



European Union Network for  
the Implementation and Enforcement  
of Environmental Law

# Effective Enforcement Needs a Good Legal Base:

## Final Report of the IMPEL Better Legislation Project



## **Foreword**

The European Union Network for the Implementation and Enforcement of Environmental Law is an informal network of the environmental authorities of EU Member States, acceding and candidate countries, and Norway. The European Commission is also a member of the network and shares the chairmanship of its Plenary Meetings.

The network is commonly known as the IMPEL Network
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The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on certain of the technical and regulatory aspects of EU environmental legislation. The Network's objective is to create the necessary impetus in the EU to make progress on ensuring a more effective application of environmental legislation. It promotes the exchange of information and experience and the development of greater consistency of approach in the implementation, application and enforcement of environmental legislation, with special emphasis on EU environmental legislation. It provides a framework for policy makers, environmental inspectors and enforcement officers to exchange ideas, and encourages the development of enforcement structures and best practices.

Information on the IMPEL Network is also available through its web site at:  
<http://europa.eu.int/comm/environment/impel>



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<p><b>Executive Summary</b></p> <p>The project was established to examine the challenges that IMPEL members have faced in the practical implementation of EU legislation and suggest recommendations for legislative improvement. It involved gathering information on the experience of implementing EU legislation from IMPEL members through a questionnaire, and discussing the results and developing conclusions through project meetings. It covered a range of issues relating to the practical implementation of legislation, such as clarity, coherence and proportionality. The main recommendations of the project are:</p> <ul style="list-style-type: none"><li>• More individuals with practical experience should be involved in the law making process.</li><li>• Before drafting a new law it should be standard practice to review all other related EU legislation, international Conventions and ECJ cases, including that from other policy fields.</li><li>• Issues such as coherence of legislation should be assessed during the Commission's extended impact assessment. The Council and European Parliament should also assess the consequences of their amendments, by comparing them to the Commission's original proposal and impact assessment.</li><li>• There is also a need for an overall, strategic approach to broad sectors of environmental policy, such as through the use of framework Directives.</li><li>• Recitals in Directives should be used as a method to explain the rationale behind the legislative act and links between different acts. Recitals should be consistent with the Articles of the Directive.</li><li>• Definitions must be clear and unambiguous, especially in framework Directives, and particularly when they determine some key aspect of the scope of a measure or define the regulatory requirements. Technical definitions in different laws should be, as far as possible, identical in terms of units and scientific meaning.</li><li>• Time frames for the implementation of legal requirements should be clear, and developed with care to avoid difficulties in subsequent implementation and compliance.</li><li>• The use of a single permit or control process which implements multiple pieces of legislation is a positive development and potentially avoids problems such as inconsistency and contradictions. Legislation that allows this is to be encouraged. There is also a need for a more harmonised reporting system for all environmental Directives, including more focused reports and greater commonality of reporting.</li><li>• There is a need for a simplified process for the review and amendment of legislation. Increased provision should be made, where the Treaties allow for this, for more technical aspects of EU legislation, which are often set out in annexes, to be reviewed by a Committee Procedure.</li><li>• For current legislation, IMPEL projects may provide a route to compare and analyse implementation problems and make recommendations for improvement.</li><li>• With new legislation IMPEL could be involved in examining drafts and commenting from the point of view of enforceability and practicality. The Commission may wish to organise discussion sessions, during the expert stage of legislative development, with IMPEL members.</li></ul>	
<p><b>Disclaimer</b></p> <p>This report on better legislation is the result of a project within the IMPEL Network. The content does not necessarily represent the view of the national administrations or the Commission.</p>	



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## KEY FINDINGS

1. EU legislation has been a major force for environmental protection and improvement over the last 30 years or so. However, legislation only works if it is applied properly. One of the aims of the IMPEL network, therefore, is to assist in compliance with EU environmental laws. A pre-requisite for successful performance of this function is that such laws are, amongst other things, clear, precise and consistent. While there is no doubt that EU legislation is applied to great benefit, IMPEL members have noted that some EU legislation does not always achieve its full potential because of shortcomings in the law itself, which affect its enforceability. As a result, an IMPEL project was established to examine this issue and suggest recommendations to support the development and implementation of better EU legislation.
2. The project was undertaken during 2003. It involved gathering information on the experience of implementing EU legislation from IMPEL members through the use of a questionnaire, and discussing the results and developing conclusions through project meetings.
3. A number of other initiatives have been undertaken or are underway which are relevant to the project. These include the EU Better Lawmaking Initiative<sup>1</sup>, the recent Commission working paper on dialogue with local and regional authorities<sup>2</sup>, and the Communication on the implementation of the IPPC Directive<sup>3</sup>. Members of the IMPEL network hope that the results of this project will feed into these processes, as well as into the immediate and future work of the Commission, Council and Parliament in producing or revising legislation.
4. The range of issues relating to the practical implementation of EU environmental legislation that were considered in the project include:
  - legislative coherence;
  - aims and principles;
  - clarity and consistency of key terms and definitions;
  - the clarity and consistency of requirements imposed on regulators and operators;
  - the extent to which requirements meet legislative aims;
  - monitoring and reporting; and
  - the proportionality of legislation.

While a number of illustrations of good practice were noted in each case, other examples indicated the potential for further improvement. The main conclusions which IMPEL members believe would lead to better and more enforceable legislation are summarised below.

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<sup>1</sup> Communication from the Commission, COM (2002) 275 final. The three Communications are:

- Action plan "Simplifying and improving the regulatory environment", COM(2002) 278 final;
- Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission, COM (2002) 277 final; and
- Communication on impact assessment, COM (2002) 276 final.

<sup>2</sup> <[http://europa.eu.int/comm/governance/suivi\\_lb\\_en.htm](http://europa.eu.int/comm/governance/suivi_lb_en.htm)>.

<sup>3</sup> Commission Communication (COM(2003)354)

5. More individuals with practical experience should be involved in the law making process. Technical experts should be engaged at various levels to advise on feasible and effective options to achieve the proposed aims of the legislation and on its enforceability.
6. Before drafting a new law it should be standard practice to review all other related EU legislation, international Conventions and ECJ cases, including legislation from other policy fields, which may interact with environmental requirements. Opportunities for revision/consolidation of existing legislation, and determination of the most appropriate legal or policy instrument (Directive, guidance, Communication, etc.), should also be considered prior to development of new legislation. These findings should be included in the Commission's Explanatory Memorandum to a proposal.
7. Issues such as coherence of legislation should be assessed during the Commission's extended impact assessment. The Council and European Parliament should also assess the consequences of their amendments, by comparing them to the Commission's original proposal and impact assessment.
8. There is also a need for an overall, strategic approach to broad sectors of environmental policy, for example regulation of industry, such as was achieved for water by the Water Framework Directive. Framework Directives can also more generally assist in streamlining legislation. However, while frameworks can provide opportunities for flexibility, they can also lead to additional complexity by requiring guidance and interpretation. So it is especially important in producing frameworks that careful consideration is given to achieving the right balance between flexibility and detailed prescription. It should also be anticipated in advance where common guidance might be required, although IMPEL members' first preference is for EU legislation whose clarity is such that guidance is not needed.
9. Recitals in Directives should be used as a method to explain the rationale behind the legislative act and links between it and different acts. Recitals must also be consistent with the Articles of the Directive to ensure that it is possible to reconcile them with any prescriptive standards set down.<sup>4</sup>
10. In drafting legislation there needs to be adequate assessment of what terms need definition. Definitions must be clear and unambiguous, especially in framework Directives as noted above, and particularly when they determine some key aspect of the scope of a measure (for example definition of installations or activities), or define the regulatory requirements.
11. Technical definitions (for example establishing emission limit values) that appear in different laws should be, as far as possible, identical in terms of units and scientific meaning. Non-technical definitions generally should be consistent and, where this is not the case, it should be made clear why.

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<sup>4</sup> For example, recital 27 of the Water Framework Directive states that its ultimate aim is to eliminate release of priority substances. However, the scope and text of the Directive could not achieve this.

Technical annexes must also be produced with as much care as the main text of a law, as their specifications can drive much of the practical consequences of implementation.

