of nuisance-causing establishments on their territory. There could potentially be more than 300 of such establishments, so they should have 2 supervisors at their disposal instead of one.

municipal supervisor. The average amount of time spent per municipal supervisor on environmental enforcement duties in 2018 was 0.20 FTEs, which means that the average supervisor spends 1/5 of their time on environmental enforcement duties. The average amount of time spent on environmental enforcement duties by municipal supervisors has decreased somewhat since the entry into force of the Environmental Enforcement Decree. Whereas it still amounted to 0.30 FTEs in 2011 and 0.29 FTEs in 2012, it fell to 0.19 FTEs in 2017 and 0.20 FTEs in 2018.

In 2018 a total of 3,672 environmental enforcement inspections – of which almost 64.5% were carried out in response to complaints and reports – were carried out by the 244 municipal supervisors. Generally speaking, a rather declining trend can be determined with respect to the environmental enforcement inspections carried out by municipal supervisors. These numbers are related to the response. The average number of environmental enforcement inspections per supervisor fell further to 15 inspections per supervisor in 2018, the lowest number in the period studied. The average number of inspections per FTE was 78 in 2018. This figure shows a fluctuating picture since the entry into force of the Environmental Enforcement Decree.

To organise environmental enforcement within inter-municipal associations, it was found that 7 inter-municipal associations had appointed at least one supervisor within their association in 2018. A total of 19 supervisors were appointed within these 7 inter-municipal associations and a total of 4.45 FTEs carried out environmental enforcement duties, which represents an average time expenditure of 0.24 FTEs. By way of comparison, in 2018 this was 0.20 FTEs for municipal supervisors and 0.57 FTEs for local police supervisors. Intermunicipal supervisors carried out 501 environmental enforcement inspections. This represents 26 inspections per intermunicipal supervisor and 112.5 inspections per FTE. For municipal supervisors, these figures amounted to 15 inspections per municipal supervisor and 78 inspections per FTE in 2018, respectively. In 2018, these figures amounted to 88 inspections per local police supervisor and 155 inspections per FTE, respectively.

5.2 INSTRUMENTS

The third chapter in this environmental enforcement report deals with the use of the individual environmental enforcement instruments in 2018.

Inspections and infringements

In 2018, a total of 46,770 environmental enforcement inspections were carried out by regional supervisors, provincial supervisors, municipal supervisors and local police supervisors. An increasing trend can be determined in the total number of environmental enforcement inspections carried out since the entry into force of the Environmental Enforcement Decree. This is obviously related to the response.

In 83% of the environmental enforcement inspections carried out in 2018, no infringements were found. An infringement was detected in only 8,078 inspections. Infringements were mainly established when the provincial supervisors and the municipal supervisors carried out inspections. In 55% of all inspections carried out by municipal supervisors, an infringement was found. This was even 86% for the provincial supervisors. In the case of local police supervisors, this ratio was almost 1 to 2 in 2018. An infringement was detected in almost 10% of the inspections carried out by regional supervisors. Since the entry into force of the Environmental Enforcement Decree, the share of inspections in which no infringement was identified always increased compared with inspections in which an infringement was identified. In recent years, therefore, there have been fewer and fewer inspections in which infringements have been detected. This change could indicate an increased level of compliance or the lack of a risk-based enforcement.

No further action was taken with regard to the infringement found in 5% of the 8,078 inspections in 2018 where an infringement was found. Before 2015, this percentage was always above 9%. Since 2015, it has fluctuated between 2% and 5%. This evolution can be seen as positive. After all, it shows that an increasing number of infringements were followed up (appropriately or not) with the help of the instruments provided for supervisors by the Environmental Enforcement Decree.

In the period 2010-2013, the percentage of inspections where the result is unknown compared with the total number of environmental enforcement inspections carried out was between 9% and 12%. From 2014 this percentage fell, to between 1% and 5%. This improvement in recent years could indicate better monitoring. Effective monitoring is crucial for drawing up an environmental enforcement report efficiently. Complete and accurate data should be used as much as possible. Every inspection whose outcome is unknown results in an incomplete evaluation of the bodies involved and the available set of instruments.

Recommendations and exhortations

In 2018, a total of 6,532 recommendations were drawn up out of a total of 38,692 inspections in which no infringement was found. This equates to 17%. As in previous years, the regional supervisory bodies, with the exception of VAZG, used the recommendation instrument significantly less than the municipal supervisors and the local police supervisors. The total number of recommendations formulated has increased since 2015. These numbers are related to the response. However, in percentage terms, in relation to the total number of inspections in which no infringement was found, a difference can also be determined with regard to the number of recommendations formulated between the period 2010-2014, when this percentage fluctuated between 7% and 13%, and the period

2015-2018, when it fluctuated between 14% and 19%.

The instrument 'exhortation' was also widely used in 2018. An exhortation was issued in 68% of all inspections where an infringement was found. In total, 5,514 exhortations were formulated during 8,078 inspections where an infringement was found. Since the entry into force of the Environmental Enforcement Decree, the percentage ratio with respect to the number of inspections in which an infringement was identified has fluctuated in a similar way. In the initial period from 2010 to 2014, this percentage was between 31% and 47%. From 2015 onwards, the percentage fluctuated between 58% and 81%. In general, it can be said that from 2015, more exhortations were formulated in respect of the infringements detected.

Identification reports and official reports

Compared with the other instruments, the Identification report instrument – introduced by the Environmental Enforcement Decree – has not been used often since the entry into force of the Environmental Enforcement Decree. A total of 148 identification reports were drawn up in 2018. Over the entire period studied, 2009-2018, a total of 1,196 incident reports were drawn up. The percentage of use of the instrument in relation to the number of inspections in which an infringement was detected was 1% over this entire period. However, the annual number fluctuates, with a sharp increase since 2015. However, this increase in the number of identification reports does not necessarily indicate an increase in the number of environmental infringements identified since 2015.

After all, supervisors are free to decide whether or not they draw up an identification report for the identified environmental offence.

