



European Union Network for
the Implementation and Enforcement
of Environmental Law

Engaging Stakeholders around Priority Implementation Issues for EU Law for 2012 to 2015

Final report for Warsaw General Assembly
November 2011

Introduction to IMPEL

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international non-profit association of the environmental authorities of the EU Member States, acceding and candidate countries of the European Union and EEA countries. The association is registered in Belgium and its legal seat is in Brussels, Belgium.

IMPEL was set up in 1992 as an informal Network of European regulators and authorities concerned with the implementation and enforcement of environmental law. 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. The core of the IMPEL activities concerns awareness raising, capacity building and exchange of information and experiences on implementation, enforcement and international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.

During the previous years IMPEL has developed into a considerable, widely known organisation, being mentioned in a number of EU legislative and policy documents, e.g. the 6th Environment Action Programme and the Recommendation on Minimum Criteria for Environmental Inspections.

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on both technical and regulatory aspects of EU environmental legislation.

Information on the IMPEL Network is also available through its websites at:

<http://impel.eu/>.

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<p>Executive Summary</p> <p>This document reports on an IMPEL project which engaged with some IMPEL members and key stakeholders through a survey held in Spring 2011 regarding priority implementation issues for EU Law for the period 2012 – 2015. The focus was to identify future potential project topics to improve the practicability and enforceability of EU environmental law.</p> <p>The project held a workshop on 1 July 2011 which discussed the findings of the survey, identified and considered priority implementation issues for EU law and made suggestions for potential projects for IMPEL to consider.</p> <p>The findings of both the survey and workshop are presented as a number of suggestions for IMPEL to consider as part of its work planning process (Section 3).</p> <p>The recommendation from this project is for:</p> <ul style="list-style-type: none"> • IMPEL to consider the suggestions in Section 3 as part of its future work planning. 	
<p>Disclaimer</p> <p>This report on <i>Engaging Stakeholders around Priority Implementation Issues for EU Law for 2012 to 2015</i> is the result of a project within the IMPEL Network. The content does not necessarily represent the view of the national administrations.</p>	

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SUMMARY

The objectives of this project were to:

- Engage with IMPEL members and key stakeholders to identify priority issues around the implementation of EU law for 2012 to 2015
- To inform the Better Regulation Cluster's multi-annual work programme by identifying potential projects that will improve the implementation of EU law and add the most value to the Commission's legislative programmes, while targeting areas of most concern to IMPEL members and other stakeholders and to identify the right time to carry out these projects to add the most value.

The project engaged with IMPEL members and key stakeholders through a survey held in Spring 2011 regarding priority implementation issues for EU Law for the period 2012 – 2015. The focus was to identify future potential projects relating to improving the practicability and enforceability of EU environmental law.

The project also held a workshop on 1 July 2011 which discussed the findings of the survey, identified and considered priority implementation issues for EU law and made suggestions for work areas for IMPEL to consider.

The findings of both the survey and workshop are presented as a number of suggestions for IMPEL to consider as part of its normal work planning processes (see Section 3).

The project has summarised the findings from discussions with participating member countries and a small number of key stakeholders. These are presented in this report as a list of ideas for IMPEL to consider, but of course it would be for the General Assembly and the Clusters to decide to make any changes or run any of the projects suggested.

It should be noted that Germany and Italy have expressed concerns about:

- the idea of project proposals being suggested by external stakeholders and IMPEL members who do not intend to lead those projects, arguing that projects have to be specifically drafted by the respective lead-country.
- the nature of some of the suggestions generated by the project. The latter applies in particular to procedural proposals that are related to internal issues and working processes, and to project topics that touch governance issues or are perceived to be of a more political nature.

The recommendation from this project is for:

- IMPEL to consider the suggestions in Section 3 as part of its future work planning.

1. INTRODUCTION

One of the key aims of IMPEL is to contribute to implementation of European Union (EU) environmental law, helping the European Commission (EC) to improve its practicability and enforceability and ensuring consistency with the principles of better regulation. IMPEL is ideally placed to help improve implementation of EU law through the practical knowledge and experience of its members. IMPEL's scope includes existing, new and proposed EU legislation including guidance and guidelines within the scope of the current Environmental Action Programme and related European Court of Justice Decisions impacting on the regulation of industrial installations and other relevant enterprises and facilities.