12. Time frames for the implementation of legal requirements should be clear, and developed with care to avoid difficulties in subsequent implementation and compliance. The timing requirements of different legal acts can clash if this point is not considered during the negotiation process, especially if a negotiation is protracted so that what was practicable at the beginning is not so at the end.
13. The use of a single permit or control process which implements multiple pieces of legislation is a positive development and potentially avoids issues such as inconsistency and contradictions. This is to be encouraged. It is important, therefore, that EU legislation makes provision for it as far as possible.
14. There is also a need for a harmonised reporting system for all environmental Directives, rather than sub-sets of them and avoiding multiple reporting for single installations, including more focused reports and greater commonality of reporting. The IMPEL project on electronic reporting may be a vehicle for this.
15. There is a need for a simplified process for the review and amendment of legislation. This requires more than just a review clause in a Directive, as such a review would normally lead to a full legislative negotiation taking several years. Increased provision should be made for more technical aspects of EU legislation, which are often set out in annexes, to be reviewed by a Committee Procedure.
16. For current legislation, IMPEL projects may provide a route to compare and analyse implementation problems and make recommendations for improvement. This could be undertaken alongside IMPEL's "traditional" work of comparing methods of implementation and identifying good practice for particular EU laws.
17. With new legislation IMPEL could be involved in examining drafts and commenting from the point of view of enforceability and practicality. IMPEL could also help identify where it might be useful for common guidance to be produced to support implementation, or to suggest which technical aspects of draft legislation might be appropriate for simplified review and amendment provisions as outlined above. In order to involve IMPEL more closely in legislative development, as stated in the 6<sup>th</sup> Environment Action Programme, the Commission could organise discussion sessions, during the expert stage of legislative development, with IMPEL members. The focus of such discussion would be on practical, not political, issues. The findings of this project could provide a framework for the discussion.

## 1. INTRODUCTION

Environmental enforcement institutions, from which many in the IMPEL network are drawn, seek to ensure that environmental laws, such as those adopted by the EU, are complied with. An important pre-requisite for carrying out this function successfully is that such laws are, amongst other things, clear and precise, and consistent with other relevant legislation. While recognising the substantial contribution made by EU environmental legislation, concern has been expressed by IMPEL members that some EU legislation does not always meet these requirements and that this might affect its enforceability. As a result it was agreed by IMPEL to establish a project, led by the Environment Agency (England and Wales), to examine this issue and suggest recommendations for improvement. This project was, therefore, entitled the ‘IMPEL Better Legislation Project’.

In examining how to make laws ‘better’, inevitably the spotlight will fall on examples where regulators consider that there are problems. Although this report does highlight a number of such examples, it is important to emphasise that this should not be taken as a general criticism of EU environmental legislation. The EU has been responsible for a wide range of important environmental protection measures that have contributed significantly to improving the environment in the Member States and to advancing the legal basis for such protection.

It is also recognised that the process of law making is a negotiation between parties, especially the EU institutions. Sometimes it will be better to adopt a law that is less than perfect, to allow a compromise, than to agree no law at all. But even compromises should not close their eyes to practicalities. IMPEL members therefore wish to offer law makers their experiences of what sort of law regulators need to allow effective implementation and environmental protection.

The issues considered in this report are not just academic. IMPEL members have found that difficulties in EU environmental legislation can have a significant impact on environmental outcomes. If laws are deficient in certain areas then a range of problems can occur, such as:

- the legislation does not achieve its stated aims;
- regulators and operators must expend considerable effort to analyse and interpret the legislation in order to apply it;
- less time is therefore available to spend on other, potentially more important, areas of environmental protection;
- the regulatory environment created results in conflict and increased litigation;
- application is not consistent across the Member States; and
- the credibility of EU environmental policy to those affected is undermined.

This project aims to help reduce or avoid such problems.

The project began in January 2003. The terms of reference (see Appendix I for full terms of reference) stated that its objectives were:

- to prepare a detailed report on aspects of current EU legislation where difficulties arise in terms of practicality or enforceability, for example because of how the legislation is written, definitions are presented, etc. This would focus primarily on the legislation covered by the Recommendation on Minimum Criteria for Environmental Inspections (MCEI), and other measures insofar as they relate to these primary MCEI laws.
- to set out recommendations for how more practical and enforceable legislation might be produced in the future, including a set of principles and tests against which future legislative drafts might be considered.
- to produce a report to be sent to the EU institutions (especially DG Environment and the European Parliament's Environment Committee) as a contribution to the current Better Lawmaking initiative, and to Member States' Governments.

## 2. METHOD

The project was initiated by a workshop in London in January 2003, attended by participants from 11 countries and the European Commission. Appendix II lists all of the project participants who took part in this first workshop and/or the second project workshop, held in June 2003 in Bristol.

The first workshop clarified the objectives of the project and the means by which it would be carried out. The information for the project was firstly gathered by the development and use of a questionnaire asking a series of questions about experience of implementing EU legislation. This is shown in Appendix III.

The questionnaire was sent by the project participants to many officials from the various organisations involved in the project. These officials ranged from policy makers and lawyers working on transposition of EU legislation and co-ordination of national implementation, through to inspectors responsible for practical permitting and inspection activities.

The project also sought to learn from, build on and support other work, as summarised in Appendix IV. Consideration was therefore given to previous IMPEL projects, the work of the European Commission and other developments.

The results of the information gathering and analyses were summarised in preparation for the second project workshop in June 2003. This meeting discussed the findings and agreed outline conclusions of the project as a whole, as a starting point for the production of this final report. The remaining and most substantive sections of the report consist of:

- Section 3 - the analytical part of the report presenting a summary of the questionnaire responses<sup>5</sup>.
- Section 4 – conclusions and recommendations.

The project was managed by Neil Emmott and Terence Shears of the Environment Agency of England and Wales. Andrew Farmer and Ian Skinner of the Institute for European Environmental Policy, and Peter Beyer of Ecologic, acted as consultants to the project and were the principal authors of this report. The project manager and the authors wish to acknowledge with gratitude the hard work and energy given not only by the project participants listed in Appendix II, but also by the many further individuals, too numerous to list, who provided information or otherwise contributed.

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<sup>5</sup> Responses were received from participants in Austria, Czech Republic, France, Ireland, the Netherlands, Slovakia, Spain, Sweden and the United Kingdom. Participants at the meetings also included representatives from Germany, Greece and DG Environment.

### 3. SUMMARY OF THE QUESTIONNAIRE RESPONSES

This section summarises the results of the responses to the questionnaire, following the same structure as the questionnaire (see Appendix III). Each subsection covers one question and begins with the key points followed by the main findings.

A few practical examples, taken from those given in the many questionnaire responses, are provided in a box in each section. It is important to note that the comments received from individuals reflect their particular perceptions and positions. It was not the objective of this project to seek uniform agreement on particular legal or interpretational issues, or to collectively verify each and every point that someone put forward. Rather, the intention has been to form an overall picture of the broad issues of concern to IMPEL Members emerging from the questionnaire responses as a whole.

#### 3.1 *Coherence of Legislation*

This section considers the general coherence of EU environmental legislation based on experience of implementation in the Member States and Accession Countries.

*Key points:*

- Respondents were concerned about the apparent “piecemeal” fashion in which EU environmental legislation has been drafted;
- To be coherent the scope and interaction between different but overlapping laws must be well defined;
- Overlapping information, reporting and monitoring requirements can cause practical problems if not aligned.

*The “piecemeal” fashion of EU environmental legislation*

A major reason for the existing incoherence is believed to be the apparently “piecemeal” fashion in which EU environmental legislation has been produced. This often has the knock-on effect that each new EU law equally has to be transposed into national legislation in a piecemeal fashion and cannot easily be integrated into existing legislation, which inhibits the development of coherent integrated legal frameworks at the national level. Inconsistencies particularly arise when activities fall under a number of different Directives.

For example, even if different EU Directives allow for one overall permit to be issued – which fosters coherence and is therefore positive – problems can arise due to the fact that this permit still has to meet the requirements of several Directives. This can be difficult as the Directives can be transposed through several different national laws.

*Definition of scope and interaction of different Directives*

Inconsistencies also arise when the scope of an instrument is not well defined and it remains unclear which of the different Directives governs a particular activity or object. The same is true for the definition of how different Directives interact with each other as these can remain unclear or are highly complex, especially between Directives of a general and a specific nature. For example, the scope of the Waste Framework Directive in relation to the different specific waste directives, such as the Hazardous Waste and the Landfill Directives, seems to be unclear.

### *Relationship to other EU policies*

Several respondents pointed out that the relationships between environmental regulation and other EU legislation, for example in the health sector or on competition, are not always coherent.

### *Reporting and monitoring requirements*

It has been pointed out that some provisions requiring monitoring, reporting and other specific information are redundant or at least of questionable value. Problems can also arise when linked Directives require essentially the same but slightly variant information, or define different reporting formats with varying intervals and different reporting thresholds. This is further explored in section 3.6.

### *Consistency of thresholds and technical requirements*

Inconsistencies also exist in the technical requirements of different Directives governing the same activities. Conflicts may arise where some Directives contain prescriptive requirements - for example emission thresholds, minimum standards, BAT and the phasing out of substances - and other Directives for the same activities are aimed at providing the Member States with more flexibility.

### *Coherence between EU and international environmental law*

Problems of incoherence between EU legislation and international environmental agreements also leads to difficulties in the implementation of EU law, such as the relationship between EPER and the recently adopted Pollutant Release and Transfer Register under the Aarhus Convention.