An official report was drawn up for 2,958 of a total of 8,078 inspections where an infringement was established in 2018. This represents a percentage ratio of 37%. It can be determined that the number of official reports drawn up by supervisors for the identification of environmental offences fluctuated during the period studied. It is striking, however, that in 2018 almost 3,000 official reports were drawn up, which is the largest number in the period studied, whereas just that year the drawing up of an official report for an identified environmental crime became an option for supervisors. Previously this was a requirement. This can also be seen in the percentage ratio of the number of official reports to the number of inspections in which an infringement was identified. In 2018 the ratio was 37%, whereas in previous years it had been decreasing, with the lowest percentage ratio, 17%, in 2012 and 2013. This may indicate that, despite the fact that the drawing up of an official report has become optional, supervisors feel increasingly familiar with the use of this instrument.

Administrative and safety measures

In 2018, a total of 673 administrative measures were imposed by the supervisory authorities. In percent- age terms, compared with the number of inspections where an infringement was detected, this represents 8%. In addition, it was found that 25% of the administrative measures imposed in 2018 were not implemented within the time limits imposed. In 2018, only 21 cases of an administrative penalty payment were linked to an administrative measure. The administrative penalty payment was actually collected in four of these cases. Since the entry into force of the Environmental Enforcement Decree, it can be determined that the number of administrative measures imposed has remained at the same level, which means there was no 'learning curve', as supervisors have used this instrument from the start and in a constant manner over the past years. The percentage ratio of the number of administrative measures imposed in relation to the number of inspections during which an

infringement was identified fluctuated only moderately between 4% and 8% during the period studied.

In 2018, 55 appeals were lodged against decisions regarding administrative measures. This means that the appeal rate in 2018 was 8%. 45 of the 55 appeals lodged in 2018 were declared admissible. For 30 of these appeals, a judgment was given within the time limit. For 12 cases, the period within which the minister must take a decision had not yet expired at the time of the report. In the context of 3 cases, an extension of the deadline was requested. Almost half of the judgments dismissed the appeal as unjustified 27% were partially justified and 20% were fully justified. 7% of the appeals were declared devoid of purpose. In the period 2009-2018, in most years appeals were lodged mainly in respect of injunctions. The percentage of appeals for the different types of administrative measures fluctuates during the period studied.

In 2018, 7 appeals were lodged against dismissed requests for the imposition of administrative measures. All the appeals lodged in 2018, all of which were related to environmental hygiene, were declared inadmissible. In five appeals, the minister took a decision within the time limit provided for in the decree. In the other two cases, the deadline had not yet been reached. Only 1 request was granted. The other four appeals were unfounded. In the period 2010-2018, a total of 83 appeals were lodged against dismissed requests for the imposition of administrative measures. 80% of these were declared admissible. Of the 64 admissible appeals for the period 2010-2018 in which the minister has already ruled, 28% were upheld in part or in full.

A total of 122 safety measures were imposed in 2018. The number of safety measures imposed fluctuated in the period 2010-2018. As the imposition of a safety measure is not linked to the number of environmental enforcement inspections carried out, the fluctuating nature is not surprising either.

5.3 SANCTIONING

In the section on criminal sanctions in 2018, chapter 4 reveals that 4,522 'Environmental Enforcement' cases were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region. 57% of these cases came from the general police and 42% from the inspection services. Since 2010⁵⁵, the number of 'environmental enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region has steadily decreased. For 2018, a percentage reduction in the number of cases can be calculated of 29% compared with 2010. The ratio of reporting authorities remains more or less stable.

In more than 45%, or 2,033 cases, of the number of Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors of the Flemish Region in 2018, the main indictment code related to the waste theme. Emissions and environmental law cases represented 14% and 16% respectively of all cases in 2018. In addition, 21% were related to permits and somewhat fewer than 4% to manure. It could be determined that the ratio of the different types of themes (per main indictment codes) to the total number of 'Environmental Enforcement' cases recorded did not fluctuate significantly and remained fairly stable in the period 2009-2018. Thus, the number of environmental management law cases always represented between 13% and 18% of the total number of 'Environmental Enforcement' cases recorded. This percentage fluctuated between 3 and 5% for manure and between 42 and 48% for waste. A shift could be identified with regard to permit cases and emissions cases. In 2009, emissions cases accounted for 28% of the total number of 'Environmental Enforcement' cases recorded. This percentage gradually decreased to 10% in 2017 and 14% in 2018. A reverse movement can be determined in permit cases. Whereas the ratio to the total number of 'Environmental Enforcement' cases recorded in 2009 was 13%, this percentage rose steadily to 21% in 2018. For the period 2009-2018 it can therefore be seen that the proportion of emissions cases decreased in favour of the proportion of permit cases.

In 2018, 1,513 cases related to illegal dumping. Nearly 33.5% of the total number of files registered with the criminal divisions of the public prosecutor's offices in the Flemish Region in 2018 related to illegal dumping. This trend was also visible in the previous environmental enforcement reports, where it could be determined that the number of cases relating to illegal dumping was always between 27% and 35% of the total number of 'Environmental Enforcement' cases.

Chapter 4 also shows that almost 26% of all 'Environmental Enforcement' cases recorded by the criminal prosecution offices of the Flemish Region were still under preliminary investigation on the extraction date. In addition, almost 25% of cases had already been dismissed without further action (dismissal for reasons of expediency or technical reasons), 2.5% had proposed an amicable settlement and 2% of all cases had already been subpoenaed on the extraction date. Furthermore, almost 42% of all 'Environmental Enforcement' cases had already been transferred to the competent service on the extraction date, with a view to imposing an administrative sanction.

The percentage of 'Environmental Enforcement' cases referred to the competent service with a view to imposing an administrative sanction has risen sharply since the Environmental Enforcement Decree came into force. In 2009, this percentage was almost 10%, in 2010 15%, in 2011 26%, in 2012 28%, in

⁵⁵ For 2009, only cases recorded as from 1 May 2009 were counted (cf. entry into force of Environmental Enforcement Decree)

2013 27%, in 2014 22%, in 2015 31%, in 2016 and 2017 38% and in 2018 42%.

In general, it can be determined that the dismissal rate (reasons of expediency and technical reasons) has decreased since the entry into force of the Environmental Enforcement Decree. Before 2015, approximately 1/3 of the total number of recorded 'Environmental Enforcement' cases had already been dismissed on the extraction date. In 2018 this had fallen to fewer than 1/4 of the total number of recorded 'Environmental Enforcement' cases. This can possibly be explained by the fact that more and more 'Environmental Enforcement' cases were referred to the competent public services for the imposition of non-municipal administrative sanctions (see above).

