

European Union Network for
the Implementation and Enforcement
of Environmental Law

Workshop on assessing the practicability and
enforceability of EU environmental legislation
and the use of the IMPEL and NEPA checklists
Lessons learnt and ways forward

Brussels, 18 September 2008

Proceedings

VRROM  Inspectorate



Institute ^{for}
European
Environmental
Policy

Introduction to IMPEL

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international association of environmental authorities of EU Member States, acceding and candidate countries, and Norway.

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 European Community to make progress on ensuring a more effective application of environmental legislation. It promotes the exchange of information and experience and the development of environmental legislation, with special emphasis on Community 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.

For further information on IMPEL see:

<http://europa.eu.int/comm/environment/impel>

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| <p>Workshop participants: Representatives of IMPEL Member countries, the European Commission and the Network of Heads of European Environmental Protection Agencies (NEPA)</p> | |

Executive summary – Introduction

- On 18 September 2008 a joint IMPEL and European Commission workshop was held in Brussels to discuss the use **of IMPEL's Practicability and Enforceability Checklist** and the Checklist from the "**Barriers to Good Environmental Regulation**" Report produced by the Network of Heads of European Environmental Protection Agencies (NEPA). In particular lessons were discussed from the use of these two checklists in the IMPEL project analysing the Commission's **IPPC Recast Proposal**.
- The workshop included presentations from IMPEL members and the Commission involved in the project and from the Secretariat of NEPA.

Participants reached the following conclusions:

- The IMPEL project analysing the Commission's IPPC Recast Proposal provided a good opportunity to feedback practical experience into the policy development process. It was therefore considered to be very successful and further use of the checklists is highly recommended.
- The questions in the two checklists were tailored to the Recast Proposal; this approach worked well in eliciting information from IMPEL members.
- Using the checklists does require information on enforceability and practicability to be available. This can be a challenge with proposed legislation in a new area.
- The checklists can be used at any stage in the policy cycle, tailored to the issues or texts that are relevant.
- The checklist is not only for use by IMPEL members. It is important, therefore, for IMPEL to promote the checklist so that others will be stimulated to use it.
- There would be benefits in simplifying the IMPEL and NEPA checklists in the future, producing a consolidated version.
- It is very important to make reports on practicability and enforceability assessments visible, to ensure that IMPEL members and other actors and stakeholders use the reports.
- It would be beneficial to embed practicability and enforceability assessments more routinely within the legislative development process. The checklists could act as a quality standard.
- The IMPEL project analysing the Commission's IPPC Recast Proposal had a very tight timetable to turn information around. Critically, effective planning ensured that the tight timetable was adhered to. Projects such as that on the IPPC Recast Proposal throw into question how quickly IMPEL can operate. To engage with the policy cycle, IMPEL will, at times, need to react quickly. Therefore, it may be beneficial for IMPEL to agree an ongoing programme relating to the use of the checklist, rather than needing to seek approval from the Plenary on every occasion that the checklist should be used.

Disclaimer

- This report 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.

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**Workshop on assessing the practicability and enforceability of EU
environmental legislation and the use of the IMPEL and NEPA checklists -
lessons learnt and ways forward**

Organised by the European Commission and IMPEL
Brussels, 18 September 2008

1. Introduction

To contribute to the practicability and enforceability of EC environmental law IMPEL and the Network of Heads of European Environment Protection Agencies (NEPA) recently took several initiatives. IMPEL assessed the Recast Proposal for the IPPC Directive and six industrial emissions Directives, adopted by the European Commission in December 2007, using the IMPEL practicability and enforceability checklist. NEPA published a vision paper “Improving the Effectiveness of EU Environmental Regulation”. It recommended in the report to “Incorporate and support implementation of the IMPEL and the Network of Heads of European Environment Protection Agencies’ Barriers checklists into the Commission’s Impact Assessment and policy-making procedures to improve the quality of new legislation.” These initiatives link up with the work of the European Commission on improving EC law and Better Regulation, such as the Communication “A Europe of Results – Applying Community Law” and the review of the EU impact assessment guidelines.

A copy of the IMPEL Practicability and Enforceability Checklist is available at:
http://ec.europa.eu/environment/impel/pdf/pe_checklist.pdf

A copy of the IMPEL report on assessing the practicability and enforceability of the IPPC Recast Proposal is available at:
http://ec.europa.eu/environment/impel/pdf/checklis2_report.pdf

A copy of the NEPA paper “Barriers to Good Environmental Legislation”, containing the Checklist “Identifying barriers to good environmental regulation” is available at:
<http://epanet.ew.eea.europa.eu/fo1249409/fo1249409/fo1249409/helsinki-statement>

A copy of the NEPA paper “Improving the Effectiveness of EU Environmental Regulation” is available at:
<http://epanet.ew.eea.europa.eu/fo1249409/fo1249409/oslo-statement-vision-paper>

A copy of the Commission Communication “A Europe of Results – Applying Community Law” is available at:
[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SPLIT_COM:2007:0502\(01\):FIN:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SPLIT_COM:2007:0502(01):FIN:EN:PDF)

IMPEL and European Commission jointly organised a one-day workshop to discuss the outcomes and uptake of these different initiatives and consider how to proceed further. Participants at the workshop (experts from Member States, IMPEL, NEPA and the European Commission) were invited to present their ideas and thoughts on:

- where in the EU policy and legislative cycle practicability and enforceability issues should be addressed and how and by whom.
- the use of the IMPEL and NEPA checklists so far and what possible improvements both procedural and as regards content could be considered.
- what further practicability and enforceability assessments could be undertaken.

The overall aim of the workshop was to support the work on Better Regulation and to further raise attention to the need to effectively involve regulators and practitioners in the EU policy and legislative process.

This report presents a summary of the presentations given at the workshop, a record of the discussions that were held and conclusions and recommendations for IMPEL, Commission and others to take forward work on improving the practicability and enforceability of environmental legislation.

2. Assessing the Practicability and Enforceability of EU Environmental Legislation, State of Play

Jan Teekens, VROM-Inspectorate, the Netherlands

IMPEL has been in existence since 1992, but its status has recently changed to that of an International Association. A main focus of the work of IMPEL is to improve the application of environmental legislation across the EU. As part of this aim, Better Regulation has been a core concern of IMPEL for a number of years. In response, IMPEL established a Better Regulation Cluster with the aims:

- to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation.
- to ensure that existing and proposed legislation is consistent with the principles of Better Regulation and that such legislation is practicable and enforceable.