### ***Coherence of EU legislation – good and bad examples***

- The body of waste legislation as well as the EIA and the IPPC Directives were seen as examples of the apparently “piecemeal” approach, in the sense that they are not as well integrated as they could be. Landfills provide an example of activities governed by a number of different Directives, such as EIA, IPPC, Waste Framework, and the Landfill Directives. On the other hand positive examples are “real” framework Directives such as the Air Framework Directive forming an umbrella for the subsequent daughter Directives. Another positive example is horizontal Directives such as the Directive on Public Participation. This regulates one matter in a general way, for implementation through several further instruments, thus ensuring consistency on this issue.
- The scope of the Waste Framework Directive, and the different specific waste Directives such as the Hazardous Waste and the Landfill Directives, seems to be particularly unclear, mainly because of the wording of the exclusions in Article 2. The relationship between the National Emissions Ceilings (NEC) and the IPPC Directives concerning the question of whether emission limit values have to be included in permits is also unclear. While the IPPC Directive seems to require this, the NEC Directive seems to be more flexible on this issue.
- An example of inconsistent reporting and monitoring requirements has been in the field of waste related legislation. The 2002 Waste Statistics Regulation has assisted in harmonising this to some degree as will studies required by the Regulation which will consider further classification systems, such as those on Transfrontier Shipment.

### 3.2 *Aims and Principles*

It is important that regulators and the regulated understand the purpose of legislation. This section addresses the issue of whether the aims and principles of EU environmental legislation are clear.

*Key points:*

- The aims of most Directives are clear;
- The recitals of Directives, however, are sometimes unclear or difficult to reconcile with the prescriptive requirements of a Directive.

*Clarity of aims and principles*

Respondents generally considered that the overall aims and objectives laid out in the Environment Action Programmes and Directives are clear, except for a very few Directives.

*Consistency of aims and instruments*

Sometimes Directives do not include the necessary measures to realise the objectives they pursue. Thus a Directive might have a broad aim in respect of an area of environmental protection, but the prescriptive requirements only contribute partially to meeting this aim.

*Aims and recitals*

The usefulness of recitals for the general understanding of the purpose and the aims of a Directive has been highlighted. They do not unfortunately always provide guidance on the necessary issues, and when they do, it is sometimes not clear what they mean in practice or it is not possible to reconcile them with the prescriptive nature of the standards set down in the Directive. An issue of particular importance can be the means by which the recitals can or should be reflected in implementing legislation. Whilst they will obviously influence the interpretation of the Directive, in most Member States it is not normal practice for the recitals to be transposed into domestic law. However, the Articles and Annexes of Directives may be transposed word for word into domestic law in order to ensure complete transposition, although this is not a requirement for transposition. This makes it even more important that the practical implications for implementation and enforcement of proposed Directives are understood and fully debated during negotiations.

*Additional background information*

Even when aims are clear, respondents noted that additional background information on the development of the aims would be welcomed in order to facilitate understanding of the instruments and to provide some guidance to those who have to implement the measures.

#### ***Examples of where the aims of EU legislation are clear and unclear***

- In implementing the Waste Framework Directive there is sometimes confusion over whether the principal aim is to manage waste (promote recovery, etc) or control environmental pollution (control emissions and nuisances). These can be two distinct but separate activities, which while often mutually supportive, are not so in every instance.
- Some respondents believed that the aims of the IPPC Directive are clear, but noted

that the recitals imply a broader aim than the articles actually pursue. For example, the recitals talk about the desirability of the integrated approach, state that the Directive establishes a general framework for integrated pollution prevention and control, and comment that the Directive is concerned with installations whose potential for pollution is significant. However, Article 1 states a more precise purpose: to achieve integrated prevention and control of pollution from a specific set of activities listed in Annex I. Moreover, some respondents queried whether this list of activities was broad enough to reflect the apparent broader aim of the Directive. For example it does not cover cattle rearing, a major source of ammonia emissions, although deciding what activities to include under a Directive is, of course, a political decision.

- Other respondents pointed out that the aims for EU legislation covering GMOs were clear and had largely been achieved.

### 3.3 *Clarity of terms and definitions*

#### *Key points:*

- Many terms in Directives are clearly defined;
- Some terms, however, lack a definition, with particular concern over definitions in the waste sector;
- A much larger number of terms are poorly defined;
- Terms can subsequently be clarified in ECJ rulings – though this can take considerable time - and through Commission guidance.

#### *Many definitions are clear*

For many Directives clear definitions are provided. In some cases, all of the terms necessary to implement the Directive were adequately defined, while in others, although some definitions are lacking, the definitions they do contain are clear.

#### *Definitions are lacking*

The questionnaire responses noted a number of cases where definitions for important terms are lacking. This poses problems either in the transposition phase for national governments or, if national law provides no further clarification, for regulators (and the regulated) in implementing the legislation. Alternatively, if Member States give their own interpretations, this then opens up the possibility for inconsistent implementation of legislation across the EU.

#### *Definitions are unclear*

Questionnaire responses noted a number of examples of unclear definitions. Problems were found across a number of important sectors, such as much waste legislation. Again this can pose significant regulatory and/or consistency problems. It is, however, important to note that clarity does not necessarily mean a loss of flexibility, where this is desirable.

#### *Interpretation by the European Court of Justice*

Where terms and definitions create ambiguity in the legislation, decisions of the European Court of Justice can assist in clarifying what these mean in practice for Member State implementation. This may, subsequently, require amendments to transposing legislation within the Member States. However, if legislation is initially unclear, Member States will be faced with the unappealing prospect of having to

transpose it once, and then potentially to re-legislate once the ECJ has ruled. Moreover, given the large array of EU legislation that has had to be transposed and implemented in preparation for membership in Accession Countries, the usual practice has been to adopt much of it word for word into national legislation, including terms that lack clarity. In some cases, this process has not taken full account of ECJ rulings, partly due to issues of haste and partly due to lack of familiarity with the legal systems.

#### *Guidance from the Commission*

It was suggested that Member States would benefit in some cases from guidance from the Commission on the interpretation of key terms and definitions in Directives. This would certainly be of assistance, particularly if this guidance would provide an understanding of how particular definitions arose. However, such guidance would not have a legal basis and only interpretations arising from rulings in the ECJ would be obligatory on Member States.

#### ***Definitions: clear, unclear or lacking***

Definitions in Directives regulating GMOs seem clearly defined, and pan-EU projects have assisted Member States in understanding the legislation and effective implementation.

Terms that lack a definition where it would be helpful include:

- ‘substance’ in the Groundwater Directive;
- ‘if practicable’ in a number of legislative items, such as the Regulation on ozone depleting substances;
- ‘technical unit’ in the waste incineration Directive;

Examples of confusing or unclear definitions include:

- ‘major accident’ in the Seveso II Directive;
- ‘installation’ in the IPPC Directive and the Solvent Emissions Directive;
- ‘thermal treatment’ and ‘combustion’ in the context of incineration;
- ‘heavily modified water body’ in the Water Framework Directive.

### ***3.4 Consistency of Key Terms and Definitions***

#### *Key points:*

- There are a number of examples of consistency, for example on regulating GMOs;
- However, inconsistency is also a problem, for example the definition of ‘pollution’ in a number of industrial and water protection Directives;
- While there may be good reasons for some differences in the use of the same term in different Directives, this can lead to confusion for both the regulator and operator.

#### *Introduction*

Terms and definitions might be clear within individual items of EU legislation. However, many activities are subject to regulation by more than one Directive, so consistency is important for both the regulator and regulated.

#### *Good practice*

There are a number of cases of consistency between EU environmental Directives. For example, the proposed revision to the Bathing Water Directive has attempted to

harmonise its definitions with the requirements of the Water Framework Directive to improve consistency.

#### *Definitions of 'objects'*

Respondents noted a number of inconsistencies between Directives in their definition of specific 'objects', such as the physical definition of the regulated subject or definitions of individual pollutants.

#### *Definitions of process*

Processes can also be defined in different ways in different Directives. This can be particularly problematic for regulatory activity as regulators and operators expect to be able to transfer their understanding of terms such as 'substantial change' or 'recycling' across their operational areas. This is not always the case.

#### ***How definitions vary between different Directives***

Examples of 'objects' with varying definitions include:

- Volatile organic compounds are defined differently in the Solvent Emissions and National Emission Ceilings Directives
- 'Pollution' is defined in different ways in the IPPC and Water Framework Directives

Examples of processes with different definitions include:

- 'Recycling' is defined in the Packaging Directive, but not in the Waste Framework Directive, even though the latter is the principal EU legislation on waste.
- 'Substantial change' is defined in different ways in the IPPC, Solvent Emissions and Waste Incineration Directives.

### ***3.5 Requirements Imposed on Regulators and Operators***

#### ***3.5.1 Clarity of Requirements***

*Key points:*

- The clarity of requirements varies from one instrument to another;
- The opinion as to whether the requirements of a particular law are clear may also vary between different authorities;
- Aspects of the IPPC Directive, such as when an installation is brought into operation and the timing of the publication of BREFs, lead to uncertainty in relation to requirements on regulators and operators;
- Details of the Solvent Emissions Directive, for example on replacement of risk phrase solvents, are not clear;
- Aspects of waste legislation lead to unclear requirements, for example land restoration using waste as a form of recovery; and
- Issues under the Waste Incineration Directive, such as conditions during start-up and anomalies in derogations for NOx limits, also cause regulatory problems.