As a network of regulatory practitioners, IMPEL is ideally placed to help improve implementation of EU law through the practical knowledge and experience of its members. To this end a project was approved by the IMPEL General Assembly in 2010 to engage with IMPEL members and key stakeholders including other environmental authorities, industry, non-governmental organisations (NGOs), the European Commission and other networks regarding their views on priorities for IMPEL to add value to the implementation of EU law.

That survey was carried out between March and June 2011 followed by a workshop in July 2011. This report presents the results of the survey and the workshop and makes some suggestions for IMPEL to consider as part of its work planning process.

It is intended that the output from this project will help inform IMPEL to develop a prioritised work programme for 2012 – 15 to help improve implementation of EU law.

2. SURVEY AND WORKSHOP

2.1 The Survey

In March and April 2011, a survey was conducted of IMPEL members and key stakeholders to hear their views regarding priority implementation issues for IMPEL.

Questionnaires were sent out to all IMPEL members and to representatives of NGOs and Business Groups such as the Institute for European Environmental Policy (IEEP) and the European Environmental Bureau (EEB). Ten IMPEL members completed the survey (Romania; Czech Republic; Portugal; Latvia; Ireland; Netherlands; Poland; Scotland; England and Wales; Malta) and two stakeholders (Institute for European Environmental Policy; European Environmental Bureau).

Interviews were offered to a number of key stakeholders of whom 7 accepted. These were:

- European Commission, Directorate General, Environment (DGENV) – Liam Cashman and Hans Lopatta
- European Commission, Directorate General Climate Action (DGCA) - Marco Loprieno
- European Commission, Secretariat General (SECGEN), Secretariat for the high level group of independent stakeholders (also known as the “Stoiber Group”) - Jorg Stephan
- High level group of better regulation experts (evaluation sub-group secretariat) - Anthony Miller
- European Environment Agency (EEA) - David Egilson and Will Fawcett
- Network of Heads of EPAs Better Regulation Interest Group (BRIG) - John Seager
- Institute of European Environmental Policy – Andrew Farmer

The survey also took account of discussions on future priorities on implementation of EU law at the Cluster 3 meeting on 31 March 2011 and at the joint meeting of Cluster 3 and BRIG on 30 March 2011. The findings of the survey are summarised in the report in Annex 1.

2.2 The Workshop

On 1 July 2011 a workshop was held in Brussels to discuss the results of the survey as well as hear views from seven IMPEL member countries including the Co-Chairs of Cluster 3 and the IMPEL Chair, and from a small number of key stakeholders: the European Commission, the European Environment Bureau and Institute for European Environmental Policy. Discussion Groups were held to discuss and develop ideas.

The note of the workshop and its findings are summarised in Annex 2.

3. RESULTS: SUGGESTIONS FOR ITEMS FOR IMPEL TO CONSIDER FOR FUTURE WORK PROGRAMMES

The findings of both the survey and workshop are presented here as a list of suggestions for IMPEL to consider as part of its work planning process.

They are presented in order of priority and year in which they might be best carried out as suggested by the workshop attendees. These are initial ideas only. If IMPEL wants to consider them further then they would need to be developed as project proposals and approved by the Clusters and General Assembly. In addition to these, a number of other suggestions were made for activities IMPEL could consider to help improve the implementation of EU law. These are recorded in the report of the workshop.