Across the Member States there is often an implementation deficit – a failure to achieve full implementation. This is often due to the establishment of a poor legal base (lack of, or incomplete, transposition or poorly established provisions in the Member States' law) or poor implementation conditions (such as through competent authorities having insufficient resources). Various actions have been taken to tackle this problem, including:

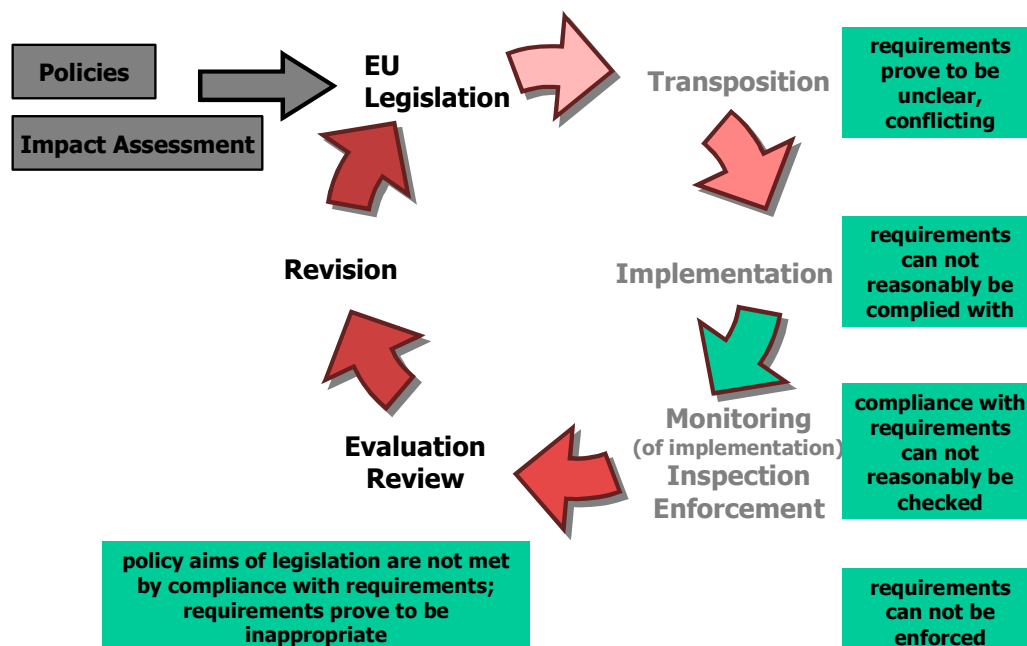
- The EU Joint Practical Guide for the EU institutions.
- Impact Assessment Guidelines.
- IMPEL and NEPA Better Regulation Initiatives.

All of these measures focus on assessing issues that arise in legislative implementation with the aim to improve the quality of legislation that is adopted.

An important response from IMPEL to tackle problems of implementation was to develop the practicability and enforceability checklist. In developing this the following questions were considered:

- What are the practicability and enforcement issues?
- Where do they occur in the regulatory cycle and why?
- What can be done, and by whom, during and after the legislative process?

In considering practicability and enforceability issues, it is important to consider how these relate to different elements of the EU Regulatory Cycle. This cycle is set out below.



Practicability and enforceability issues can arise at any point in the regulatory cycle. For example, at the point of transposition it may be found that a Directive is not as clear in its provisions as was originally thought. There may also be practical problems of interactions with other Directives. Implementation problems may arise due to complexity of the law or high costs.

The IMPEL Practicability and Enforceability Checklist was, therefore, developed in order to enable actors and stakeholders in the legislative and implementation process to assess legislation and implementation efforts on various aspects of practicability and enforceability, both ex-ante and ex-post. The checklist considers legislation in both Directive and Regulation format. The Checklist contains 51 questions structured in 5 sections. It is not a prescriptive tool. Users may decide to use parts of the checklist selectively and asking the questions is as important as answering them – in any given case it would be unlikely that all 51 questions need to be answered. Its use can be flexible – such as an aide-mémoire, checklist, or questionnaire – whichever is most appropriate to the issue being considered.

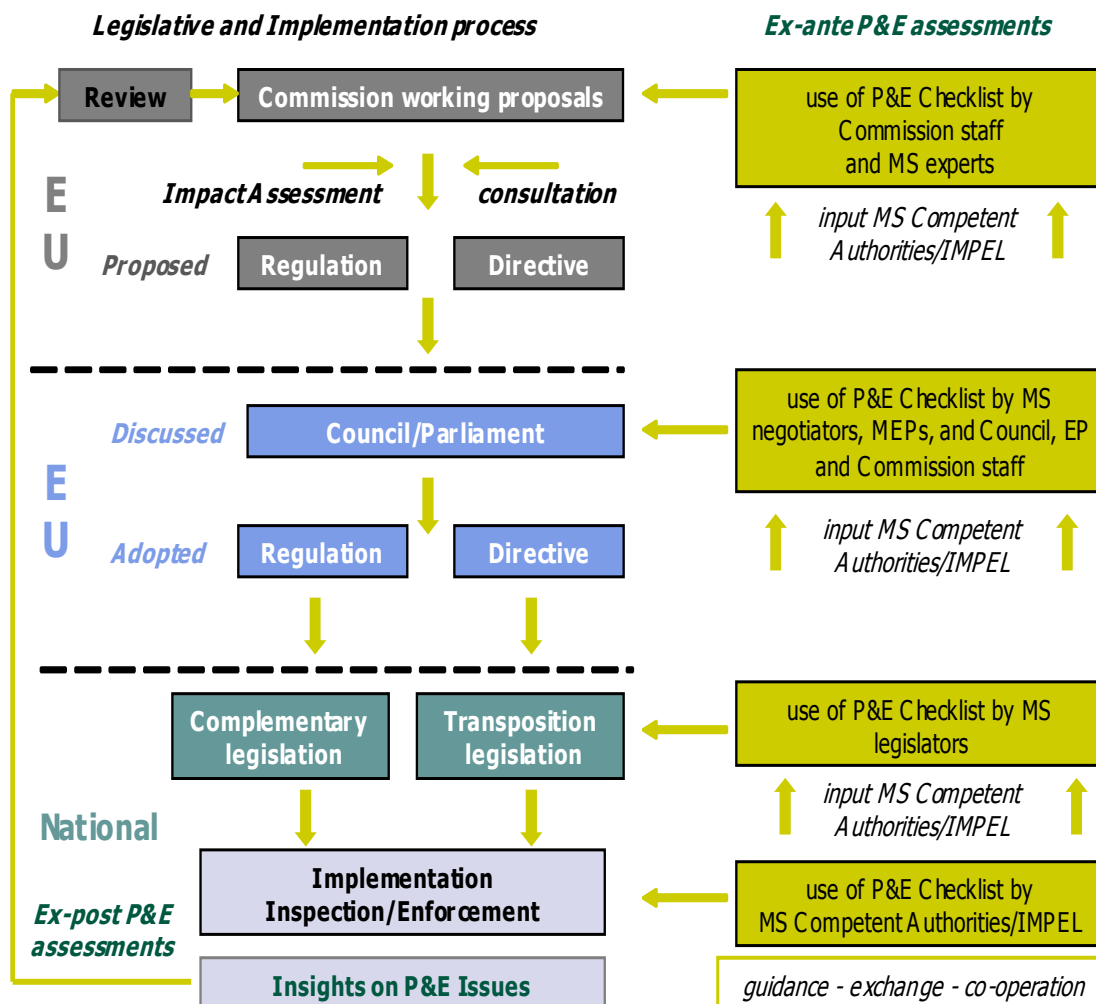
The five sections of the Checklist contain questions relating to:

- Choice of legislative instrument – e.g. Regulation or Directive.
- Suitability for transposition and implementation.
- Quality of the legislation.
- Practicability for compliance by the regulated target group.
- Enforceability of the legislation.

The aim of the checklist is to help structure the discussion on practicability and enforceability of proposals. However, to do this it is important to get input from key

stakeholders in order to get the right information to answer the questions that are raised. Therefore, consultation with stakeholders should be timely and, to do this, they need an accurate and up-to-date timetable of the legislative agenda. Overall, the checklist should provide an excellent structure to frame thinking and conduct a suitable analysis, for example to frame ex-ante and ex-post assessments.

Practicability and enforceability issues can be examined at different stages of the development of EU legislation. The following Figure sets out the EU legislative development and implementation processes and how practicability and enforceability issues can be considered and by whom. Ex-ante assessment can be undertaken prior to adoption of a proposal; through to consideration by the EU institutions in the adoption process and by Member States in addressing how a Directive is to be transposed. Ex-post assessment, such as during the review of a Directive, is also an important time to assess practicability and enforceability questions.



In 2007 the European Commission published a Communication “A Europe of Results – Applying Community Law” (COM (2007) 502). This stressed the need to consider practicability and enforceability issues. For example, in the section entitled ‘Increased Attention to Implementation throughout the Policy Cycle’, the Communication stated:

“Maximum effort should be made to ensure the clarity, simplicity, operability and enforceability of legislation. Increased attention should be paid to aspects of implementation, management and enforcement in the development of proposals, in particular at the impact assessment stage, and throughout the policy cycle.”

The importance of practicability and enforceability has also been taken forward by the Commission in its development of new Impact Assessment Guidelines¹ on which the Commission organised a public consultation in the Summer of 2008. For example, section 5.3.2 of these guidelines discusses the issue of proportionality, section 5.4.3 addresses the assessment of impacts at national and regional level, section 5.4.4 (and Annex 7.6) makes reference to the need to consider administrative burdens for administrations, section 5.4.5 addresses transposition and compliance issues. IMPEL submitted comments on the draft guidelines and noted that practicability and enforceability were better addressed in the document. However, it does consider that some parts could be made more concrete in specifying practicability and enforceability assessment. For example, reducing administrative burdens for industry (such as information requirements) can increase the burdens for administrations and these need to be fully considered. The final version of the updated Guidelines is expected to be available around the end of 2008.

The draft updated Guidelines are available at:

http://ec.europa.eu/governance/impact/consultation/docs/ia_guidelines_draft_text_final_en.pdf

IMPELs comments on the draft updated Guidelines are available at: at http://ec.europa.eu/governance/impact/consultation/docs/contributions/public_authorities/impel_en.pdf

The NEPA Paper “Improving the Effectiveness of EU Environmental Regulation” also emphasises the importance of practicability and enforceability issues. It states:

“Effective policy-making processes will require better consideration of implementation issues, involvement of regulators and use of appropriate innovative policy instruments and tools to enable practical, proportionate and potentially, where appropriate, risk-based solutions.”

With regard to the Commission’s Impact Assessment Guidelines, it goes on to state:

“Incorporate and support implementation of the IMPEL and the Network of Heads of European Environment Protection Agencies’ Barriers checklists into the

¹ Impact assessment is a form of ex-ante assessment designed to help in structuring and developing policies. It identifies and assesses the problem at stake and the objectives pursued. It helps to identify the main options for achieving the objectives and analyses the likely economic, environmental and social impacts of their implementation. It outlines advantages and disadvantages of each option and examines possible synergies and trade-offs. Around 400 Impact Assessments have so far been undertaken and published.

Commission's Impact Assessment and policy-making procedures to improve the quality of new legislation.”

The IMPEL project to assess the IPPC Recast Proposal on practicability and enforceability was the first real use of the IMPEL and NEPA checklists. It was, therefore, a learning exercise. The project generated large interest amongst competent authorities and the participation of these authorities was highly valuable. Involvement of the Commission in the process also proved to be vital in clarifying issues and helping to keep the process focused. The process itself was also a challenge. It sometimes proved easier to obtain expert judgements rather than supporting facts and figures and it was not always easy to distinguish practical issues from the political.

It is important to learn lessons from the IMPEL project on the IPPC Recast Proposal so that future use of the checklist can be improved. It is therefore appropriate to ask the following questions:

- What can we learn from the use of the checklists?
- What improvements both procedural and as regards content could be considered?
- What further practicability and enforceability assessments could be undertaken?
- What other ways, and through what other means and arrangements, can practicability and enforceability issues be taken on board in a timely manner? How can regulators and practitioners best be involved in the assessment process for that purpose?

In conclusion, the development of the practicability and enforceability checklist has proved to be a valuable tool to structure analysis of proposed and existing legislation to enhance implementation and reduce unnecessary burdens. The use of the checklist by IMPEL in examining the IPPC Recast Proposal was successful. However, it is important to consider how this assessment process can be further improved and what assessments could be undertaken in the near future to assist in validating the process.

3. The IMPEL project to assess the IPPC Recast proposal on Practicability and Enforceability

Stan Smeulders, VROM-Inspectorate, the Netherlands, and Andrew Farmer, IEEP

The aim of the project was to use the IMPEL practicability and enforceability checklist and the NEPA checklist from its 'Barriers to Good Environmental Regulation' report to examine practicability and enforceability of the Commission's IPPC Recast Proposal. This project was the first use of the checklist by IMPEL and it is, therefore, important to consider the lessons learned from this project to help inform future use of the checklist by IMPEL and others.