### *Introduction*

Regulators are required to undertake a variety of tasks, such as permitting, inspection, monitoring, etc. It is necessary that these requirements are clearly defined in Directives. This does not mean that such requirements should be unduly prescriptive. A requirement, for example, to review a permit ‘periodically’ is relatively clear and preferable because it leaves flexibility to the regulator to take a risk based approach.

Responses to the questionnaire produced a variety of comments. Interestingly some considered that the requirements in Directives such as IPPC and Solvent Emissions are generally clear. However, other responses considered that this was not the case. Overall, responses did consider that problems of the clarity of requirements on regulators is an issue, even if some debate remains over individual examples. It was also noted that when there are problems with the clarity of legislation, these are sometimes transposed directly into national legislation, so as to avoid changing the meaning of the original text.

### *The regulatory ‘object’*

Regulators need a clear definition of what they are to regulate. Regulatory objects should be clearly defined in terms of activity, new/existing, geographic scope, etc. Another example of the lack of clear requirements on operators relates to the fact that BREFs are sometimes developed after permits requiring BAT have been issued. This means that operators are not yet aware of the European BAT reference guidelines when applying for a permit.

### *Regulatory processes*

A range of regulatory processes might be poorly specified. These include the details of what is to be permitted, how and when. Also, establishing conditions during start-up and shut-down for operations can be unclear.

### *Timetables*

The timetables for the implementation of most Directives are clearly set out. However, the details of some are confusing. Timetabling is critical for regulators to ensure adequate time to adapt to new regulations and to manage workloads effectively.

### *Analysis to support decision-making*

Many Directives require extensive analysis, for example of the environment, to be undertaken in order to inform or direct decision-making. This can include the designation of parts of the environment (for example specific waters) based on principles identified in a Directive which can then trigger further requirements. These are not always clear, for example by specifying a type of impact that is not further elaborated.

### ***Different instances of where requirements on regulators lack clarity***

- An example of lack of clarity in defining the regulatory object includes the definition of ‘existing installation’ in the IPPC Directive. The definition depends on when the installation was brought into operation, which depends on a number of factors; hence it is not always clear whether some installations can be classified as existing or not, and therefore the requirements on both the regulator and operator are uncertain.

- An example of timetabling issues concerns the Solvent Emissions Directive. Articles 4 and 5 require that ‘existing installations’ must comply fully by 31 October 2007, but the Directive then goes on to speak about the replacement of certain risk phrase solvents ‘within the shortest possible time’. Respondents therefore questioned when the ‘shortest possible time’ begins to run for existing installations: from the end of 2007 or as soon as the Directive enters into force?
- The permitting requirements for some waste activities are unclear, for example land restoration that uses waste as an infill might be considered recovery in some cases and landfilling in others (noting recent ECJ judgments on these issues). Also the requirements in relation to the enforcement of the export of wastes to non-OECD countries is a moving target, as the green list wastes destined for these countries may be changed at any time. Thus, by the time an infringement case reaches court a company could possibly no longer be in breach of the law.
- An example of lack of clarity in analysis of the environment prior to regulatory decision making is the identification of sensitive areas under the Urban Waste Water Treatment Directive. In Article 5, paragraph 5, it is not clear whether the retention of nitrogen may be included when deciding whether discharges from urban waste water treatment plants, which are situated in the relevant catchment areas of sensitive areas, contribute to the pollution of these areas.

### ***3.5.2 Extent to which Requirements Meet the Aims of the Legislation***

Key points:

- For many Directives, for example IPPC and Seveso II, the requirements do meet the aims;
- Some requirements may, however, be unenforceable, for example prevention of entry of List I substances to groundwater under the Groundwater Directive, as well as certain conditions in the Urban Waste Water Treatment and End of Life Vehicles Directives.

#### *Introduction*

Directives (usually in Article 1, supported by the recitals) set out the purpose of the legislation. It is important that the subsequent requirements on regulators and operators achieve these aims. If this is not the case, then the environment might be inadequately protected and regulators and operators might use resources in inefficient ways. At the very least it is unhelpful to have regulatory requirements that are not consistent with the aims because, in cases of doubt, there is then no scope for regulators to seek to interpret and apply the requirements in a way that best delivers those aims.

#### *Where requirements do meet the aims*

Responses to the questionnaire noted a number of cases where it is thought that the requirements of Directives meet the aims of the legislation. Such cases are found across a variety of sectors.

#### *Requirements can be insufficient*

In some cases the legislation can set out very broad or ambitious aims. However, these might not be fully achieved by the specific requirements of the legislation. The requirements might only contribute towards achieving the objectives, or there might be ‘gaps’ in the requirements that prevent the objectives being achieved.

#### *Requirements can be unenforceable*

Occasionally Directives establish requirements that cannot be achieved. This often arises from a broad or blanket requirement on a Member State, which presumes complete knowledge of the issue being addressed.

#### *Requirements might interfere with achieving wider objectives*

Directives might also set out very broad objectives to which the detailed requirements contribute. However, such requirements cannot be ignored if a more effective means of achieving the objectives is identified by a Member State. EU Directives are, largely, command-and-control based instruments. There is already debate on whether alternative instruments could be more effective in some instances, but it is not possible to decide on a different approach to that set out in EU legislation.

#### ***Where legal requirements meet their aims and where they are unenforceable***

- Examples of where the requirements of Directives are thought to meet their specific aims include IPPC, Seveso II and the Large Combustion Plant Directives. Requirements that are unenforceable include the total prevention of entry of List I substances into groundwater under the Groundwater Directive.

### **3.5.3 Consistency of Requirements**

Key points:

- As single activities become increasingly regulated by more than one Directive, the implications of inconsistencies might grow;
- Landfill sites, for example, are regulated under a range of Directives and the use of single permits to cover all of these is an attempt by the regulator to integrate these requirements;
- However, specific inconsistencies remain, for example the effects of substantial change to large combustion plants (implementing the Large Combustion Plant and IPPC Directives); and
- More broadly, there are inconsistencies in relation to the stage of the permitting procedure where a permit is issued and the role of the public in this process.

#### *Introduction*

The requirements of different Directives do not always seem to fit together logically. These can sometimes result from broader concerns, such as those relating to the wider economy. The confusion over the distinction between the recovery and disposal of waste, which still exists despite recent ECJ rulings, contributes to the lack of clarity on the requirements imposed on operators and regulators with respect to waste. There is a need for clearer legislation in this respect, without having to wait for court rulings.

### *Activities subject to more than one Directive*

It is increasingly the case that particular activities are subject to the requirements of a number of Directives. Some regulators are keen to ensure that, wherever possible, all of the requirements are delivered through a single permit – aiding compliance by the operator and enforcement by the regulator, as well as offering economies to both parties. Landfills are a particular example where regulators are endeavouring to achieve this is by delivering the site-based permitting requirements of the Landfill, IPPC, Groundwater, Habitats and Waste Framework Directives through a single permit. This can be dependent on domestic implementation rather than just the Directives, but unless the Directives themselves are clear and consistent, it is difficult to achieve this in practice.

### *Permitting*

More broadly, inconsistencies were noted in relation to the stage at which a permit for an industrial process was given. Permits are granted for many Directives for the activity that is to be permitted, rather than for the place, for example an installation, where the activity is to be undertaken.

### *Public participation*

The public has a right to participate in the permitting procedures of many Directives. However, only the SEA Directive actually defines who the public is, although the recent Directive on public participation may address this in relation to EIA and IPPC.

### ***Lack of consistency concerning transfrontier shipment of animal by-products***

The animal by-products Regulation regulates animal by-products which are partly defined as waste. As the Regulation does not allow the use of animal by products other than as liquid manure on fields, it does not promote composting and in consequence hinders a closed loop recycling management. The Regulation also contains provisions concerning the transfrontier shipment of waste and therefore interacts with the waste shipments Regulation. However, it is not clear which of the two Regulations applies to the transfrontier shipment of those animal by-products which are defined as waste.

## **3.6 Monitoring and Reporting**

### *Key points:*

- The importance of monitoring and reporting for effective regulation is emphasised;
- Many monitoring and reporting requirements are viewed as clear and proportionate;
- However, for some small low risk installations (or some substances), the requirements are seen as disproportionate;
- Facilities can be subject to different reporting requirements under several Directives and this imposes additional burdens on operators and regulators;
- Problems can arise between providing confidentiality for companies and open information for the public;
- There is a need to improve the methods of reporting;
- Respondents would appreciate more information on the use that the Commission makes of reports submitted to it.