With regard to the grounds for dismissal, 33% of the 1,110 'Environmental Enforcement' cases that had already been dismissed on the extraction date were dismissed for reasons of expediency. In addition, 67% were dismissed for technical reasons. Since the entry into force of the Environmental Enforcement Decree, the share of cases dismissed for reasons of expediency has been decreasing compared with cases dismissed for technical reasons.

With regard to the administrative sanctions, chapter 4 reveals that the regional sanctioning entity received 2,181 official reports in 2018 from the criminal divisions of the public prosecutors in the Flemish Region with a view to imposing an alternative administrative fine. Since the entry into force of the Environmental Enforcement Decree in 2009, the number of cases received by the regional sanctioning entity has increased significantly. In 2009, the regional sanctioning entity received 304 cases (the low number can be explained by the fact that the Environmental Enforcement Decree did not enter into force until May 2009). The number of cases subsequently rose sharply in 2010 and 2011, to 1,100 and 1,597 respectively. This figure initially remained quite stable, with 1,545 cases in 2012, 1,594 cases in 2013 and 1,693 cases in 2014, and has continued to increase further since then to more than 2,000 cases in 2018. Generally speaking, since 2013, the regional sanctioning entity has always received at least 1/3 of the total number of 'Environmental Enforcement' cases recorded by public prosecutor's offices with a view to imposing an alternative administrative fine. In 2018, almost half of the files were transferred to the regional sanctioning entity.

The majority of the total number of cases received by the regional sanctioning entity since the entry into force of the Environmental Enforcement Decree, i.e. more than 40%, related to the subject of waste. In addition, more than 22% were related to environmental management and more than 15% to emissions. 15% of the total number of official reports received in this period related to permits and 7% to manure.

For 2018, the regional sanctioning entity received 2,181 cases and processed 2,077 cases. A total of 886 alternative administrative fines were imposed. In 305 cases it was decided not to impose a fine. In addition, 1,241 administrative transactions were proposed in 2018 and 886 administrative transactions paid in 2018. The 886 decisions that involved a fine also included the fines that were imposed after the administrative transaction proposal was rejected.

In general, since the Environmental Enforcement Decree came into force in May 2009, the regional sanctioning entity has received a total of 15,851 official reports from the public prosecutor's offices. Between 1 May 2009 and 31 December 2018, the regional sanctioning entity processed 13,836 cases in the context of the 15,851 official reports that were received. It should be noted that this is not a 1-to-1 relationship, as the regional entity may take multiple decisions in a single case (e.g. because there are multiple offenders). During this period, 7,456 alternative administrative fines were imposed. In

addition, in 2,206 cases it was decided not to impose a fine or it was established that the official report did not fall within the scope of the Environmental Enforcement Decree.

In addition, in 2018 the regional sanctioning entity received 116 identification reports with a view to imposing an exclusive administrative fine for the identified environmental infringement in question. Most of these identification reports, i.e. 88%, were drawn up by regional supervisors. In 2018, the regional sanctioning entity took 149 decisions regarding identified environmental infringements. An exclusive administrative fine was imposed for almost 38% of these decisions, while it was decided not to impose a fine in 31 cases. In addition, 62 administrative transactions were paid.

Since the Environmental Enforcement Decree came into force in May 2009 and until 31 December 2018, the regional sanctioning entity received a total of 805 identification reports. A total of 393 exclusive administrative fines were imposed. It can also be seen that 143 files were dealt with by means of the accelerated procedure, namely the administrative transaction.

In 2018, appeals were made to the Environmental Enforcement Court for 48 of the 886 alternative administrative fines imposed by the regional sanctioning entity; this corresponds to an appeal percentage of 5.4%. Of the 52 appeals lodged against the alternative administrative fines imposed, 13.5% were declared inadmissible, 58% of the appeals were declared unfounded with confirmation of the fine imposed by the regional sanctioning entity and 23% of the appeals submitted were declared wholly or partly well founded, with the fine being reduced or waived. In 4% of the judgments in 2018, an interlocutory judgment was handed down.

If one looks at the period from the entry into force of the Environmental Enforcement Decree up to and including 2018, an appeal percentage of 9.5% can be established, since a total of 705 appeals were recorded with the Environmental Enforcement Court and a total of 7,456 alternative administrative fines were imposed by the regional sanctioning entity in that period. In the same period, 672 (interim) decisions were taken by the Environmental Enforcement Court, which represents almost 95.3% of the appeals recorded.

With regard to the exclusive administrative fines imposed by the regional sanctioning entity, the Environmental Enforcement Court received 4 appeals in 2018 and 4 decisions were taken by the Environmental Enforcement Court in 2018. The regional sanctioning entity imposed 56 exclusive administrative fines, bringing the appeal rate to 7%.

If one looks at the period from the entry into force of the Environmental Enforcement Decree up to and including 2018, an appeal percentage of 9% can be established, since a total of 36 appeals were recorded with the Environmental Enforcement Court and a total of 393 exclusive administrative fine were imposed by the regional sanctioning entity in that period.

As regards the VLM's power to impose administrative fines in 2018, the last part of chapter 4 shows that 72 field identification reports were made and 2,637 fines were imposed.

5.4 RECOMMENDATIONS

The recommendations below are formulated on the basis of the findings made in this environmental enforcement report and the previous reports and are designed to optimise environmental enforcement policy. These were already formulated in the previous environmental enforcement reports, but they are still relevant given the figures for 2018 and are therefore repeated here.

I. Local supervisors

The Environmental Enforcement Decree contains provisions for the organisation of local enforcement and the appointment of local supervisors and provincial supervisors. As in previous reports, the figures in this environmental enforcement report give rise to the formulation of recommendations to optimise local environmental enforcement.

► Appointment of a local supervisor

The municipalities have the possibility to appoint supervisors within their own municipalities, but they can also choose to have a supervisor appointed within an intermunicipal association or within their local police district. The annual survey showed that there are still responding municipalities that cannot use the services of an appointed supervisor or supervisors at all or insufficiently. In 2018, this was the case for a minimum of 15% and a maximum of 22.5% of the number of responding municipalities. No fewer than 13% of municipalities had no supervisor at all in 2018.