The Commission's Recast Proposal on industrial emissions amends the IPPC Directive and merges it with six other industrial Directives. IPPC has been a core activity of IMPEL members and central focus of much IMPEL work since its adoption in 1996. It has challenged IMPEL members in interpretation of many aspects of the Directive and in the practical details of permitting, inspection, enforcement, etc. Therefore, if IMPEL members are concerned over the practicability and enforceability of any Directive, then that Directive is IPPC. Therefore, the revision to IPPC is a perfect case for analysis using the practicability and enforceability checklist.

The project started in January 2008 and the final report was produced in May 2008. For an IMPEL project this is a relatively short timescale. The project had a straightforward structure: to collect information from IMPEL members, analyse it, discuss the results in a workshop and reach conclusions.

The project was overseen by a Review Group consisting of representatives of selected IMPEL members. A consultant was also contracted to support the work of the project. Information was gathered from IMPEL members through the use of a questionnaire. The results and issues were discussed at meetings of IMPEL Clusters 1 and 3, as well as at a project workshop in The Hague in April 2008, attended by representatives of many IMPEL members and the European Commission.

The project had a particular challenge in that the Recast Proposal is a very long document, can prove difficult to interpret and covers a wide range of issues. The questionnaire approach was agreed as the most useful way of obtaining information from IMPEL members in a short timescale. The Review Group considered that the practicability and enforceability checklist questions needed modification in order to focus responses from members and it agreed a list of the key elements of the IPPC Recast Proposal to be considered. Thus the questionnaire was structured according to these elements, rather than the structure of the practicability and enforceability checklist.

The practicability and enforceability Checklist contains 51 questions and the NEPA report contains 28 questions. Therefore, there was also a challenge to identify the most relevant questions from these both and combine them as necessary. When complete, most of the questions in the questionnaire were modified from the originals in the checklists. The aim was not to have too many questions, although because of the range of issues in the Recast Proposal, it was found necessary to have 34

questions. Importantly, these sought both views and practical examples from IMPEL members aiming to draw on their practicability and enforceability experience. The questions also specifically asked for positive comments, as it is often easy to focus on the negative. This was also thought to be important in relation to a recast proposal, given that practicability and enforceability issues had been highlighted in the IPPC Directive review process and it would be important to consider positive changes in relation to revisions of existing provisions. Finally, the questionnaire also contained open questions relating to the checklists to allow for any other issues to be raised by IMPEL members, so that the choices of question made by the Review Group in the questionnaire did not prevent comments being made on any other issues that were felt to be important.

The project generated significant interest from IMPEL members. Overall replies were received from 29 IMPEL members from 17 Member States. Most of these were received within the tight three week timetable given for responses. Many IMPEL members also provided detailed responses to the questionnaire. These responses resulted in the identification of a number of practicability and enforceability issues. The workshop provided an opportunity to bring together regulators and practitioners which would not normally happen. It was very successful with frank and open debate and constructive discussion of many issues reaching agreed conclusions and report content.

All of this enabled rapid completion of the final report and, therefore, conclusion of the project. The project report was adopted at the IMPEL Plenary Meeting in Slovenia in May 2008.

There are a number of lessons that can be learned from the project:

- The Commission gave ample prior notification that a proposal was coming. Therefore, IMPEL was able to prepare for a project (funding identified and agreement in Plenary) prior to publication of the proposal. Project initiation was rapid.
- The project had solid funding and agreement to ensure implementation.
- The project required rapid implementation (three months from start to finish) in order to provide outputs that are able to be fed into the legislative adoption process. This contrasts with the longer project implementation processes of many other IMPEL projects. To implement such a project quickly requires effort and commitment of project participants.
- Even though the questionnaire repeatedly sought positive comments on aspects of the Recast Proposal, these often proved difficult to get. Members usually found it easier to highlight a concern. This was where the workshop proved very valuable in discussing the issues and finding the positive path (it is easier to be positive in debate than in a document).
- It also proved difficult to obtain practical examples from many Members. While practical evidence can be problematic where the Commission proposes a completely new provision, much of the Recast Proposal addressed existing provisions and, therefore, more detailed practical evidence would have been expected. This may have been due to the very tight deadlines involved with the project. More time would naturally facilitate a greater degree of detail and practical examples.

- The rapid process for information gathering and analysis of a complex proposal could lead to errors in the report (e.g. mistakes on the content of the Recast Proposal). It was important, therefore, for these to be identified and the Commission was particularly helpful in this process. At the same time it should also be recognised that carrying out the P & E assessment identified some errors within the recast which were highlighted to the EC. This was another strength of the project!

There was a particular challenge in separating political views from comments on practicability. A political view would be ‘we don’t think that it is appropriate for X to be put in an EU Directive’. In contrast a practical view would be ‘including X in a Directive would make work easier/hard for this reason’. IMPEL should focus on practical issues in such studies, but many made political comments in their questionnaire responses. This is understandable as the P&E checklist does contain ‘political’ questions as it is designed for use at different governance levels (not just for EU legislation) where such questions might be relevant. Also the statutory roles of IMPEL members differ and ‘political’ engagement at national level may be a key role at Member State level for some. Individuals completing a questionnaire might not always be aware of different roles at Member State level and within IMPEL. It is also important to note that some ‘political’ responses did have a practical origin and, therefore, some responses only required rephrasing or further information. The approach of the project meant, however, that having such political responses was not a problem, in that subsequent analysis, clarification and workshop discussion was able to identify them and either provide additional information or remove them from the final report.

In developing the questionnaire, a number of lessons can also be identified:

- IMPEL members were more familiar with structure of IPPC (e.g. ‘permitting’, ‘inspection’) than ‘structure’ of practicability and enforceability issues. It, therefore, proved to be more appropriate to build on such practical experience in the structure.
- Some practicability and enforceability questions in the checklist were found not to be relevant as the checklist was designed also for national situations, not just the EU level. Therefore, it was important to be clear about what was relevant from the checklist.
- For those issues considered to be relevant issues, it was found necessary to modify the questions, i.e. to re-interpret questions according to aspects of IPPC implementation as well as to bring together practicability and enforceability issues simply to make the length of the questionnaire manageable. Thus the checklist was used as a guide for issues to consider rather than a list to be blindly followed.
- Finally, the questionnaire should always ask for practical examples as this is the key expertise of IMPEL members and provides evidence which can then be used at a political level to support their views.