### *Introduction*

Monitoring and reporting are essential tasks in efficient compliance assessment. Requirements in EU legislation concern the need for monitoring and reporting on those who are regulated, and the environment, in order for the regulator to assess compliance. There are also requirements for reporting to the European Commission to assess Member State compliance. Such requirements have to be sufficient to ensure effective operation of the legislation, but they can also be a significant workload on those affected. This section considers whether the monitoring and reporting requirements of EU environmental legislation are relevant to the objectives of that legislation.

### *Clarity of requirements*

A variety of responses were received. Some consider that the requirements are generally seen to be relevant and have a clear rationale. However, this is not the case with some Directives.

### *The extent of requirements*

It is also important to note that EU Directives do not always provide a comprehensive framework for monitoring some areas of concern for the environment. Thus monitoring requirements might need to be supplemented by additional national measures.

### *Proportionality of requirements*

A variety of responses were received on the appropriateness of the workload that monitoring and reporting require. It is acknowledged that many of the requirements are a significant workload on the regulators and regulated. Some consider that some requirements are excessive, while in other cases they are not sufficient to achieve effective regulation. While there is some suggestion for more detailed (and clear) reporting requirements to be established in some cases (for example within some more generalised legislation setting out minimum reporting standards), this is tempered with potential concerns over the costs that this might pose on regulators and operators. Thus moves in this direction must demonstrate clear environmental outcomes. Proportionality is critical.

There is concern over the issues of proportionality where many low-risk activities require monitoring and reporting to be carried out. The environmental effectiveness of these requirements needs to be examined.

### *Confidentiality issues*

The reporting requirements of some Directives can present problems where company specific information is disclosed to the public. This can make companies reluctant to divulge information. If this occurs, it can make the work of regulators more difficult.

### *Reporting to the European Commission*

A common theme from respondents is uncertainty of the use made of data reported to the Commission, as illustrated by the response ‘what do they use it for?’ Clearly, data gathering requirements need to be properly justified.

### *Improving the monitoring and reporting process*

It is also important to note that the format of some reports is far from ‘user friendly’. Modification of the format (for example harmonised electronic reporting) might assist in informing stakeholders, allowing them to participate more in environmental assessment and have a greater regulatory understanding. It could also assist regulators to perform their tasks more effectively.

#### ***Where monitoring and reporting requirements are not clear or are insufficient***

- It was argued that the rationale for reporting under the Groundwater Directive, is not clear.
- One response suggested that the requirements of the Landfill Directive in relation to monitoring are insufficient and should be enhanced to ensure effective regulation.
- The problems of the extent to which monitoring requirements are comprehensive were highlighted by the Solvent Emissions Directive, which covers a wide range of activities, but not all VOC sources, which in some cases can form an important overall contribution to VOC emissions and, hence, tropospheric ozone formation.

### ***3.7 Proportionality of Legislation***

#### *Key points:*

- The importance of proportionate legislation was stressed by most respondents;
- There is concern that the effort required to be directed to regulation of some small, low-risk activities is not justified by the risks they pose to the environment;
- Suggestions for exemptions or simplified systems are made to tackle this problem.

#### *Introduction*

Legislation must ensure effective regulation. However, the burden of legislation should be proportional to the environmental benefits. There is not a bottomless pit of resources to tackle environmental problems, so it is important that the focus of regulators can be placed on those things that matter most.

#### *Proportionality of legislation*

Respondents felt that the requirements of EU legislation should take more account of whether they are proportionate to the risks and hazards they address. In particular, small scale and low risk activities need not be covered at all by some permitting or other requirements, or simplified permitting systems could be utilised for such activities instead. Provisions for exemptions for low risk activities should also be considered. Even some large installations might be subject to disproportionate requirements. Most recent Directives seem to take better account of the question of proportionality.

#### *Cost-effectiveness of measures*

Respondents expressed their concern about the need for legislation that focuses limited regulatory resources on those areas where most can be done to protect the environment at least cost. Economic factors should be taken into account.

#### ***Examples of where requirements might be disproportionate***

- the lack of any threshold for some types of installations covered by the IPPC Directive;
- the fact that landfills for construction waste are covered by the IPPC-regime;
- the fact that the Waste Framework Directive requires substances to be managed simply because they are waste rather than because they pose any risk to the environment.

### **3.8 *Other Issues Raised***

A range of other issues were raised by respondents, including:

- many of the problems identified arise because EU legislation has developed piecemeal over time, with gaps, retention of obsolete requirements, etc;
- the time spent dealing with complaints raised by the Commission can be disproportionate to the environmental benefits;
- attempts by Member States to overcome problems in the wording of Directives (for example lack of clarity) can result in complaints from the Commission, when the Member States are seeking to ensure effective regulation and not transposing word for word;
- one way to overcome problems of interpretation of Directives can be to bring Member State authorities together to discuss the issue, although their conclusions have no legal basis;
- as Directives come into force, many of the activities to be regulated are already under some form of regulation. It is essential that this is taken into account and appropriate transitional provisions are provided;
- in emergency situations the requirements of Directives cannot always be met and provision should be made for this.

## **4. CONCLUSIONS**

### ***4.1 Introduction***

EU environmental legislation is of significant benefit to improving environmental protection. The project has therefore aimed to contribute to making EU environmental legislation yet more effective, because of the value IMPEL members attach to it. IMPEL members also recognise the value of the current initiatives by the Commission and other EU Institutions (see Appendix IV) on improving legislation, and hope that this IMPEL project will feed into and support them.

The project has highlighted a range of good examples of EU environmental legislation, as well as a number of examples which cause implementation problems. In many cases responses from the different IMPEL members demonstrated common concerns, indicating that, broadly, the concerns are not the result of specific national conditions, even though individual examples might be.

The following conclusions are based on discussions at the project meetings, following consideration of the analysis of questionnaire responses and other initiatives. Some of the conclusions could seem obvious. However, it is of a great importance that these considerations are recognised by all actors throughout the law-making process.

### ***4.2 General considerations***

It was recognised in the project that there is a need for more individuals with practical experience to be involved in law making, both at Member State and EU level. This can be achieved by getting technical, legal or other experts involved, for example as seconded experts in the Commission, or by the greater involvement of staff with practical experience of implementation and enforcement in the preparation of Member States' national positions on EU proposals.

The experience of those responsible for implementing environmental legislation should thus be fed into the legislative process at an early stage. This would enable them to advise on feasible and effective options to achieve the proposed aims of the legislation and its enforceability.

An overall strategic approach to individual sectors, for example industry, such as was achieved for water by the Water Framework Directive, should be considered. Framework Directives can also assist in streamlining legislation, such as was achieved with the Air Framework Directive. Tiered approaches should be used in order to achieve proportionality, for example as provided to some extent in the Waste Framework Directive or the use of general binding rules in IPPC.

As to the permit system, it was recognised in the project that a single permit which implements multiple pieces of legislation is a positive development and potentially avoids issues such as inconsistencies and contradictions. This is to be encouraged.

A further issue which could be considered is the development of a database of existing legislation, electronically available, to assist in the process of creating new legislation. Such a database has already been developed in Ireland, for example. This

process would ensure that the interface with existing legislation is such that there is consistency in terms of, for example, thresholds, use of codes, classifications, reporting requirements, definitions and timetables.

#### ***4.3 Recommendations for lawmakers***

The following considerations need to be taken into account when drafting a new Directive:

- The aims of any Directives should be such as to link back to the relevant Environment Action Programme or other relevant EU framework or strategy providing for their establishment.
- A review should be made of all other relevant EU legislation, requirements from international Conventions and ECJ cases. This should be undertaken beyond just environmental legislation, as conflicts can also arise with laws from other policy sectors.
- It should be determined if there are opportunities for revision of existing legislation or consolidation. This would assist in promoting consistency, such as is being undertaken currently in the field of chemicals policy.
- The most appropriate type of instrument - for example permitting, emission limit values, environmental quality standards, general binding rules, emissions trading, etc - should be determined. It should also be considered whether the use of many different legal instruments in one specific sector could result in an overly complex legal system that might be counterproductive to the environmental goals being pursued.
- Issues of coherence and consistency of legislation should be assessed throughout the drafting process, including during the Commission's extended impact assessment, examining a range of practical consequences of the provisions in the proposal.
- The Council and European Parliament should equally assess how any amendments they are considering would alter the original proposal and the associated impact assessment, as far as is possible.

In more in detail, the following issues need to be considered when drafting legislation:

- Recitals in Directives should be used as a method to explain the rationale behind the legislative act and links between different acts. Recitals must also be consistent with Articles of the Directive.
- The aims of any Directives should be proportionate to what the Directive can achieve.
- There needs to be a thorough evaluation as to what terms need definition.

- Definitions must be clear and unambiguous, especially in framework Directives, and particularly when they determine the scope (for example definition of installations), or define key regulatory requirements (for example definition of disposal versus recovery).
- Technical definitions should be, as far as possible, identical in terms of units and scientific meaning. Non-technical definitions generally should be consistent, and where this is not the case it should be made clear why. Technical annexes must also be produced with care.
- Time frames for the implementation of legal requirements should be clear, and developed with care to avoid difficulties in subsequent implementation and compliance.