It is therefore once again recommended that these municipalities also comply with the provisions of the Environmental Enforcement Decree.

► Appointment of provincial supervisors

Only two of the five Flemish provinces have appointed provincial supervisors. This has remained unchanged since 2015. It is therefore once again recommended that the provinces that have not yet appointed provincial supervisors in accordance with the Environmental Enforcement Decree still do so.

► Expressing supervisors in FTEs

As in previous years, the figures in this environmental enforcement report also show that appointed supervisors can only spend a limited part of their time on environmental enforcement duties. The fact that the appointed supervisor cannot be involved in environmental enforcement duties on a full-time basis naturally also affects the number of inspections that can be carried out. It is therefore once again recommended that the obligatory number of supervisors per municipality should no longer be expressed in terms of numbers in the Environmental Enforcement Decree and the Environmental Enforcement Order but should be expressed in FTEs that can be deployed on enforcement activities. Otherwise, there could be a risk that local supervisors will be appointed on paper but that they will de facto be able to spend relatively little time on enforcement duties. Such an approach requires an amendment of the legislation and could be linked to a funding scheme that still needs to be developed but for which a statutory basis has already been provided in the Environmental Enforcement Decree (art. 16.3.4)

► Promoting supralocal collaboration

Collaboration via an inter-municipal association can generate economies of scale and guarantee a

higher level of expertise, through specialisation, for example. It is therefore again recommended that the possibilities for inter-municipal cooperation be further explored. The VHRM has already organised a number of exploratory discussions in its working groups with the umbrella organisation Vlinter and intermunicipal associations active in the field of enforcement.

II. Risk-oriented supervision and programme-based enforcement

The objective of risk-oriented supervision and programme-based enforcement is to use financial resources as effectively and efficiently as possible in order to achieve the highest environmental return. This means, among other things, that enforcement should be used primarily where the compliance behaviour is low and where the environmental damage in the event of a violation could be relatively large or even irreparable. So this not only calls for enforcement activities that enforce reactively (in response to complaints) but also requires supervisory authorities to develop a programme on their own initiative, for example using a risk analysis, and organise enforcement activities on the basis of the expected risks and the associated potential environmental gains that may be achieved.

► Focus on risk-oriented supervision

Chapter 3 revealed that, of the environmental enforcement inspections carried out by supervisors in 2018, no infringements were established in 83% of these cases. Since 2012, when no infringement was found in 63% of the inspections, this means that infringements were identified in approximately 1 in 3 of the environmental enforcement inspections and over the years that has changed to finding an infringement in less than 1 in 5 environmental enforcement inspections. Notwithstanding the fact that this decreasing ratio could indicate a high degree of compliance and that the presence of supervisors in the field also has an impact on compliance behaviour, this high percentage of inspections where no violation could be identified may also indicate a lack of a risk-based approach and a lack of targeted supervision. In order to use the limited resources more efficiently and effectively, it is therefore recommended that regulatory bodies focus (more) on a risk-oriented approach.

► Importance of programme-based enforcement

It is important to find a balance between programme-based and reactive supervision (in response to complaints and reports). In the absence of sufficient resources, there is a danger that only reactive enforcement can be maintained. In addition, it is necessary to support the trend towards risk-oriented enforcement, which has already been used by many supervisory bodies.

► Focus on tackling unlicensed establishments

The data provided show that, in 2018, a total of no less than 3,173 nuisance-causing but (wholly or partially) unlicensed/reported establishments were active in the responding municipalities. This concerns establishments that, on the basis of the VLAREM regulation, can be classified as being a class 1, class 2 or class 3 establishment, but have not yet been granted a permit and were therefore not operated legitimately. These municipalities are aware of environmental legislation infringements. It is therefore recommended, once again, that efforts be focused primarily on these infringements. After all, mandatory permit and reporting requirements are the cornerstone of administrative environmental law, because conditions can also be imposed by means of a permit or the reporting requirement with a view to improving the environmental quality and limiting nuisance. On the basis of a study, the VHRM will have this problem investigated.

III. Monitoring

Effective monitoring is necessary to organise enforcement. Not only in the context of risk-oriented and programme-based enforcement, but also to encourage proper reporting and monitoring. The following recommendations are therefore formulated based on the data in this environmental enforcement report.

► Knowledge of nuisance-causing establishments

An essential condition for programme-based enforcement is that satisfactory accurate information is available regarding the establishments located on one's own territory. The figures provided for 2018 again show that a number of municipalities do not yet have a clear picture of the number of class 1, class 2 and class 3 establishments on their territory. This has proved to be a sore spot for several years. The same applies to the regional government. The recommendation needs to be repeated again this year that the number of establishments that require mandatory permits and reporting must be registered (at local level).

The VHRM emphasises the importance of accurately recording each new permit in the register, in such a way that eventually there is clarity about all existing permits.

► Priority Memorandum follow-up

Within the VHRM, the "Priority memorandum on the prosecution policy for environmental law in the Flemish Region" protocol was drawn up with the aim of indicating which violations are considered to be a priority by a supervisor. The content of the protocol aims to ensure that appropriate action is taken, in particular with regard to those violations identified as priorities, either through criminal proceedings or at least through administrative sanctions. Gaining insight into the implementation of this priority memorandum is obviously of particular importance. This assumes, on the one hand, that all supervisors indicate whether the official report drawn up is a priority or not, and on the other hand, that the sanctioning bodies also indicate the manner in which these official reports considered to be a priority were dealt with, and provide feedback on this to the supervisors. The reported figures show – as in previous years – that not all the bodies involved classify the official report as being priority or non-priority, or do not further introduce the data classification into their own monitoring system. This means it is not possible to assess the Priority Memorandum adequately. It is therefore again recommended that all the enforcement bodies involved guarantee the correct implementation and tracking of the Priority Memorandum.

► Full monitoring and reporting

It is still recommended that each enforcement body ensures full monitoring (internal) and reporting (internal and to third parties, e.g. the VHRM) is investigated, and in particular with regard to the use of each instrument, but also that it is checked and monitored whether the problem has been remedied each time and when the enforcement process has been completed in such a way that compliance has been achieved. Such monitoring provides a picture of the deployment and effectiveness of the instruments.