Overall, the following key conclusions can be reached on the process and outcomes of the IMPEL project:

- The project was successful in identifying practicability and enforceability issues.
- The practicability and enforceability checklist proved to be a useful tool to interrogate the recast proposal.
- Considerable effort was required to interpret the practicability and enforceability checklist for the particular objectives of the project.
- The interest and commitment of IMPEL members was key to getting information quickly.
- Timing was important, ensuring prior preparation of the project in readiness for publication of the Recast Proposal and ensuring project completion to contribute to the legislative adoption process.
- There was a challenge in focusing on practical (rather than political) issues and ensuring robust evidence to support conclusions.
- Overall participants were positive on the process of the project and its outcomes.

4. Assessing the practicability and enforceability of the IPPC Recast Proposal: Feedback from the Commission

Keir McAndrew, DG Environment, European Commission

The Commission began a review of the IPPC Directive in early 2006, with data collection taking place over the following two years. The main focus of the review was 10 key studies that focused on horizontal issues including implementation, environmental benefits, impacts on competitiveness and on sectoral issues including waste treatment, agriculture, waste incineration and large combustion plants. As part of the review studies approximately 100 case study installations were analysed with respect to current implementation of IPPC. The entire review process was overseen by an advisory group comprising stakeholders from Member States, industry and NGOs. Importantly, IMPEL played a role in the review process.

As a result of the review process, in December 2007 the Commission published a recast proposal involving a revision of the current legislation on industrial emissions through simplification, clarification and strengthening - Proposal for a Directive on industrial emissions (integrated pollution prevention and control) (COM (2007) 844 final). This proposal recasts seven Directives into a single Directive.

The proposal is supported by an impact assessment as well as an Action Plan to enhance implementation of existing Directives - Commission Communication Towards an improved policy on industrial emissions (COM(2007) 843 final).

The seven existing Directives included in the scope of Recast Proposal are:

- Directive 2008/1/EC concerning integrated pollution prevention and control (IPPC)
- Directive 1999/13/EC on VOC solvent emissions
- Directive 2000/76/EC on waste incineration
- Directive 2001/80/EC on large combustion plants

- Directives 78/179/EEC, 82/883/EEC and 92/112/EEC related to the titanium dioxide industry

The Commission contributed to the process of the application of the IMPEL practicability and enforceability checklist to the Industrial Emissions Proposal in a number of ways. The Commission formed part of the Review Group. It provided assistance in formulation of the questionnaire sent to IMPEL Members. It identified and clarified key aspects of the proposal that would benefit most from the input of IMPEL. It also indicated what issues may be considered 'Practical' and what were 'Political' in order to ensure that the remit of the project was followed. The Commission attended the IMPEL project workshop in The Hague on 10-11 April where it presented the proposal to attendees and worked with the project review group to draw conclusions

Following the completion of the project the Commission reached a number of conclusions on the processes and output of the project. These are:

- The final report is based on significant effort from IMPEL members under challenging time pressure.
- The final report identifies a number of issues concerning practicability and enforceability that are, and will continue to be, of value during the co-decision process.
- IMPEL is in a position to bring significant wealth of experience to assessment of proposals. This should help to provide positive, evidence-based input to the co-decision process.
- The checklist must be tailored to the proposal concerned. The checklist provides a framework against which relevant questions can be posed.
- Applying the checklist to a recast proposal can deliver useful outcomes.
- The focus of the checklist must be on practicability and enforceability issues.
- The checklist and the products of its use should not be used to express political views – there are other mechanisms for this.
- The gathering and presentation of evidence is fundamental to assessing practicability and enforceability. Some further practical examples and other evidence would have improved the robustness of the final report.
- Application of the checklist to further proposals would be of benefit to both the Commission and to IMPEL / NEPA.

The report of the project has been positively received and it is being used, as such within the Commission and by the Council.

In conclusion, it is clear that the use of the Checklist by IMPEL to the IPPC Recast Proposal was a valuable contribution to the further decision-making process. Further use of the Checklist by IMPEL to the assessment of new legislation and review of existing legislation would be valuable in the future. However, it will be important to ensure that IMPEL focuses on practicability and enforceability issues and draws upon the extensive experience of its members to provide evidence to help inform the policy process, particularly through the provision of evidence to support practicability and enforceability arguments. The Recast Proposal was probably easier for IMPEL to consider as its members had extensive experience of the issues addressed by it. Where

there is a proposal for a Directive on a new area for regulation, this would present more of a challenge to IMPEL and its members.

5. Assessing the practicability and enforceability of the IPPC Recast Proposal: Feedback from the United Kingdom

Martin Quinn, Environment Agency of England and Wales

There are three areas that can be considered in assessing the value of the project that was undertaken:

- The value of bringing the experience of IMPEL together.
- The value of the workshop as a forum to debate the IPPC recast proposal in depth.
- The value of the practicability and enforceability checklist itself.

The Environment Agency received the project questionnaire derived from the checklist and distributed to staff each of which had different experiences of implementing IPPC (such as a lawyer and an inspector). The result was collated and contained a wide range of comments and experience.

The use of the checklist did result in some responses which were about existing issues and, therefore, the questionnaire acted as a forum for these. However, importantly it also generated some new thinking in relation to the questions being asked. For example, the UK expressed concerns over proposed changes in the recast proposal to the monitoring of contaminated land which drew on Environment Agency approaches that had since been rejected. The checklist highlighted the need to address such issues. Of course much of this information could be fed into the deliberations of the Council, but the IMPEL project allowed them to be raised early on and debate with similar regulators in other Member States.

The workshop was impressive for the level of detail addressed in the discussions. Participants raised issues that had not been considered by the Environment Agency at that point and, therefore, the discussions were valuable. In particular, views brought to the workshop (either in the draft report or verbally) were challenged and this allowed them to be rejected, revised, restated, etc. The checklist played an important role within the workshop, as it provided a focus for discussion, ensuring that debate was always brought back to the key issues that needed to be addressed. This included understanding the separation of practical and political issues, for which participation from the Commission was especially valuable.

Before the project was undertaken, it might have been assumed that the checklist should be used as it is, question by question. Indeed, this could be done. However, it is a more powerful tool than this, particularly if re-crafted to the specific issue(s) being addressed, as was the case with the IPPC recast proposal.

Overall the questionnaire and workshop in the project generated very useful outcomes in the view of the Environment Agency. It would be hard to say how many of these would have arisen through IMPEL members' roles with ministries within the political process of Council. It is likely that additional points were generated and, certainly, within a constructive context.