#### ***4.4 Reporting***

There is a need for a harmonised reporting system for environmental Directives, including:

- Fewer reports, focusing on important environmental data;
- Reporting to the Commission should focus principally on compliance data, and on provision of information to allow assessment of whether the legislation is effective in realising its objectives;
- The EEA should make use of the data, providing added value;
- There is a need to identify exactly what data are required and for what purpose;
- More commonality of reporting is required in some cases, for example from IPPC installations.

Reporting requirements should be reviewed in order to:

- Determine the resource implications of reporting requirements;
- Determine how the information should be transmitted in order to reduce time spent by regulators in putting data together;
- Give an explanation on the use of the information by the Commission.

#### ***4.5 Comments on related issues***

The project has, in addition to discussing better lawmaking, discussed the need for guidance in interpreting EU environmental legislation. The first preference is, of course, for legislation that is so clear that guidance is not needed. However, as this is not always achieved, guidance can be useful in helping authorities understand Directives. It would be better for this to be produced by Member States collectively rather than the Commission alone, for example as done in working groups of the Common Implementation Strategy of the Water Framework Directive. However, this should not be used to implement ideas that failed to get into the law itself during the drafting stage. Guidance also must not be too rigid – it must provide clarity but, at the same time, it must allow an appropriate degree of flexibility for regulators to ensure that the best environmental outcomes are achieved.

Also, it was recognised that there often is a need for a simplified process for the amendment of legislation, not just a review clause in a Directive (for example, with the possibility for a technical annex to be reviewed by a Committee Procedure, where the Treaties allow this). This is because, without the possibility of implementation of anticipated legislation to any significant degree on a "test" basis, there is always a chance that problems of interpretation, coherence, etc. will only emerge when real implementation is underway. Thus it is important that unforeseen technical problems can be addressed quickly.

#### **4.6 *The role of IMPEL***

It was agreed that, for *current legislation*, IMPEL projects might be used to compare and analyse implementation problems and make recommendations for improvement. This could be undertaken alongside "traditional" work comparing methods of implementation and identifying good practice for particular EU laws. It could then contribute to any revision of the legislation in the future, or to the production of guidance to support ongoing implementation.

With *new legislation* IMPEL could be involved to:

- Examine drafts and comment from the point of view of enforceability and practicality;
- Identify where it might be helpful for guidance to be produced (or even itself help produce such guidance at a later stage);
- Suggest which parts of draft legislation might be more suitable for review by a Committee Procedure, where the Treaties allow this, with a view to effecting simplified amendment.

However, the mechanisms to achieve any such IMPEL input to new draft legislation would need to be established. Projects would normally be too slow. Obtaining approval, funding and implementation often would not meet timetables for EU legislative development. Two suggestions for practical involvement were, therefore, made:

1. IMPEL could provide a standing group of practitioners (whose membership could vary depending upon the issues discussed) to allow for relatively rapid comments on draft legislation, etc.
2. The Commission could organise discussion sessions, during the expert stage of legislative development, with IMPEL members. The agreed findings of this project could provide a framework for the discussion. The discussions could, for example, result in an agreed recorded view, although participation of the relevant desk officer would also allow him/her to gain immediate feedback. The Commission could provide information at each IMPEL Plenary meeting on what legislation is forthcoming, so that IMPEL members could identify those items where they consider IMPEL might most appropriately provide this input.

Generally the participants in the project thought the second of these two approaches would be more effective. A standing group might be too formal and in any case it would be difficult for members of such a group to have expertise in all of the areas

that might be required. In contrast, it should be relatively easy for the national IMPEL co-ordinators quickly to identify the appropriate people to take part in any organised discussion sessions. In order for the system to work, of course, IMPEL members would have to be in a position to put forward individuals who could join in the discussion and offer relevant regulatory insights. Moreover, it would be important for the discussions to focus on practical regulatory issues, rather than political ones.

Overall, however, this project has shown that there is significant experience of the practical implementation of existing EU legislation within the IMPEL Network. This could valuably support the development of new laws in the future, potentially supporting the establishment of better legislation, allowing better implementation and enforcement, and thereby securing better protection of the environment.

## APPENDIX I

### PROJECT TERMS OF REFERENCE

<p><b>1.1. Background</b></p>	<p>The IMPEL Network has had a significant role in the work that led to adoption of the EU Recommendation on Minimum Criteria for Environmental Inspections (MCEI), and in the preparation of guidance to aid Member States in their reporting under the Recommendation. The Recommendation applies to a core set of EU environmental measures, attached at Annex A.</p> <p>IMPEL also has considerable practical experience in the implementation of EU environmental legislation, especially that listed in Annex A. As a result of this experience, IMPEL members are in a good position to identify and comment on aspects of the current legislation that hinder its practicality and enforceability.</p> <p>The EU's 6<sup>th</sup> Environmental Action Programme (6EAP) provides continuing support for IMPEL's exchange of information on implementation experience between Member States. In this capacity, the 6EAP notes that IMPEL can play an important role in improving the implementation of legislation.</p> <p>The EU is also currently engaged in a "Better Lawmaking" initiative, which applies to all areas of policy rather than just the environment. As part of this initiative, the Commission has recently published an action plan for "Simplifying and Improving the Regulatory Environment". This includes, among other elements, actions relating to improving the quality of new legislative proposals, and simplifying current legislation.</p> <p>There has been discussion in the past about IMPEL's role in relation to the development of new legislation. It has been agreed that, on the basis of its practical experience, IMPEL is in a good position to comment on the practicality and enforceability of early drafts of new measures (that is before they are formally proposed) as a way of supporting the production of better legislation.</p> <p>In summary, therefore, the background to this project is as follows:</p> <ul style="list-style-type: none"> <li>• IMPEL has a strong background in relation to the MCEI Recommendation, and practical experience of applying the measures covered by it;</li> <li>• as part of its role anticipated under the 6EAP of exchanging practical experience, IMPEL is in a good position to identify aspects of legislation that hinder practicality and enforceability;</li> <li>• such work could support the EU's Better Lawmaking initiative, since it would identify the types of problems that should be avoided if future legislation is to be more practical and enforceable, and might also assist future simplification and improvement of current measures; and</li> <li>• the work could also support an anticipated IMPEL role in commenting on early drafts of future legislation, by identifying a set of enforceability and practicality tests or principles against which such drafts might be considered.</li> </ul>
<p><b>1.2. Definition</b></p>	<p>The project would involve a series of steps as outlined below.</p> <p>Firstly, there would be an introductory workshop of IMPEL experts from the participating Member States; the candidate countries would also be invited to take part. This would be to discuss the precise information sought from the project, and the production of a questionnaire to elicit that information. The workshop would take as a starting point: the paper on "Difficulties in the Practical Implementation of EU Environmental Legislation" already circulated by the Environment Agency and discussed at the Santiago de Compostela Plenary; the IMPEL four instruments report (interaction of IPPC, Seveso II, EIA and EMAS); and other related</p>

	<p>assessments to be put forward by the participants.</p> <p>Secondly the questionnaire would be circulated to the designated people in each participating Member State. They would then liaise with colleagues expert in the relevant areas to complete responses to the questionnaires.</p> <p>Thirdly, the returned questionnaires would be analysed and common themes, problems and issues would be identified. This would provide the basis for the drafting of a report setting out the main areas in which difficulties arise, and the reasons why, illustrated by practical examples taken from the IMPEL members' responses.</p> <p>Fourthly, the draft report would be considered by project participants at a workshop. Comments at the workshop would be fed into the final report.</p>
<p><b>1.3. Objective of project</b></p>	<p>The project is being undertaken in order to prepare a detailed report on aspects of current EU legislation where difficulties arise in terms of practicality or enforceability, for example because of how the legislation is written, definitions are presented, etc. This would focus primarily on the legislation covered by the MCEI Recommendation, and other measures insofar as they relate to these primary MCEI laws. The project would also set out recommendations for how more practical and enforceable legislation might be produced in the future, including a set of principles and tests against which future legislative drafts might be considered.</p> <p>The report would therefore be sent to the EU institutions (especially DG Environment and the European Parliament's Environment Committee) as a contribution to the current Better Lawmaking initiative, and to Member States' Governments.</p>
<p><b>1.4. Product(s)</b></p>	<p>The project will produce a report synthesising the assessment by the participants of the applicability and enforceability of current legislation, and setting out the overall conclusions, recommendations and principles as outlined above.</p>

## Annex A (to Appendix I)

### Main sectors of Community legislation which contain requirements for permitting and inspections

Recommendation 2001/331/EC of the European Parliament and of the Council providing for minimum criteria for environmental inspections in the Member States was adopted on 4 April 2001. It applies to "...environmental inspections of all industrial installations and other enterprises and facilities, whose air emissions and/or water discharges and/or waste disposal or recovery activities are subject to authorisation, permit or licensing requirements under Community law...(II.1 (a))."