Project suggestions - 2012

1. Developing a **strategic approach / common vision with regard to inspections (and other “supervision” activities)** in EU law, with the aim of delivering the desired environmental outcomes, building on IMPEL projects such as *Complementary Approaches to Environmental Inspections* and *Doing the Right Things*. This might be incorporated into a further developed IMPEL position on the Recommendation for Minimum Criteria for Environmental Inspection (RMCEI) which is under review. This is linked to project proposal 3.
2. **Co-operation and integration of different Agencies within a country.** Integrated licences and integrated inspections and integrated self reporting. Including Climate Issues such as administration of EU ETS system. Maybe we could analyse strengths and weaknesses of different approaches. Where are opportunities to co-ordinate and simplify and get better service and improve effectiveness and efficiency. To include reporting of climate substances- CO₂ and other emissions.
3. **Choosing the right intervention mix to ensure compliance and achieve environmental outcomes** – collaborative project with input from academics, building on IMPEL projects such as *Complementary Approaches to Environmental Inspections* and *Doing the Right Things*. To be completed by Sept 2012 and presented at IMPEL conference under “new approaches” theme. This is linked to project proposal 1.
4. **Regulators’ role in reducing non-CO₂ Greenhouse Gases (GHGs):** Review the EU Environmental acquis (in co-operation with INECE who have agreed to review world-wide environmental law) to look at how existing law allows regulators to reduce “non- CO₂” GHGs and then review and exchange views opportunities, experiences across IMPEL members on how to maximise regulatory efforts on these GHGs so as to minimise global warming potential of industries regulated under the EU Environmental acquis. Share report with INECE to influence other environmental regulators throughout the world.
5. **Implementation of Industrial Emissions Directive (Early exploration of what is needed for implementation of the Directive).** Break it down into a number of manageable bits e.g. inspections. Engage with the Commission have who have said they want to do work with IMPEL in 2012 before transposition.
6. Sharing good practice of **closing illegal waste sites.**
7. Review **how other networks of inspectors / regulators work** and make proposals for how IMPEL might learn from those to improve the way it can support

implementation of EU Environmental Law. This could include European networks (e.g. on Chemicals and on non-environmental EU law) as well as networks of environmental regulators outside Europe. A report by IEEP for the Netherlands is relevant to this and recent work on network development at INECE can be used to feed in.

Project suggestions - 2013

1. **Improving Coherence.** We could start by prioritising coherence issues identified in the IMPEL project “Engaging stakeholders around priority implementation issues for EU law for 2012 to 2015” and see if there are any more and then link these with other EU work planned or IMPEL projects and propose new project(s) for any which will not otherwise be tackled. This exercise can give us ideas to feed into the evaluation programme. And also we can spot coherence issues that single issue “desk officers” might not know about.
2. **Implementation of Environmental Liability Directive (ELD).** IMPEL could contribute to ELD discussions.
3. **Complementary approaches to prosecution.** Consider other approaches and experiences of member countries and academics such as “settlement”. An INECE workshop in June 2011 provided some useful examples.
4. **Implementation of Industrial Emissions Directive Key Issues (after transposition deadline of 6 January 2013).** Suggestion to break this work down into a number of manageable bits. This may be too late to be taken into account in Member States’ reports which are due in April 2013, but could be a useful supplementary source of information to be used by the Commission in preparing its April 2014 report.
5. **Improving the language of reports/documents presented to the public.** This is really about increasing public participation by “translating” the very technical information that is currently made available to them. This might improve compliance / implementation etc by increasing knowledge and stimulating interest in the public about environmental issues and about who is responsible for dealing with them – e.g. which companies, which inspectorates, which govt departments etc.
6. Project on the Commission’s proposed **waste fitness check.** This should include the issue of coherence and the examples of coherence issues from the IMPEL project ‘Engaging stakeholders around priority implementation issues for EU law for 2012 to 2015’ would be a good place to start.

2014 and beyond

No specific proposals were made for projects in these years.

4 DISCUSSION AND RECOMENDATIONS

The results of this project are suggested potential work areas and timings for IMPEL to consider through its work planning procedures to help improve the implementation of EU law.

Its purpose is to help IMPEL with thinking about ideas for projects for future years, alongside other suggestions for projects from members.

It was recognised in the survey and workshop that, as well as ideas for future projects, there was a potential need for IMPEL to do other tasks as part of IMPEL's role in improving the implementation of EU environmental law. These are outside the main purpose of this project but have been recorded in the workshop summary for completeness.

The survey and workshop identified a lot of suggestions for projects for 2012 fewer for 2013 and none for 2014 and beyond.

The recommendation from this project is for:

- IMPEL to consider the suggestions in Section 3 as part of its future work planning.

Improving Implementation, Practicability and Enforceability of EU Environmental Law

A report for the IMPEL workshop on 1 July 2011 on a survey of IMPEL members and stakeholders regarding priority implementation issues for IMPEL

BACKGROUND

IMPEL, the European Union Network for the Implementation and Enforcement of Environmental Law, is an international association of environmental authorities in Europe. The network is committed to contribute to a more effective application of EU environmental law by capacity building, awareness raising, sharing good practices, providing guidance and tools, enforcement cooperation and giving feed back to lawmakers and regulators on the practicability and enforceability of environmental legislation.