6. EPA NET's View on Better Regulation

David Egilson, EPA Secretary

The EPA Network is an informal grouping bringing together the Directors of environment protection agencies and similar bodies across Europe. The network exchanges views and experiences on issues of common interest to organizations involved in the practical day-to-day implementation of environmental policy.

The Network includes organizations from many EU Member States, EEA countries and some from neighbouring non-Member States. The Network works for the interest of the European populations in having efficient and efficacious agencies active in the environment field in European countries. It provides a **forum for exchange of information on policy and implementation** developments and for identifying, managing and allocating resources to possible areas of cooperation, ranging from policy to organisational issues.

The Network **works on an informal and voluntary basis**. Groups of Network members are free to cooperate on whatever issue they like. When deemed appropriate by the plenary, the **Network will communicate with third parties** and the wider public under the title “**EPA-Network Network**”. In particular, the Network of Heads of Agencies will:

- **provide a forum for leadership on critical issues** of environmental policy and implementation across the policy cycle
- provide a **forum for high-level dialogue** and exchange of information on matters of mutual concern
- **promote and support bi-lateral/multi-lateral cooperation** between its members through sharing experiences, approaches, problems and solutions
- provide support to the Network's members through **exchange of information**, organisation of **mutual support** and the organisation of topical cooperation
- serve as a **place for discussion** with regard to policy implementation proposals and/or developments
- devise and **deliver practical solutions** to common problems
- provide a mechanism for **communicating the views** of the **Environment Protection and Nature Conservation Agencies** to third parties and a wider public

Details of role of EPA Net are available at:

<http://epanet.ew.eea.europa.eu/fol249409/epa-booklet>

The organizations that are members of the EPA Net undertake work on different areas of environmental protection. Most undertake work on environmental protection, pollution prevention and sustainable development, with fewer being responsible for areas of conservation, land use, chemicals and wildlife management. Within these areas most have functions of undertaking monitoring, assessment and advice. Fewer are involved in research, enforcement and licensing. Visits have been undertaken to some of the Agencies of the EPA Net. These visits show that the members have

significant diversity regarding size, level of governance, number of tasks and relations to EU policy.

The EPA Net undertakes some of its work through Interest Groups established through mutual interest of the members. One Interest Group is that on Better Regulation. This has produced three papers.

The 'Prague Statement' (Prague 2005) is a report entitled 'Contribution of Good Environmental Regulation to Competitiveness' endorsed by 30 members. The report emphasises the importance that effective environmental regulation can make to deliver a competitive economy. Key conclusions of the report are set out below.

Summary

In the context of the current EU focus on growth and jobs, this paper reviews the evidence on the links between environmental regulation and competitiveness. It finds that a modern approach to regulation can:

- reduce costs for industry and business
- create markets for environmental goods and services
- drive innovation
- reduce business risk and increase the confidence of the investment markets and insurers
- assist competitive advantage and create competitive markets
- create and sustain jobs
- improve the health of the workforce and the wider public
- protect the natural resources on which business and we all depend

We conclude that there is now significant evidence from international research that good environmental management and regulation does not impede overall competitiveness and economic development. On the contrary, it can be beneficial by creating pressure that drives innovation and alerts business about resource inefficiencies and new opportunities.

The Network of Heads of European Environmental Protection Agencies submits this paper as its contribution to the current debate.

The 'Barriers Paper' (Helsinki 2006) is a report entitled 'Barriers to Good Environmental Regulation' endorsed by 23 members of the EPA Network. This report examined the different barriers to effective environmental regulation at different governance levels. This report included a checklist to examine such barriers. Some of the issues included in the checklist are also considered, or expanded upon, in the

IMPEL practicability and enforceability checklist. Key conclusions of the report are set out below.

Barriers to good regulation

- 2.1 Barriers to good regulation can take three forms.
- Institutional, legal and regulatory framework barriers arising from the processes for developing legislation at EU level and its transposition and implementation into national law.
 - Behavioural barriers on the part of both regulators and those they regulate.
 - Lack of scrutiny and challenge mechanisms in the legislative and regulatory process.

These three types of barriers may arise along the regulatory chain at EU and national level, and amongst the regulated community and other interested groups. We have used the following headings to highlight where we think barriers to good environmental regulation can be overcome and who would need to take action to overcome them.

- EU level barriers
- Domestic barriers
- Stakeholder barriers
- Infrastructure and administrative barriers

We conclude the paper with recommendations and actions that could help overcome these barriers.

The ‘Vision Paper’ (Oslo 2008) is a report entitled ‘Improving the Effectiveness of EU Environmental legislation - A future vision’ endorsed by 31 members of the EPA Net. The vision that it sets out is for an environmental policy that supports a clean, competitive economy and healthy environment in which to work and live and one that is effective, efficient and easy to adopt and implement. Key conclusions of the report are set out below.

Summary

Developing an agreed vision for environmental policy and regulation in Europe will be an essential building block in achieving an integrated, coordinated and consistent legal framework which will help to better deliver environmental outcomes.

We are asking DG Environment and the Commission to work with us and other interested parties to develop and adopt a long-term vision and strategy to improve the effectiveness of environmental regulation. This paper proposes some guiding principles for a strategy for regulation and identifies actions that would help achieve it.

We are calling for:

An approach to regulation based on environmental outcomes

A simple, transparent and consolidated legal framework, with a common approach to regulation

Effective policy-making processes.

While this paper focuses on action required at an EU level we recognise that action is also required at a national level and we are working to remove obstacles and to promote good environmental regulation in practice locally.

The paper is intended as a contribution to the Commission to help develop their vision and strategy to improve the effectiveness of EU environmental regulation and we would welcome the opportunity to play our part in developing these further.

In conclusion, at present there are 30 Agencies in the EPA Network which is Pan-European in scope. Some EPA members are also members of IMPEL. EPAs generally are involved in scientific and advisory roles and/or in operational roles (licensing and enforcement). Across the network there is recognition that environmental legislation is mainly driven by the EU. The network considers that there is value in speaking with one voice, instead of airing different views of individual EPAs.

The majority of members are calling for Better Regulation aiming for environmental outcomes based on transparent and clear criteria. It is hoped that a systematic approach with a predefined checklist as set out in the 'Barriers Paper' will assist in avoiding gaps in legislation and focus on the main issues of the legislation.

7. Discussion

The workshop participants discussed the issues in three break-out groups and in plenary. The results of these discussions are presented in a collated form below to avoid duplication of common points that arose.

It was considered that the **questionnaire approach worked** well in eliciting information from IMPEL members because the questions were tailored to the IPPC Recast Proposal. The approach provided a good opportunity to feedback practical experience into the policy development process.