IV. Failure to implement administrative measures on time

Imposing administrative measures is intended to end an illegal situation within the imposed time limit. In 2018, 25% of the imposed administrative measures were not implemented within the time limit set by the supervisor. On the one hand, this may undermine the authority of the administrative

authorities that imposed the measures but, on the other hand, prolongs an illegal situation. It is, therefore, again recommended that the authorised body use the available instruments to enforce an imposed administrative measure within the required time limit. For this purpose, the supervisor can make use, among other things, of administrative coercive measures, whereby the supervisor himself remedies the situation and recovers the costs from the offender. In addition, use can also be made of the administrative penalty payment instrument, which is linked to the administrative measure. Finally, the supervisor can also draw up an official report if an administrative measure is not implemented. In such cases, it is recommended that the Public Prosecutor brings criminal proceedings before the criminal court in order to send a clear signal to hard-line offenders.

V. Environmental enforcement as a task for the police force

On the basis of this environmental enforcement report, it can also be concluded that environmental enforcement and supervision is a responsibility that is not only embraced by, for example, regional authorities and municipalities; the various police forces also play an important role with regard to environmental enforcement. In addition to the activities of the federal police concerning proactive inspections in the context of waste shipments, many environmental inspections are carried out, mainly as a result of complaints and reports, and official reports drawn up by the general police services, as explained in chapter 2. A great deal of effort can also be noted from the appointed local supervisors within the police services, such as a high number of inspections per FTE and a considerable amount of time spent by supervisors on enforcement tasks. It is therefore recommended, like last year, that the police force is able/will continue to carry out these duties. In addition, it is recommended that the environment remain part of the new Framework Memorandum on Integral Safety and the future National Safety Plan, with translation into the zonal safety plans.

VI. Establishing illegal dumping

As in previous years, the figures from the public prosecutor's offices show that illegal dumping is the most frequently established offence in the Flemish Region. However, these are often cases that can also be categorised as local nuisances and should preferably be processed at a local level by means of a so-called GAS fine. The reason why these cases are still referred to the public prosecutor's office and, where appropriate, to the regional sanctioning entity for an administrative fine, is that not all municipalities have provided for (such) nuisance cases in their police regulations, or that the infringement is not reported pursuant to the GAS regulations. It is therefore recommended that municipalities include provisions to establish and report illegal dumping in their GAS regulations.

6 ACTIVITIES OF THE FLEMISH HIGH ENFORCEMENT COUNCIL FOR SPATIAL PLANNING AND THE ENVIRONMENT IN 2018

In this last chapter, the Flemish High Enforcement Council for Spatial Planning and Environment wishes to report on its own work in 2018. Activities were carried out, both in the plenary meetings and in the working groups⁵⁶, that fall within the scope of the VHRM's tasks as provided by decree and which benefit environmental enforcement in the Flemish Region. The activities can, of course, be considered as part of the VHRM's strategic and operational plan but can also be related to certain recommendations formulated by the VHRM in previous environmental enforcement reports.

6.1 GIS – SHARED GEOGRAPHICAL INFORMATION SYSTEM – PILOT PROJECT

A study on 'The possibilities and optimisation of information exchange in the context of environmental enforcement' was outsourced as a public contract at the beginning of 2017. The results of this study were presented at the autumn conference dedicated to 'information exchange' in 2017. The aim of this conference was to organise an interactive study day with the emphasis on practical support for supervisors and enforcers, by means of various workshops on information exchange. The workshop 'Opportunities for new ways of information exchange' addressed the following questions: taking into account privacy rules, how can inspections be harmonised and, where necessary, strengthened without making their own operation more burdensome? What information is required for this? The workshop started with a short general explanation about the current technical GIS possibilities in Flanders (GEO counter), foreign examples, internal practical examples (VLM) and the personal limitations from the study. The aim was to examine the extent to which the information from inspections carried out or planned by other enforcers can make their own operations more effective. It should be clear that the result of this study and the information exchange conference was not the final phase for the VHRM.

On the contrary, it initiated further research in 2018 into the development of a GIS application. In 2018 the VHRM started a GIS pilot project



⁵⁶ In 2018, the VHRM also looked into the organisation of its own activities. The structure and content of the working groups were revised. Since 2018, the following working groups have been active within the VHRM:

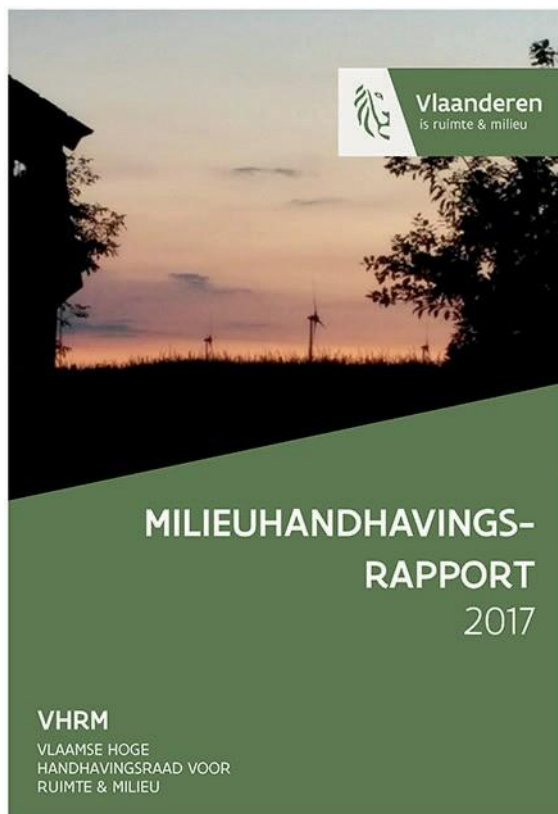
- Enforcement Practice Environment
- Development and Sharing of Knowledge
- Environmental Enforcement
- Spatial Planning Code Enforcement

where it was initially investigated how different types of databases of the different enforcement actors

could be accessed or a shared GIS application could be used on the basis of manual input, indicating which actor carried out an inspection and where. After all, sharing enforcement data on inspections in the field is essential to carry out risk analysis. This makes it possible to find out where offenders are located and to take multidisciplinary action where necessary/useful. The pilot project was set up in 2018 in cooperation with the Data and Information Management & Digital Society department of the Environment Department, a number of regional enforcement actors, a number of provinces and municipalities and an intermunicipal association. If the pilot project is perceived as successful, the project can in a second phase be broadened to all supervisory bodies at regional, provincial and municipal level.