One of the key aims of IMPEL is to contribute to implementation of European Union (EU) environmental law, helping the European Commission (EC) to improve its practicability and enforceability and ensuring consistency with the principles of better regulation. IMPEL is ideally placed to help improve implementation of EU law through the practical knowledge and experience of its members. IMPEL's scope includes existing, new and proposed EU legislation including guidance and guidelines within the scope of the current Environmental Action Programme and related European Court of Justice Decisions impacting on the regulation of industrial installations and other relevant enterprises and facilities.

As a network of regulatory practitioners, IMPEL is ideally placed to help improve implementation of EU law through the practical knowledge and experience of its members. To this end a project has been established which has surveyed IMPEL members and key stakeholders including other environmental authorities, industry, non-governmental organisations (NGOs), the European Commission and other networks regarding their views on priorities for IMPEL to add value to the implementation of EU law. The Environment Agency of England and Wales is leading this project on behalf of IMPEL, supported on the project team by the Netherlands and Romania. The final outputs will help inform IMPEL to develop a prioritised work programme for 2012 – 15 for Cluster 3 of IMPEL to help improve implementation of EU law.

This document includes a report on the results of the survey at Annex A and makes some proposals on priority issues for IMPEL for discussion at a workshop to be held on 1 July 2011

SUMMARY AND CONCLUSIONS

The outputs from the survey have been considered by the project team who have agreed that the most common themes arising from the survey are as follows:

Four specific aspects of EU legislation, namely:

- **Industrial Emissions Directive (IED)**
- **Waste (numerous aspects of)**
- **The Recommendation establishing minimum criteria for environmental inspections (RMCEI)**
- **Seveso II Directive on the control of major accident hazards (Seveso 2)**

The first three aspects are also all listed as issues affecting achievement of targets in the 6th Environmental Action Programme (EAP). Two other priorities identified in the survey were trans-frontier shipments of waste and the environmental liability directive.

Coherence of EU law. IMPEL members in particular felt this was an issue that needed addressing and provided seventeen different examples, most of which involved, IED, waste or water. Interestingly, however all examples were different, so more investigation of this may be necessary before identifying which aspects are priorities.

Supervision. This was a clear priority of IMPEL members and of external stakeholders surveyed. Different terminologies are used, such as “assessing compliance“, “inspection” as well as “complementary approaches” to inspection. It also included strategic aspects of setting priorities for supervision and assessing which interventions/approaches to use depending on the context.

Smart Regulation Plans and Programmes. There was considerable support from IMPEL members and from the external stakeholders for IMPEL to play a role here, in particular on: “Reviews, revisions, recasts etc of existing EU environmental law which includes the **administrative burden reduction** and **simplification** programmes, the **evaluation** programme and the **fitness checks**.”

As well as covering the subjects that IMPEL should focus on, the survey also addressed what should IMPEL do in these subject areas and **how**. The survey identified a number of ideas for things such as quicker more flexible responses, preparatory work for likely issues coming up and working in collaboration with others. The workshop might provide an opportunity to develop these ideas further.

A more detailed report on the survey can be found in Annex A, with extra information in Annexes B, D and E.

PROPOSALS

Participants at the workshop are invited to read this report in advance of the workshop and also seek views from within their own organisations. In particular:

- consider the results of the surveys and whether the priorities identified in the summary and conclusions are indeed the right ones for IMPEL and be prepared to discuss and provide views at the workshop (but not attempt to provide detailed project proposals).
- consider the responses on how IMPEL can work in novel ways (for instance being more responsive or working with others) ready to discuss and provide views at the workshop.

The workshop itself should provide a steer on what are the priority issues for IMPEL.

Before taking the workshop outputs further and developing more detailed proposals for IMPEL, the project team should take account of the current position, in particular, aspects issues such as: what has IMPEL has done already; where is the issue in any EC plans ,timetables etc. Annex G provides some information that has been gathered already on this.