The list below sets out examples of the main sectors of Community legislation which contain permitting and inspections requirements and which fall within the Recommendation's scope. The list is not intended to be exhaustive, not least in the light of the fact that Community law is being added to or amended all the time. (References to legal acts include all amendments thereto).

1. Legislation relating to **integrated pollution prevention and control** as covered by:
  - Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ No L257, 10.10.1996, pp 26-40)
  - Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (Seveso II) (OJ No L10, 14.01.97, pp 13-33)
  - Council Directive 99/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (OJ No L85, 29.03.1999, pp 1-22)
2. Legislation relating to **water quality** as covered by:
  - Council Directive 74/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ No L129, 18.05.1976, pp 23-29 and implementing measures made thereunder)
  - Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (OJ No L20, 26.01.1980, pp 43-48)
  - Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ No L135, 30.05.1991, pp 40-52)
3. Legislation relating to **waste** as covered by:
  - Council Directive 75/442/EC of 15 July 1975 on waste (OJ No L194, 25.07.1995, pp 39-41)
  - Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ No L377, 31.12.1991, pp 20-27)
  - Council Directive 99/31/EC of 26 April 1999 on the landfill of waste (OJ No L182, 16.07.1999, pp 1-19)
4. Legislation relating to **air pollution**:
  - Council Directive 88/609/EEC of 24 November 1988 on the limitation of emissions of certain pollutants into the air from large combustion plants (OJ No L336, 07.12.1988, pp1-13)
  - Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new waste incineration plants (OJ No L163, 14.06.1989, pp 32-36)
  - Council Directive 89/429/EEC of 21 June 1989 on the prevention of air pollution from existing incineration plants (OJ No L203, 15.07.1989, pp 50-54)
  - Council Directive 94/67/EC on the incineration of hazardous waste (OJ No L365, 31.12.1994, pp 34-45)
  - Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste (OJ No L332, 28.12.2000, pp 91-111)
  - Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (OJ No L309, 27.11.2001, pp 1-21)

**APPENDIX II  
PARTICIPANTS IN THE PROJECT**

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<b>Ken Ledgerwood</b>	Environment and Heritage Service (Northern Ireland)
<b>Dara Lynott</b>	Environmental Protection Agency (Ireland)
<b>Janice Milne</b>	Scottish Environment Protection Agency
<b>Robin Mulder</b>	Inspectorate of the Ministry of Housing, Spatial Planning and Environment (Netherlands)
<b>Alexandre Paquot</b>	Ministry of the Environment and Sustainable Development (France)
<b>Waltraud Petek</b>	Federal Ministry of Agriculture, Forestry, Environment and Water Management (Austria)
<b>Sian Priest</b>	Department of Environment, Food and Rural Affairs (UK)
<b>Gernot Schnabl</b>	European Commission
<b>Anneke Sewandono</b>	Ministry of Housing, Spatial Planning and Environment (Netherlands)
<b>Terry Shears</b>	Environment Agency (England and Wales)
<b>Sara Spillett</b>	Environment Agency (England and Wales)
<b>Thalia Statha</b>	Ministry of Environment (Greece)
<b>Anna Barbora Stykova</b>	Slovak Inspectorate of the Environment
<b>Caroline Wakter</b>	Swedish Environmental Protection Agency
<b>Matthias Weigand</b>	Bavarian Ministry for Regional Development and Environmental Affairs

## APPENDIX III: BLANK QUESTIONNAIRE USED TO OBTAIN VIEWS FROM IMPEL MEMBERS

### Introduction

IMPEL is the European network for the implementation and enforcement of environmental law. The IMPEL Project on Better Legislation is reviewing the practicality of implementing and enforcing current EC environmental legislation, to identify ways to improve future legislation. The project terms of reference can be provided if you would like to see them.

As part of the project, the attached questionnaire seeks the views of officials in environmental authorities who implement or enforce EU legislation on a day to day basis. [National Project Contacts add any further comments as necessary]

### Responses

Please send your response by [date] to [Name of National Project Contact]. Your response, and responses from others in [insert name of country] and 10 other countries, will help to produce recommendations on how better environmental legislation can be produced to allow for effective implementation and enforcement, based on experience with the application of current legislation. These recommendations will be put to the European Commission, European Parliament and Governments of the Member States and Accession States.

Please complete

Your position.....

The project is looking at EC legislation containing permitting and inspection requirements falling within the scope of Recommendation 2001/331/EC on minimum criteria for environmental inspections, as listed in the table below, plus related EC legislation. Please insert "X" in the second column where appropriate to indicate which legislation you are providing information on. If you are commenting on national or regional laws that transpose EC legislation, rather than directly on the EC legislation itself, please also write the name of the national or regional laws concerned under the name of the EC legislation.

EC Legislation	Insert "X"
Directive on integrated pollution prevention and control (96/61)	
Directive on the control of major accident hazards (Seveso II) (96/82)	
Directive on the limitation of emissions of volatile organic compounds (99/13)	
Directive on pollution by dangerous substances discharged to the aquatic environment (76/464)	
Directive on the protection of groundwater against pollution (80/68)	
Directive concerning urban waste water treatment (91/271)	
Directive on waste (75/442 as amended by 91/156)	
Directive on hazardous waste (91/689)	
Directive on the landfill of waste (99/31)	
Directive on the limitation of emissions into the air from large combustion plants (88/609)	
Directive on the limitation of emissions into the air from large combustion plants (2001/80)	
Directive on the prevention of air pollution from new waste incineration plants (89/369)	
Directive on the prevention of air pollution from existing waste incineration plants (89/429)	
Directive on the incineration of hazardous waste (94/67)	
Directive on the incineration of waste (2000/76)	
Other related EC legislation (please specify)	

### Questions

Please answer the questions below for the legislation that you have specified above. Where possible your answers should relate to provisions in the EC legislation, or those in the national or regional legislation that derive directly from the EC legislation.

When answering the questions please give examples of difficulties in implementation and enforcement that arise from the legislation, and of the impacts that these difficulties have caused (for example environmental impacts, costs to regulator or regulated, etc.). Please feel free to indicate how you think these problems could be overcome and/or have been avoided in the first place and, if possible, also give examples of good legislation or practice.

If you need further information on the questionnaire please contact [Name of National Project Contact].

## ***QUESTIONNAIRE***

### ***1 Coherence of Legislation***

What is your experience of how different pieces of legislation fit together?

### ***2 Clarity of Aims and Principles***

What is your experience of the clarity of the environmental aims and principles of the legislation?

### ***3 Clarity of Key Terms and Definitions***

What is your experience of the clarity of the key terms and definitions in the legislation?

### ***4 Consistency of Key Terms and Definitions***

What is your experience of the consistency of key terms and definitions across different pieces of legislation?

### ***5 Requirements Imposed on Regulators and Operators***

The requirements of interest in this question are those parts of the legislation that require regulators and/or operators to do things – for example to operate a permitting regime, to meet certain standards, or to undertake enforcement – in support of the aims of the legislation.

What is your experience of:

- a) the clarity of these requirements?
- b) the extent to which these requirements are sufficient to meet the aims of the legislation (for example, are they enforceable, or are there gaps or problems)?
- c) the extent to which these requirements are consistent with those of other relevant legislation?

### ***6 Monitoring and Reporting***

What is your experience of the monitoring and reporting requirements in the legislation (for example, type, frequency, usefulness)?

### ***7 Proportionality of Legislation***

What is your experience of the extent to which the requirements of the legislation are proportionate to the environmental benefits that they deliver?

### ***8. Additional Information***

Are there any other issues you wish to raise concerning the legal or practical implementation and enforcement of the legislation?

***Thank you for your time and contribution to the project.***

## APPENDIX IV: OTHER WORK RELEVANT TO THIS PROJECT

### IV.1 *EU Better Lawmaking Initiative*

In July 2001 the Commission presented its White Paper on European Governance<sup>6</sup>. This was followed in December 2001 by a political communication on “Simplifying and improving the regulatory environment”<sup>7</sup> which identified four areas of priority for action:

- Simplifying the Community *acquis*;
- Improving the quality of legislation;
- Creating a new culture within the institutions; and
- Improving the transposition process.

In June 2002 following the public consultation on the White Paper, the Commission presented three communications entitled “European Governance: Better Lawmaking”.<sup>8</sup> Based on the White Paper on European Governance their aim is to improve the overall lawmaking process within the EU without changing the Treaty or waiting for the next Intergovernmental Conference.

The first communication sets up an Action Plan on “Simplifying and improving the regulatory environment” and introduces “a strategy for further co-ordinated action to simplify the regulatory environment” which aims at making European legislation more comprehensible by making it simpler. Taking into account the various important submissions, the Commission has identified three main phases of the legislative process upon which the improved quality strategy should focus:

- preparation and presentation of the legislative proposal by the Commission;
- discussion of the proposal by the European Parliament and the Council; and
- application of the legislative act by the Member States.