6.2 PREPARATION OF ENVIRONMENTAL ENFORCEMENT REPORT 2017 AND SPATIAL PLANNING ENFORCEMENT REPORT 2017

The VHRM is in close contact with the various enforcement bodies to draw up the enforcement reports. In 2018, the VHRM digitally questioned all enforcement actors for the third time in the context of drawing up the Spatial Planning Enforcement Report and for the ninth time in the context of drawing up the Environmental Enforcement Report. Both surveys were reintegrated. In 2018, an analysis was also carried out into the preparation of an integrated Environmental Enforcement Report (see next point).



6.3 STUDY OF ENVIRONMENTAL ENFORCEMENT REPORT

In 2018, the VHRM outsourced a **study** on the content and preparation of an Environmental Enforcement Report. The content and procedures of the current Spatial Planning and Environment Enforcement Reports were examined in this study to investigate how the quality and relevance of the reports could be improved. In addition, a template was developed for drawing up an Environmental Enforcement Report with an associated Environmental Enforcement Programme in which the key priorities for the enforcement policy to be pursued can be marked.

The VHRM is currently investigating how the recommendations from this final report can be implemented with a view to further aligning the environmental enforcement policy and spatial planning enforcement policy within the framework of the environmental enforcement policy.

6.4 WORKSHOPS

In 2018, the VHRM organised two workshops “VHRM on tour: exchange of practical experiences and working methods”, in Leuven and Ghent, in which environmental and spatial planning enforcement actors were able to exchange practical experiences in an interactive way by solving concrete cases. The workshops were built around 2 practical cases in which aspects of waste, manure, spatial planning as well as nature conservation and environment were discussed. The on-site investigation was also covered. The cases were addressed in mixed groups (police – municipality – region) that were territorially close to each other. In this way, it was also possible to further develop networks. The groups received limited information, as is the case in practice when a complaint is made, or they started from the supervision of an environmental permit that was made available. The elaboration of the cases was then explained in a plenary session during which information was exchanged and techniques were communicated, with the support of the moderators.

6.5 CONFERENCE

At the end of 2018, the VHRM organised a study day in Brussels on the use of enforcement instruments. Given the success of the workshops in Leuven and Ghent, the VHRM opted for a case-by-case approach with regard to some important enforcement instruments because of their relevance for enforcement practice. The study day began with a lecture by Prof. dr. J.G. van Erp (University of Utrecht) on “Want, need, know: Reasons for compliance and effective enforcement”, followed by workshops on the following instruments:

- ▶ Recommendation/Exhortation
 - ▶ Administrative measures/Safety measures/Penalty payment
 - ▶ Implementing sanctioning: enforcement order, recording, mortgaging
 - ▶ Official report/Identification report

6.6 GREEN DEAL – DOMESTIC WOOD HEATING

At the end of 2018 the ‘Green deal – Domestic Wood Heating’ was concluded. The VHRM is an involved party in action 1.3.5 “Improving the handling of nuisance complaints relating to wood-burning stoves” and will contribute to the implementation of this green deal in the coming years.



6.7 TOOLS AND GUIDELINES FOR ENFORCERS

The VHRM works on guidelines and tools to support the practice of enforcement. The result of this work will be made available to the environmental and spatial planning enforcers at the **VHRM Knowledge Centre** as soon as it has been completed. In 2018, attention was paid, among other things, to:

► Decision tree

The decision tree on information sharing as drawn up within the framework of the study ‘The possibilities and the optimisation of information exchange in the context of environmental enforcement’ was updated in 2018 in accordance with the General Data Protection Regulation.

► Templates

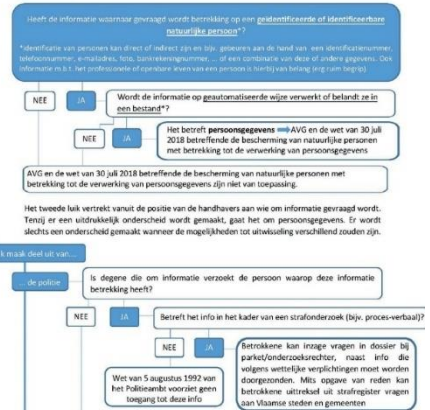
Templates and models were developed and updated by the VHRM in 2018. In view of the entry into force of the Environmental Permit Enforcement Decree on 1/3/2018, various templates were also extended to spatial planning and numerous templates were specifically developed to support the spatial planning enforcement actors.

Geactualiseerde beslissingsboom

De studie Informatie uitwisseling bij deze beslissingsboom heeft ontwikkeld, werd eind 2017 opgeleverd. Gelet op de Algemene Verordening Gegevensbescherming (AVG), van kracht sinds 25 mei 2018, waren een aantal gegevens in deze beslissingsboom niet meer van toepassing. Onderstaande beslissingsboom vormt aldus een aangepaste versie.

Stel je krijgt als handhaver een vraag naar informatie of bepaalde gegevens. Hoe ga je daar, rekening houdend met de regelgeving, mee om? Onder welke voorwaarden en aan wie? Op dit soort vragen proberen we hieronder op schematische wijze in een afgetraind antwoord te voorzien.

Aan de hand van een eerste luik wordt duidelijk of AVG en de wet van 30 juli 2018 betreffende de bescherming van natuurlijke personen met betrekking tot de verwerking van persoonsgegevens van toepassing zijn. Dit is louter informatief. Het niet van toepassing zijn van deze regelgeving, impliceert niet dat informatie uitwisseling zonder meer is toegestaan. Daarin is het steeds nuttig ook naar het tweede luik te kijken.



Wettelijke basis	Wettelijke basis				Afsluit		Mondelijke uitsluiting	Mondelijke uitsluiting		Mondelijke uitsluiting			Mondelijke uitsluiting		
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► www.milieuhandhaving.be

In 2018, work continued on the finalisation of the citizens' tool 'www.milieuhandhaving.be'. The intention is to launch this signposting tool in 2019.