After the workshop, proposals should be developed by the project team to take account of views expressed at the workshop and made available for further comments - (maybe using “BASECAMP” on the IMPEL web-site). Final proposals will then be prepared for approval by the Cluster 3 and the IMPEL General Assembly in the autumn.

IMPEL should consider how it can continue this strategic planning role which this project has commenced and embed it into its governance arrangements.

List of Sub-Annexes to Annex 1

Annex Title

- 1.A Report on the Survey
- 1.B Summary of Responses to Question 12
- 1.C Key Programmes of work which are likely to influence IMPEL's future priorities
- 1.D Top Four Priority EU legislative instruments for IMPEL: Summary of Issues raised in Questionnaires and Interviews
- 1.E Coherence Issues Mentioned in Questionnaires and Interviews
- 1.F Implementation Issues listed as relevant to non-achievement of the 6th Environmental action programme

Report on the Survey

1. Introduction

In March and April 2011, a survey was conducted of IMPEL members and key stakeholders to hear their views regarding priority implementation issues for IMPEL.

Interviews were offered to a number of key stakeholders of whom 7 accepted. These were:

- European Commission, Directorate General, Environment (DGENV) – Liam Cashman and Hans Lopatta
- European Commission, Directorate General Climate Action (DGCA) - Marco Loprieno
- European Commission, Secretariat General (SECGEN), Secretariat for the high level group of independent stakeholders (also known as the “Stoiber Group”) - Jorg Stephan
- High level group of better regulation experts (evaluation sub-group secretariat) - Anthony Miller
- European Environment Agency (EEA) - David Egilson and Will Fawcett
- Network of Heads of EPAs Better Regulation Interest Group (BRIG) - John Seager
- Institute of European Environmental Policy – Andrew Farmer

Questionnaires were sent out to all IMPEL members and to representatives of NGOs and Business Groups. 10 IMPEL members and Switzerland responded along with two NGOs. Those who responded were:

- Romania (R)
- Switzerland (Ch)
- Czech Republic (Cz)
- Portugal (PT)
- Latvia (L)
- Ireland (Ir)
- Netherlands (N)
- Poland (P)
- Scotland (SEPA)
- England and Wales (EA)
- Malta
- Institute for European Environmental Policy (IEEP)
- European Environmental Bureau (EEB)

Interviews were also offered to IMPEL members who indicated they were available to do so in their questionnaire responses returned on time. 2 of those accepted: Switzerland and the Netherlands

The survey also took account of discussions on future priorities on implementation of EU law at the Cluster 3 meeting on 31 March 2011 and at the joint meeting of cluster 3 and BRIG on 30 March 2011.

The findings of the survey were discussed at a project team meeting on 9 May. The Summary and Conclusions and the Proposals on pages 1 and 2 reflect the discussions at that meeting.

2. Views provided from stakeholders in the responses to the questionnaires

A summary of responses for each of questions asked is given below.

Question 7 asked:

“Which areas of EU Environmental Law do you think should be most important for IMPEL?”

The answers in priority order with numbers of responses (out of 12)

“Top Scorers”

- Industrial Emissions Directive (IED) 8
- Waste (various aspects mentioned including Waste Framework Directive and issues about waste and materials, “end of waste” etc) 8
- Seveso 2 (including making links with their technical working group) 4
- RMCEI 3
- Trans Frontier Shipments of Waste (TFS) 3
- Environmental Liability Directive (ELD) (for instance member states experiences, how many cases, what has it achieved, is it effective?) 3

Details of what was said about the above aspects of EU law in the responses is listed in Annex D

Also mentioned in 7 responses was coherence / consolidation / integration (either between Directives or in broader areas) - numerous examples were given. Annex E provides details

Second Group

- Waste Framework Directive and issues about waste and materials, “end of waste” etc 2
- Urban Waste Water Treatment Directive (UWWTD) 2
- Water Framework Directive (WFD) 2
- Decontamination of mine and other industrial sites (soil and groundwater) 2
- Waste and Sludge to land (to inform review of sludge directive 1989) 2
- Energy and low carbon issues in combustion sector: Carbon capture, combined heat and power, combustion of biomass, clean energy, bio-fuels 2
- Noise and/or Noise Directive 2
- Natura 2000 Directives (Birds and Habitats) 2
- Environmental Impact Assessment Directive(EIA) and Strategic Environmental Assessments (SEA) (2)

Mentioned by only 1

- E- PRTR
- Nitrates Directive
- F gases
- Ozone depleting substances
- Waste Electrical and Electronic Equipment (WEEE) Directive
- National Emissions Ceilings Directive
- Air Pollution
- Chemicals
- Resource Efficiency
- Soils
- Biodiversity
- Water (agriculture + existing water plants/ residual flows)

- Water Resources
- Marine Framework Directive
- All - based on priorities on regular basis

Question 8 asked:

“Which aspects, themes or methods of regulation do you think should be priorities for IMPEL?”