The project undertaken on the IPPC Recast Proposal had, however, a **very tight timetable** to turn information around. This was a challenge. However, this pressure also helped to focus attention on what was important. Critically, effective planning ensured that the tight timetable was adhered to.

Work such as that undertaken on the IPPC Recast Proposal requires **resources** to be made available. This is critical not only in ensuring adequate development of a questionnaire and collation and analysis of responses, but also in providing facilities to allow for debate amongst IMPEL members.

It would be useful to **make the checklist available electronically** via a web-based survey form or spreadsheet. This could make its application easier to use and would reduce paper usage.

At some stage it will be important to **review the checklist** to examine whether it needs revision. This would allow for some quality assurance in the process.

There would be benefits in **simplifying the two checklists** in the future producing a consolidated version. However, this should not be too long as the benefits of consolidation would be lost. The two checklists do have different objectives, such as how political they are, but this may not be problem in seeking consolidation. However, any effort on bringing the two checklists together should not inhibit the use of the checklists in the meantime.

In presenting the results of such work, it would be useful in future use of the checklists to see the **level of agreement or disagreement of the views expressed**. This would be valuable to policy-makers. A spectrum of views, including disagreements, is valuable for policy-makers to understand. The report produced by the project on the IPPC Recast Proposal presented views that were generally unattributed. In future it would be beneficial to identify the source of such views as this would allow follow-up to explore critical issues in more detail.

It is also important to ensure that the **results of such work are made widely available**. Some ways of enhancing this would be:

- To improve the IMPEL website to make important or timely reports more visible.
- To ensure that IMPEL members use the report in their own national situations.

- The IMPEL Board should communicate to the European Commission when a report is finalised.
- Other appropriate avenues for dissemination should be considered, such as an article in the DG Environment magazine, linking results with the work of NEPA and seeking to include elements of the checklist in the Commission's Impact Assessment Guide.

Timing of such work is critical. First of all, a proper assessment can best be carried out on a concrete (legislative) text proposal. This enables one to make a concrete estimation of the consequences of a proposal. A good time to examine the practicability and enforceability of developing legislation is before a proposal is officially proposed by the Commission to the Council and Parliament. Preferably this would be a draft text prior to inter-service consultation. At this stage it is possible to have a more open debate. However, assessing a proposal which has been officially launched by the Commission for decision-making can have as advantage that one can focus on a fully developed text and the results of the assessment can be fed directly into the decision-making process.

It is important for use of the checklist to **focus on practical issues rather political ones**. Simply stating that there is opposition to an aspect of the proposal is not sufficient – there should be practical reasons and these should be justified. Within the IMPEL project, the workshop enabled many 'political' comments to be challenged and some could be presented in a practical way.

The **checklist can be used for a variety of different types of policy and legislative development**. At EU level, therefore, use of the checklist should not be restricted to the development of Directives and Regulations. It would also be important to consider its use for key issues that are to be adopted under the Comitology procedure.

It is possible to **use the checklist at any stage in the policy cycle** where practicability and enforceability issues need to be addressed. This can include early review or development stages, such as when an Action Plan is developed. However, at each stage the checklist would need to be used in different ways, tailored to the issues or texts that are relevant. However, it would always be easier to use the checklist with a concrete text. Thus ideally practicability and enforceability issues should be considered in an iterative way as policies develop. Indeed, the checklist could be used by the Commission to ask questions of the Member States in aiding its policy development work and assessing effectiveness of transposition.

Using the checklist does require information on enforceability and practicability to be available. This can be a challenge with proposed legislation in a new area. However, it should be a key element in the review of existing legislation, where such information ought to be readily available.

The **IMPEL Board could work with the Commission** to identify how to ensure such analysis could take place within the legislative development process. Indeed, it would be beneficial to embed such assessments more routinely within the legislative development process. In this way the checklist would act as a practicability and enforceability assessment quality standard. IMPEL could support this process by

producing a short guide or note for Commission desk officers to help stimulate thinking on practicability and enforceability questions.

The **use of the checklist does not, however, require a full IMPEL project** or endorsement by the Commission. IMPEL members can use the checklist to examine issues within the policy cycle themselves, including for issues at a Member State level (such as implementation studies). It could be useful to ensure that the checklist is more user-friendly for those less familiar with it.

The use of the checklist could also be rolled out to other policy development work undertaken by the Commission, i.e. not only that relating to environmental protection.

8. Conclusions

The Chair of the workshop, Terry Shears, made the following concluding remarks.

The **timing** of the use of the checklist is important. It is not always clear when the best time would be. The earlier that the checklist is used, the easier it is for the Commission to take on board the comments that are made. However, as legislative drafting proceeds, further practicability and enforceability questions will arise, which can also be considered through use of the checklist. It is also important to note that the checklist is a useful tool for analysis within the review of existing legislation.

Projects such as that on the IPPC Recast Proposal throw into question **how quickly IMPEL can operate**. To engage with the policy cycle, IMPEL will, at times, need to react quickly. Therefore, it may be beneficial for IMPEL to agree an ongoing programme relating to the use of the checklist, rather than needing to seek approval from the Plenary on every occasion that the checklist should be used.

Merging the IMPEL and NEPA checklists would produce a stronger result if agreed by both networks. Therefore, if it is possible to do this, it should be done. This will need to be considered through discussion between the two networks.

The checklist is not only for use by IMPEL members. It is important, therefore, for IMPEL to **promote the checklist and its capabilities** so that others will be simulated to use it. One feature of the new changed status of IMPEL is that it should take a more proactive approach to promotion of its activities, especially on lawmaking issues. The promotion of the checklist should be a key part of this.

The Chair ended by thanking the participants for attending the workshop, which all agreed was very useful. He also thanked DG Environment for hosting the meeting and VROM for supporting its organisation.