Vlaanderen
is ruimte & milieu

Over deze website

Wat zoekt u? ZOEKEN

Wegwijzer Veelgestelde vragen Trefwoordenlijst

Waarop heeft de hinder of verontreiniging betrekking ?

U kan milieuhinder melden als u zintuigelijk iets waarneemt in uw leefomgeving waaraan u zich stoort. Verschillende instanties zijn bevoegd om meldingen van milieuhinder te behandelen, maar elk binnen hun eigen domein. Klik op de rubriek voor de hinder die u ondervindt en vul volledig de vragenlijst om te weten bij welke instantie u terecht kan.

Afval	Asbest	Bodem	Dieren
Geluid / trillingen	Geur / Reuk / Stof	Jacht	Licht
Mest	Natuur en Bos	Pesticiden	Planten
Straling	Visserij	Water	Andere oorzaak

Problemen met de website ?



Milieuhandhaving.be is een officiële website van de Vlaamse overheid
uitgegeven door [Vlaamse Hoge Handhavingsraad voor Ruimte en Milieu](#)

DISCLAIMER

► Environment and spatial planning glossaries

In view of the entry into force of the Environmental Permit Enforcement Decree on 1/3/2018, the Spatial Planning Glossary was updated in 2018. For the sake of uniformity, the environmental glossary has also been updated.

► Monitoring – spatial planning registration table

In order to facilitate the monitoring and reporting of data in the framework of enforcement reports, the VHRM has drawn up dynamic registration forms which can be used optionally for the recording of inspections. The forms are based on the questionnaire of the current Environmental Enforcement Report and the Spatial Planning Enforcement Report. The entry into force of the Environmental Permit Enforcement Decree also had an impact on the spatial planning registration table. This table was therefore updated in 2018.

6.8 ADVICE

In the run-up to the municipal elections, the VHRM drew up a **Memorandum – Environmental Enforcement**. After all, enforcement is the corner-stone of any regulation. Without a commitment to enforcement, there is a chance that the chosen policy will remain a dead letter. That is why the VHRM considers it important that enforcement is explicitly included in the policy vision. Municipalities are an important actor in the development of effective environmental enforcement and in drawing up an enforcement policy for the environment and spatial planning. For this reason, various focal points/pillars were submitted to the Flemish cities and municipalities in the form of a **memorandum** within the context of the municipal elections.

In 2018, the VHRM formulated a recommendation with regard to the **study ‘A policy for unrecovered construction offences. Instrumental and legal solutions for the approach to historical passivity’**, carried out on behalf of the Department of Environment and Spatial Development.

At the request of the Cabinet of the Flemish Minister for the Environment, Agriculture and Nature, the VHRM prepared an opinion on the **extension of the enforcement powers of the provinces**.

In 2018, the VHRM also considered **access to the Environmental Portal** for enforcers and drew the attention of the Flemish Minister for the Environment, Agriculture and Nature to the fact that the current impossibility of gaining access to the Environmental Portal is seen as detrimental to enforcement.

6.9 INTERNATIONAL CONTACTS

In 2018, the VHRM continued to monitor developments in the foreign enforcement landscape. In 2018, the VHRM was a member of the European network IMPEL (European Union Network for the Implementation and Enforcement of Environmental Law) and of the international network INECE (International Network for Environmental Compliance and Enforcement). In addition, the VHRM was involved in the evaluation of Belgium in the framework of GENVAL-EU (**General matters including evaluation**).

6.10 COMMUNICATION, INTERNAL AND EXTERNAL

Through its own newsletter, the VHRM tries to reach as many as possible supervisors, officials and employees of governments and enforcement agencies that are active in environmental and/or spatial planning. Among other things, the newsletter keeps actors informed about regulatory changes, tools developed within the VHRM, VHRM initiatives, documents made available to the enforcement actors on the VHRM website, the publication of enforcement reports, etc. In this way, the VHRM ensures that more than 1,400 actors are reached in an efficient manner and thus remain informed of the latest developments in the enforcement sector. The section of the VHRM website accessible to the enforcing bodies developed further into a substantial **knowledge centre** in 2018. Here the enforcer will find the models and templates, practical manuals, checklists, procedures and glossaries drawn up within the VHRM. Furthermore, during plenary meetings and in working group meetings, the VHRM continued to function in 2018 as a consultation forum for the exchange of ideas, the sharing of knowledge, the transfer of knowledge, and the exchange of information. In this way, too, the VHRM aims to create greater support for enforcement.

7 APPENDICES

7.1 GLOSSARY – ABBREVIATIONS

/	Not available
AGR-GPS	Any means of transport used by an approved Class B or Class C manure feeder for the transport of livestock manure or other fertilisers, must be AGR-GPS compatible at all times. This AGR-GPS compatibility means that every authorised means of transport must have AGR-GPS equipment, which is part of an operational AGR-GPS system. In addition, the signals sent by that equipment via a computer server, managed by a GPS service provider, must be sent directly and immediately to the Manure Bank.
ALBON	Former Division of Land and Soil Protection, Subsoil and Natural Resources of the Department of Environment, Nature and Energy
AMI	Former Environmental Inspectorate Division of the Department of Environment, Nature and Energy
AMMC	Former Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy
AMV	Former Environmental Permits Division of the Department of Environment, Nature and Energy
ANB	Agency for Nature and Forests
ANG	General National Database
AWV	Agency for Roads and Traffic
AWZ	Division Waterwegen en Zeekanaal NV
BOG	Belgian Official Gazette
DABM	Decree of 5 April 1995 governing the general provisions on environmental policy DJSOC/Environment Environment Department of the Directorate for Combating Serious and Organised Crime of the Federal Police
ECO form	Summary document filled in by the police during a waste transport inspection and sent to the central Environment Department for central containment. The data are used, in addition to one- off inspections, to carry out operational and strategic analyses.
FTE	Full-Time Equivalent
GAS	Municipal Administrative Sanction
RD	Royal Decree
MOW	Department of Mobility and Public Works
n / #	Number
OVAM	Public Waste Agency of Flanders
OR	Official Report
SZ	Criminal cases
VAZG	Flemish Agency for Care and Health