The answers and the marks (out of 12) are shown below

Top Scorers

- **Supervision** (including assessing compliance / Inspection and complementary approaches , market based approaches and link to RMCEI) 7

Second group

- **Implementation** (including input to new Communication on Implementation of EU Environmental Law) and using the better regulation checklist and how to get effective participation and engagement in terms of implementation) 5
- **Outcomes** - Focus on delivering outcomes (fixing goals / safety to people and environment) and choosing appropriate methods to do so and then evaluating 4
- **Simplification, Clarification Alignment etc** (e.g. follow up IMPEL project on Common Regulatory Frameworks, clarify / align definitions and terms in EU law) 4
- **Methods to set priorities** (and to choose methods of supervisions, move away from one size fits all) 3
- **Public participation and access to justice** in relation to environmental law 2

Mentioned by only 1

- One in one out (can IMPEL help EC do that? – linked to ex-post evaluation, IMPEL can input)
- Reduction of Admin burdens
- Which EU Instruments are best for environmental governance (Directives, Regulations, Recommendations etc)
- “All”

Question 9 asked:

“Are there any of the plans or programmes or other initiatives of the European Commission that you think are particularly relevant to IMPEL?”

All respondents thought that a priority for IMPEL was “Reviews, revisions, recasts etc of existing EU environmental law in the Commission Work Programme” although different specific pieces of EU law were identified. Waste law was most commonly mentioned.

All respondents recognised the evaluation programme as important and almost all identified the fitness checks.

All of the plans and programmes listed were recognised by at least half of the respondents as being of importance to IMPEL. A fuller list of the answers is shown in Annex B and Annex C summarises the relevant European Commission plans and programmes.

Question 10 Asked:

“What types of things might IMPEL do to add value?”

The answers are shown below (with marks showing how many out of 12 responses mentioned each)

- Supporting to each other (8)
 - develop guidance and provide approaches / tools (existing or new)
 - sharing / exchange of knowledge / good practice
 - indicators for environmental outcomes
 - governance e.g. national, regional and local governance on framework directives
 - appropriate regulation of low risk activities
 - joint inspections and comparison programmes
 - short traineeships for inspectors
 - provide case studies
 - “get cluster 1 to understand the role of cluster 3”
- Communicate with / working together with the Commission (6)
 - to express views of practitioners
 - help make EU law practical and enforceable (e.g. by using the better regulation checklist)
 - provision of case studies (e.g. to help inform the flagship initiative on resource efficiency)
 - collate examples of where regulation is not working / outcomes not being achieved

But there is some concern that IMPEL is not necessarily always “geared up” for this

- Strategic Ideas (3)
 - more strategic discussions with regard to things like supervision , practicability and enforceability to input to Commission (not just DGENV)
 - make connections and learn from other networks of regulators in other policy fields
 - make connections and seek input from non-government groups
 - become involved at educating the public and/or judiciary about implementation
 - seek to have a theme of practicability and enforceability or something similar as an element of 7th EAP
 - setting out the elements of what a fitness check ought to examine (so IMPEL is ready to input when the next ones arise of interest to IMPEL)
 - in depth focus on key case studies relating to integration of environmental regulation

3. Views provided from stakeholders in telephone interviews

A summary of the stakeholder views on the priority areas for IMPEL with respect to implementation issues especially enforceability and practicability is provided below.