ANNEX I: PARTICIPANTS AT THE WORKSHOP

| Participant | Organisation | contact email |
|--------------------|---|--|
| Peter Schryvers | Flemish Environment Inspectorate | Peter.Schryvers@lne.vlaanderen.be |
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| Graham Applegate | Scottish Environment Protection Agency | graham.applegate@sepa.org.uk |
| Rikard Jansen | Swedish EPA | Rikard.Janson@naturvardsverket.se |
| Andrew Farmer | Institute for European Environmental Policy | afarmer@ieep.eu |

ANNEX II: WORKSHOP PROGRAMME

| Time | Item | Speaker |
|-------------|---|--|
| 11:00-11:10 | Welcome and opening | Chair (Terry Shears, UK) |
| 11:10-11:30 | Presentation: Assessing P&E of EC Environmental legislation | Jan Teekens (NL) |
| 11:30-11:50 | Presentation: The IMPEL project to assess the IPPC Recast proposal on P&E | Stan Smeulders (NL) and Andrew Farmer (IEEP) |
| 11:50-12:10 | Feedback from Commission and UK participants to the IMPEL project to assess the IPPC Recast proposal on P&E | Keir McAndrew (EC) Martin Quinn (UK) |
| 12:10-12:30 | Discussion | Chair |
| 12:30-14:00 | Lunch | |
| 14:00-14:30 | Presentation: NEPA's views on improving P&E of EC Environmental legislation | David Egilson (NEPA) |
| 14:30-15:30 | Discussion: addressing P&E issues timely and properly; use of the IMPEL and NEPA checklists | Chair |
| 15:30-16:00 | Tea and Coffee break | |
| 16:00-16:30 | Final comments and closing conclusions and recommendations | Chair |

ANNEX III: PROJECT TERMS OF REFERENCE

| No | Name of project |
|----|--|
| | <i>Assessing practicability and enforceability of EU legislation and the use of the IMPEL and NEPA Checklists: lessons learnt and ways forward</i> |

1. Scope

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| 1.1. Background | <p>As part of the ongoing debate on improving the practicability and enforceability of EC environmental law IMPEL and the Network of Heads of European Environment Protection Agencies (NEPA) recently took several important initiatives.</p> <p>IMPEL is currently carrying out a project to assess the Commission proposals resulting from the IPPC review, using the practicability and enforceability checklists developed by IMPEL and NEPA. With this project IMPEL intends to provide advise to the co-legislators on the practicability and enforceability of the proposals based on the practical experiences of experts from IMPEL member countries. The final project report is to be submitted for adoption to the IMPEL Plenary in Ljubljana, 28-30 May 2008.</p> <p>NEPA is preparing a vision paper “Improving the Effectiveness of EU Environmental Regulation”. One of the Proposed actions in the paper to move towards the suggested vision and strategy for regulation is: “Incorporate and support implementation of the IMPEL and the Network of Heads of European Environment Protection Agencies’ Barriers checklists into the Commission’s Impact Assessment and policy-making procedures to improve the quality of new legislation.”</p> <p>These initiatives link up with the work of the European Commission on improving EC law and Better Regulation, such as the Communication “A Europe of Results – Applying Community Law”, the upcoming DG ENV Better Regulation Action Plan and the review of the EU impact assessment procedures.</p> <p>It is useful to jointly discuss the outcomes and uptake of these different initiatives and consider how to proceed further. In particular it is worthwhile:</p> <ol style="list-style-type: none"> 1. to evaluate the use of the checklists and what possible improvements both procedural and as regards content could be considered; 2. to explore what further P&E assessments could be undertaken; |
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| | <p>3. to discuss in what other ways and through what other means and arrangements P&E issues can be taken on board timely and how regulators and practitioners can best be involved for that purpose;</p> <p>4. to further identify where in the EU policy and legislative cycle P&E issues should be addressed and how and by whom</p> |
| 1.2. Link to MAWP and IMPEL's role and scope | <p><u>Strategic goal V:</u></p> <ul style="list-style-type: none"> ❖ Providing feedback to policy makers on the practicability and enforceability of environmental legislation; ❖ Contribute in the process of drafting new or revising existing legislation ❖ Ensure activities and fulfil projects necessary for the contribution in reviewing of existing legislation. On the basis of the project results identify recommendations, suggestion for changes and provide feedback to the Commission services. ❖ Communicate the projects and other result to decision makers both at European and national level. <p><u>Strategic goal VI:</u> Strengthening dissemination of results of IMPEL activities and look back by ex-post verification to ensure that the good practices are effectively spread.</p> |
| 1.3. Objective(s) | This project aims to support and where possible improve the work of IMPEL, NEPA and COM on Better Regulation and to further raise attention to the need to effectively involve regulators and practitioners in the EU policy and legislative so that EC Environmental legislation is better implemented and enforced. |
| 1.4. Definition | A one day workshop will be held in October 2008, in Brussels, organised by IMPEL, NEPA and COM jointly. This workshop will take place preferably back to back with (autumn) meetings of IMPEL Cluster Better Regulation and the Better Regulation Interest Group of NEPA. At the workshop the initiatives and issues described under point 1.1 will be presented and discussed. |
| 1.5. Product(s) | A workshop report containing findings, conclusions and recommendations. |

2. Structure of the project

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| 2.1. Participants | Experts in the field of Better Regulation from MS, IMPEL, NEPA, COM and European Parliament |
| 2.2. Project team | <p>Experts from:</p> <ul style="list-style-type: none"> • the Environment Agency of England and Wales • the Netherlands Ministry for the Environment • COM DG ENV |
| 2.3. Manager Executor | Trudie Crommentuijn |
| 2.4. Reporting arrangements | The IMPEL Cluster on Better Regulation will review the draft Workshop report by written procedure |
| 2.5 Dissemination of | Commission, IMPEL, NEPA, Member States |

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| results/main target groups | |
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3. Resources required

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| 3.1 Project costs | <ul style="list-style-type: none"> • Support by IEEP in preparing the workshop and writing the workshop report: €6000 (5 days x € 1200) • Hosting and catering: provided by COM • Travel expenses of participants to the workshop are paid by themselves. |
| 3.2. Fin. from Com. | The Com is asked to host the workshop. |
| 3.3. Fin. from MS (and any other) | |
| 3.4. Human from Com. | |
| 3.5 Human from MS | Project team members: each 10 days |

4. Quality review mechanisms

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| The IMPEL Cluster on Better Regulation will review the draft Workshop report by written procedure |
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5. Legal base

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| 5.1. Directive/Regulation/Decision | A. 1996 Commission Communication on Implementing Community Environmental Law in which IMPEL's role was recognised. B. 6 th EAP |
| 5.2. Article and description | |
| 5.3 Link to the 6th EAP | Art. 3.2 |

6. Project planning

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|----------------------------------|---|
| 6.1. Approval | The TOR is to be submitted to the IMPEL Plenary in Ljubljana (28-30 May) for approval |
| (6.2. Fin. Contributions) | |
| 6.3. Start | May 2008 |
| 6.4 Milestones | Workshop: September/October 2008 |
| 6.5 Product | Workshop report |
| 6.6 Adoption | IMPEL Plenary, France, December 2008 |