VHRM	Flemish High Enforcement Council for Spatial Planning and Environment
VLAREM	Flemish Regulations on the Environmental Permit
VLM	Flemish Land Agency
VMM	Flemish Environment Company

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7.4 LIST OF RESPONDING MUNICIPALITIES

Aalst	Geraardsbergen	Lierde	Sint-Katelijne-Waver
Aalter	Gingelom	Lille	Sint-Laureins
Affligem	Glabbeek	Linkebeek	Sint-Lievens-Houtem
Alken	Gooik	Lint	Sint-Martens-Latem
Antwerp	Grobbendonk	Linter	Sint-Niklaas
Anzegem	Haacht	Lochristi	Sint-Pieters-Leeuw
Ardooie	Haaltert	Lokeren	Sint-Truiden
Arendonk	Halle	Lommel	Stabroek
As	Ham	Londerzeel	Staden
Asse	Hamme	Lovendegem	Steenokkerzeel
Assenede	Hamont-Achel	Lubbeek	Stekene
Avelgem	Harelbeke	Lummen	Temse
Baarle-Hertog	Hasselt	Maarkedal	Ternat
Balen	Hechtel-Eksel	Machelen	Tervuren
Beernem	Heers	Maldegem	Tessenderlo
Beerse	Heist-op-den-Berg	Malle	Tielt
Beersel	Hemiksem	Mechelen	Tongeren
Begijnendijk	Herentals	Meerhout	Torhout
Bekkevoort	Herenthout	Meeuwen-Gruitrode	Turnhout
Beringen	Herne	Meise	Veurne
Berlaar	Herstappe	Menen	Vilvoorde
Berlare	Herzele	Merchtem	Vleteren
Bierbeek	Heusden-Zolder	Merelbeke	Voeren
Bilzen	Heuvelland	Merksplas	Vorselaar
Blankenberge	Hoegaarden	Meulebeke	Vosselaar
Boechout	Hoeilaart	Middelkerke	Waasmunster
Bonheiden	Holsbeek	Mol	Waregem
Boom	Hooglede	Moorslede	Wellen
Boortmeerbeek	Hoogstraten	Mortsel	Wemmel
Borgloon	Houthulst	Nazareth	Wervik
Bornem	Hove	Nevele	Westerlo
Borsbeek	Huldenberg	Niel	Wetteren
Boutersem	Hulshout	Nieuwerkerken	Wevelgem
Brakel	Ypres	Nieuwpoort	Wielsbeke
Brasschaat	Ingelmunster	Ninove	Wijnegem
Brecht	Izegem	Olen	Willebroek
Bredene	Jabbeke	Ostend	Wingene
Bree	Kapellen	Oosterzele	Wommelgem
Bruges	Kapelle-op-den-Bos	Oostkamp	Wuustwezel
Damme	Kasterlee	Oostrozebeke	Zandhoven
De Pinte	Keerbergen	Opglabbeek	Zaventem
Deerlijk	Kinrooi	Opwijk	Zele
Deinze	Kluisbergen	Oudenaarde	Zelzate
Denderleeuw	Knokke-Heist	Oudenburg	Zemst
Dendermonde	Koekelare	Oud-Heverlee	Zingem
Dentergem	Koksijde	Overijse	Zoersel
Dessel	Kontich	Peer	Zomergem
Destelbergen	Kortemark	Pittem	Zonhoven
Diepenbeek	Kortesseem	Poperinge	Zonnebeke
Diest	Kraainem	Puurs	Zottegem
Diksmuide	Kruikebeke	Ranst	Zoutleeuw
Dilbeek	Laakdal	Ravels	Zulte
Dilsen-Stokkem	Landen	Retie	Zwalm
Drogenbos	Langemark-Poelkapelle	Rijkevorsel	Zwevegem
Duffel	Lebbeke	Roeselare	Zwijndrecht
Eeklo	Ledegem	Roosdaal	
Erpe-Mere	Lendeledede	Rumst	
Essen	Lennik	Schelle	
Gavere	Leopoldsburg	Scherpenheuvel-Zichem	
Geel	Leuven	Schoten	
Geetbets	Lichtervelde	Sint-Amands	
Genk	Liedekerke	Sint-Genesius-Rode	
Ghent	Lier	Sint-Gillis-Waas	

7.5 LIST OF RESPONDING POLICE DISTRICTS

Aalst police district
Aalter/Knesselare police district
Aarschot police district
AMOW police district
Antwerp police district
Assenede/Evergem police district
Balen/Dessel/Mol police district
Beringen/Ham/Tessenderlo police district
Bierbeek/Boutersem/Holsbeek/Lubbeek police district
Bilzen/Hoeselt/Riemst police district
Blankenberge/Zuierenkerke police district
Bodikap police district
Brakel police district
Brasschaat police district
Bredene/De Haan police district
BRT police district
Bruges police district
Damme/Knokke-Heist police district
Deinze/Zulte police district
Dendermonde police district
Dilbeek police district
Druivenstreek police district
Erpe-Mere/Lede police district
Gavers police district
Geel/Laakdal/Meerhout police district
Ghent police district
Grens police district
Grensleie police district
Grimbergen police district
Haacht police district
Hageland police district
HANO police district
Heist police district
HerKo police district
Het Houtsche police district
KASTZE police district
Klein Brabant police district
K-L-M police district
Kouter police district
Kruibeke/Temse police district
Lier police district
Lokeren police district
LOWAZONE police district
Maasland police district
Mechelen/Willebroek police district
Meetjesland-Centrum police district
Middelkerke police district
MIRA police district
Noord police district
Noorderkempen police district
Ostend police district
Pajottenland police district
Polder police district
Regio Puyenbroeck police district
Regio Rhode en Schelde police district
Regio Tielt police district
Regio Turnhout police district
RIHO police district
Rode police district
Ronse police district
Schelde-Leie police district
Sint-Niklaas police district
Sint-Truiden/Gingelom/Nieuwerkerken police district
Spoorkin police district
Tienen/Hoegaarden police district
Tongeren/Herstappe police district
Vilvoorde/Machelen police district
VLAS police district
Voeren police district
Voorkempen police district
Westkust police district
WOKRA police district
Zaventem police district
Zennevallei police district
Zottegem/Herzele/Sint-Lievens-Houtem police district
Zuiderkempen police district
Zwijndrecht police district

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