1. A Consistent Supervision Strategy

- to identify what are the features of a good system
- to be focussed at delivering outcomes with minimum burdens on business
- to provide direction for review of RMCEI
- to provide direction for implementation of IED
- to provide a model for each subsequent new/ revised directive

- take account of expertise of other different areas such as EU Emissions Trading Scheme (EUETS) and Transfrontier Shipments of Waste (TFS) and even non-environmental regulation
 - to include broader range of tools than just inspection
 - to include how to choose tools to use
 - to influence EC generally
 - it will improve consistency but recognise different circumstances
2. Support to Ex-post evaluations and Fitness checks
 - To help the EC deliver the requirements of the Communication on Smart Regulation
 - Initial piece of work to show what IMPEL could do
 - Liaise with evaluation sub-group of high level group of better regulation experts
 - Subsequent projects for 2012 - 2014 for each fitness check and ex-post evaluation (the programmes for which are to be decided late 2011 / early 2012)
 3. Implementation Issues
 - Work with BRIG
 - How should we address problems leading to infringements/infractions
 - Use of better regulation checklists on revised / recast directives
 4. Consistent Requirements for Reporting
 - Work with DG Climate Action who have lots of expertise
 - Includes IT development
 5. Governance Issues in Member States
 - Likely to be a feature of communication on implementation of EU law
 - To advise on competencies / know how of different levels of government
 - To advise on competencies/ know how of different actors involved in each stage of regulation: planning; permitting; inspection; prosecuting; courts; ombudsman etc
 - To include advantages and disadvantages of various models such as integrated environmental agency vs. separate roles
 6. Evaluate how effective IMPEL has been at inputting to practicability and enforceability of EU law
 - What has worked well and what hasn't
 - Identify causes and make recommendations on how IMPEL could be more influential
 7. Pro-active Preparation work
 - Produce templates / ways of working on how IMPEL could produce a report/ position statement etc in short time if needed
 - This will allow IMPEL to be quicker and more flexible to work with and provide input to the Commission when they announce proposal for things like communications, blueprints, flagships, road maps etc
 8. Quick and often small pieces of work to produce position statements, to input to the Commission

- Need to have a quick sign-off procedure within IMPEL
- Could involve workshops with IMPEL members and desk officer so they hear views directly
- Learn from how the network of Heads of European Environment Agencies (NEPA) and other networks do it
- Need to provide a budget line to hold workshop and produce report and short notice

9. Growing a Green Economy

- Designing Regulation to “go with the grain” of the economy
- How to implement / “supervise” without putting up barriers to “green” processes, green innovations etc.

10. Inputs to 6th and 7th EAP

- To include natural resources area
- To include IMPEL role in 7th EAP to improve implementation based on achieving outcomes
- To include IMPEL role to advise how outcomes demanded in 6th EAP can be delivered

5. Implementation Issues listed as relevant to non-achievement of the 6th Environmental Action Programme

To add further input to the survey, relevant implementation issues were identified from the “Final Report for Assessment of the 6th Environmental Action Programme”. Relevant extracts from that report are included at annex F. Those most significant for IMPEL are probably:

- Implementation Issues for the EU emissions trading scheme
- Implementation Issues which need to be in place when the IED comes into force in 2013
- Remaining implementation gaps for the bathing water directive
- Poor implementation of Waste Directives in particular WEEE, End of life vehicles directive (ELVs), packaging and landfills
- Best practice examples from member states that have shown good implementation of the RMCEI. To include unambiguous guidance on definitions and criteria in RMCEI

6. What Are the Types of things that IMPEL should do regarding the above Issues and how

As well as covering the subjects that IMPEL should focus on, the survey also addressed what should IMPEL do in these subject areas and **how**.

Many respondents said that the traditional IMPEL projects are valued - whether those that support IMPEL members themselves or to support the EC in implementation of EU law. But the survey respondents also felt that IMPEL should be able to act in a number of other ways to provide quicker responses and enable practitioners’ views to be heard by Commission officials. IMPEL does this already every now and then, for instance providing a reaction on a white paper some time ago. This type of activity has been agreed on in a cluster meeting and performed by a few of the available members. Maybe IMPEL sometimes needs to be more alert and pick up possible actions, to assign the monitoring of relevant information as a

task of the secretariat and/or cluster heads and if necessary with a “budget line” to provide support where necessary.