Focusing on the joint responsibilities of various European institutions and the Member States, the Commission proposes different actions in respect to the entities involved, amongst other things:

- defining minimum standards of consultation;
- assessing the impact of major legislative and policy initiatives;
- setting up an internal network for “better lawmaking” at the Commission;
- limiting Directives to essential aspects of legislation;
- assessing the impact of substantial amendments by the European Parliament and Council; and
- creating a legislative network between institutions and the Member States.

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<sup>6</sup> COM(2001) 428 final.

<sup>7</sup> COM(2001) 726 final.

<sup>8</sup> Communication from the Commission, COM (2002) 275 final. The three Communications are:

- Action plan "Simplifying and improving the regulatory environment", COM(2002) 278 final;
- Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission, COM (2002) 277 final and
- Communication on impact assessment, COM (2002) 276 final.

All these topics aim at improving the quality of future legislation as well as simplifying it. It is evident that those individuals and institutions involved in the implementation of European environmental law who are aware of the practical problems could provide a major input to the various actions which have been foreseen.

In December 2002 the Commission presented a second series of actions that complete the implementation of the reform on European governance. The Communications focus particularly on the openness, effectiveness and accountability of the implementation of European legislation, comprising proposals on

- Improving the quality of control, as regards application of legislation;
- The so-called "committee system";
- Regulatory agencies; and
- Tripartite conventions and contracts between different levels of European governance.

Moreover, in its recent report on European Governance the Commission reviews its actions undertaken and gives an account of the outcome of the public consultation relating to the White Paper.

The 6th Environmental Action Programme provides continued support for IMPEL's exchange between Member States of information and experience on implementation. In fulfilling this role, IMPEL could make important contributions to the better lawmaking initiative. IMPEL can offer assistance in identifying aspects which represent a hindrance to proper and (cost-) effective implementation of European legislation and could comment on the coherence, effectiveness, practicability and enforceability of forthcoming legislative proposals and their impact on local areas and regions.

The results of this IMPEL project can, therefore, feed into this initiative in two principal ways:

- it can identify aspects (detailed or general) of current EU legislation which pose problems for implementation in the Member States and good practice examples which, as a result, might guide the production of improved new or revised EU legislation.
- the project can highlight the expertise of IMPEL members and illustrate the importance of ensuring their participation in the law-making process to ensure effective and coherent legislation and suggest how this might be achieved.

#### ***IV.2 Dialogue with Associations of Regional and Local Authorities***

The European Commission acknowledges the important role of local authorities and is currently preparing a dialogue with associations of regional and local authorities. To address the issue, it recently announced its intention to issue a communication laying down the framework, goals and procedures governing the planned dialogue with local and regional government associations. As part of the preparatory work for this Communication the Commission published a Working Paper in 2003 on ongoing

and systematic policy dialogue with local and regional self-government associations<sup>9</sup> which was subject to public consultation.

According to the working paper the goal of the final Communication will be to involve local actors – via European and national associations of regional and local government – by giving them the opportunity to express their views on the Community policies they help to implement before the formal decision making processes are launched.

The Commission identifies the national and European associations of local and regional government as the best partners for a dialogue preceding the initiation of the formal-decision making process. According to the Commission the dialogue should cover the Commission's annual work programme and major initiatives of policies with impact at local level including, amongst others, environment policy. The Commission suggests that the Committee of the Regions should facilitate the dialogue.

It is important to note that, in some Member States, local and regional government is responsible for the implementation and enforcement of many EU Directives. Thus this initiative opens up another route through which the issues raised by IMPEL in this project might be addressed.

#### ***IV.3 Draft Inter-Institutional Agreement on Better Lawmaking***

In June 2003 a draft inter-institutional agreement<sup>10</sup> was produced which seeks to improve the way that the EU institutions develop legislation. The draft focuses on the relationships between the institutions, requiring better co-ordination, timetabling, etc. The draft sets out a number of principles for good legislation and alternatives to legislation. It emphasises the need for transparency and that the Commission should carry out the fullest possible consultations prior to the publication of proposals. The document also emphasises the importance of impact assessments by the Commission and also by the Parliament and Council for any substantive amendments.

These processes should assist in improving EU environmental legislation and may provide mechanisms for IMPEL members to contribute to the legislative development and review processes.

#### ***IV.4 Fight the Fog***

The European Commission has established a campaign called 'Fight the Fog'. This is focused on the Commission's Translation Service and aims to encourage authors and translators to write more clearly. As part of the campaign Martin Cutts of the UK Plain Language Commission produced a report describing how Directives could be written more clearly so that citizens of Member States (including lawyers) would understand them better<sup>11</sup>. He identified six principles for better Directives 'as a gentle reminder to future legislators'. These stated that Directives should be:

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<sup>9</sup> <[http://europa.eu.int/comm/governance/suivi\\_lb\\_en.htm](http://europa.eu.int/comm/governance/suivi_lb_en.htm)>.

<sup>10</sup> Council of the European Union. Draft interinstitutional agreement on better law-making. 10212/03.

<sup>11</sup> Cutts, M. 2001. *Clarifying Eurolaw*. Plain Language Commission, London.

- named, not just numbered – they should have a clear, short title;
- purposeful – readers should know from the first few words what each Directive will achieve;
- easy to navigate – material should be arranged so that people can easily find the part they want and see how it fits into the whole story;
- written in modern, straightforward words and constructions – this will make them easy to translate and to transpose into national law;
- models for other kinds of writing in the Commission and Parliament, so that verbose, illogical, and high-flown texts are regarded by politician and staff alike as absurd and unacceptable; and
- reasonably comprehensible to an intelligent citizen with an enquiring mind and an interest in the subject – not just to lawyers, politicians, trade associations and special-interest groups, important though these audiences may be.

The primary thrust of these principles which is of interest to the IMPEL project is the repeated emphasis on clarity. Whole Directives, Articles and individual terms should clearly, and simply, spell out their purpose. As will be seen, IMPEL members have identified instances where this is not the case. However, the emphasis of the Cutts report is on individual Directives, whereas much of the concern of IMPEL members is on coherence and consistency between Directives.

#### ***IV.5 VROM/Commission Workshop on Comparative Environmental Law***

In 1997 VROM and the European Commission hosted a workshop on comparative environmental law. The workshop addressed a range of issues, focusing on the need to integrate legislation. Some key conclusions were:

- the competence for the establishment of national legislation and the transposition of Community legislation does not always belong to the same authority and this may give rise to problems in implementation;
- great differences exist between Member States in the extent of integration in legislation;
- Most Member States have a general environmental act used for procedural and instrumental integration, supported by sectoral laws;
- almost all Member States use a range of legal and non-legal instruments to achieve integration;
- after having adopted an integrated approach, improvements to the clarity, consistency and simplicity of the system require further consolidation and harmonisation of the legislation not previously integrated;
- coherence of Community legislation could be achieved by the construction of a consistent ‘framework’ within which all different pieces of Community legislation are logically located; and
- the use of sectoral framework Directives is recommended;

Many of these conclusions reflect points also raised within the IMPEL project. The conclusions suggested that greater consistency and integration could be achieved using framework approaches to EU legislation.

#### ***IV.6 IMPEL Project on the Interrelationship between IPPC, EIA, Seveso and EMAS***

This 1998 IMPEL project undertook a detailed comparative examination of the above Directives and Regulation. The report provides an Article by Article comparison of terms, requirements, etc of each instrument. It is, therefore, a useful case study of the differences that occur between different items of EU legislation. However, the report did not seek to produce recommendations for changing the way that legislation is developed, or for harmonisation of the instruments addressed. Having said this, it still forms a detailed foundation upon which future work on harmonisation could be based.

#### ***IV.7 Communication from the Commission on the Implementation of IPPC***

The European Commission issued a Communication in July 2003 on progress in the implementation of the IPPC Directive<sup>12</sup> (COM2003(354)). The Communication is more than simply a survey of legislative transposition and practical implementation, as it discusses a number of wider issues, such as interaction with other instruments. In particular, the Communication lists a number of problems that Member States have encountered in implementing the Directive, including some derived from lack of clarity in the text, etc. These are also concerns raised in this IMPEL project.

The Communication also considers how other Directives relate to IPPC (for example Seveso II, EIA, etc.) and concludes with a discussion of non-traditional and market based mechanisms and how these might develop and be taken account of in the future. The integration of existing and future instruments in this context would also assist in achieving better regulation.

Finally, the Communication also acts as the launch of a stakeholder consultation on implementation issues and future policy development, including potential revision of the Directive (although no radical revision is envisaged). However, a revision would allow both for improving the text of the Directive, making better links with other legislation and, potentially, also addressing issues such as proportionality. The results of this IMPEL project could, therefore, assist in this process, both in relation to direct comments on the IPPC Directive and also in some of the broader principles that are discussed.

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<sup>12</sup> See also: [http://www.europa.eu.int/comm/environment/ippc/ippc\\_consultation.htm](http://www.europa.eu.int/comm/environment/ippc/ippc_consultation.htm)