Also it was felt by some that IMPEL could work in collaboration and/or more closely alongside other bodies. Examples given were: BRIG, academics and experts in environmental regulation, the EC officials leading on implementation of EU law, committees which support the EC such as the Technical Working Group for the Seveso 2 Directive or the EUETS compliance forum. Two other quite specific recommendations in this regard were made. These were for IMPEL at a senior level (maybe the Vice Chairs?) to make contact with members of the two “Smart Regulation” high level groups. Reports from both of these are due at the end of 2011 but may not be publicly available until early 2012. This unfortunate timing would mean that IMPEL might not identify, prepare TORs etc for possible projects for approval at the IMPEL’s 2011 autumn General Assembly. However, high level contacts might be a means of discussing potential work areas for IMPEL which take account of the proposals from these groups before their reports are made public. The same applies for the announcements of the next fitness checks and the evaluation programmes both of which are expected just after the autumn General Assembly.

“Preparation work” was identified as one thing IMPEL might do when it knew something as coming along soon, for example fitness checks. IMPEL could also learn from how the water fitness check went and what types of things might IMPEL have done if had had time to gear up to being involved. IMPEL might also look at the recommendations made in the water fitness check and consider what IMPEL might do to help implementation.

Other suggestions for improving the way that IMPEL worked included

- Review how successful IMPEL had been in the past to identify which aspects of IMPELs work had added most value, and use the findings to help shape future IMPEL work
- Look at how other networks work especially with regard to quick flexible ad-hoc in year actions.

Summary of Responses to Question 12

Programmes/ Plans/ Initiatives. See Annex C for more explanation.	Important for IMPEL? Marks out of 8	Reasons why it is important to IMPEL	Specific areas mentioned most frequently here	Other areas mentioned only once
New EU environmental law in the Commission Work Programme	6	Will help IMPEL members and or Member States implement EU law Important to contribute practical experience RIAs, regulatory reform and admin burden		Consolidation of water and waste legislation
Reviews, revisions, recasts etc of existing EU environmental law in the Commission Work Programme	8	Will help IMPEL members and / or Member States implement EU law IMPEL can input to development of EU law by feedback to EC. E.g. use better regulation checklist Important to contribute practical experience RIAs, regulatory reform and admin burden	Waste (3 times) IED / IPPC 3 (times)	RMCEI Greenhouse gases Impact Assessments Consolidation of water and waste legislation
Simplification Rolling Programme and Administrative Burden Reduction initiatives in the Commission Work Programme	6	Direct implication for implementation by member states Related to better regulation Important to contribute practical experience RIAs, regulatory reform and admin burden		National Emissions Ceiling Directive WEEE Sludge Directive Consolidation of water and waste legislation
Fitness Checks	7	It is related to better regulation Important to contribute practical experience , e.g. IMPEL projects reveal best practice RIAs, regulatory reform and admin burden		Fitness check and blueprint for water Consolidation of water and waste

Programmes/ Plans/ Initiatives. See Annex C for more explanation.	Important for IMPEL? Marks out of 8	Reasons why it is important to IMPEL	Specific areas mentioned most frequently here	Other mentioned once only
		Important to map work already underway and consider how IMPEL (and NEPA) can track and assist.		legislation
Evaluation of environmental law	8	IMPEL members have a lot of experience , case studies to support evaluation It helps measure outcomes achieved		Consolidation of water and waste legislation
Issues that may be picked up by the high level group of independent stakeholders (the “Stoiber Group”)	4	IMPEL should track their work to see how IMPEL can support them Important to contribute practical experience Some IMPEL projects can be useful for them		
Issues being addressed by the high level group of better regulation experts	4	It is related to better regulation Important to contribute practical experience This can help direct IMPEL’s work		
Issues arising out of the review of the 6th Environmental Action programme	5	Will drive IMPEL’s future work Important to contribute practical experience Tends to be outcome based IMPEL can help and support work of NEPA on these		
Any other programmes or initiatives of EC or other organisations relevant to the work of IMPEL				Communication on Implementation of EU Environmental Law Technical Working Group on Seveso Directive

Programmes/ Plans/ Initiatives. See Annex C for more explanation.	Important for IMPEL? Marks out of 8	Reasons why it is important to IMPEL	Specific areas mentioned most frequently here	Other areas mentioned only once
				Flagships Road Maps Blue Prints

Key Programmes of work which are likely to influence IMPEL's future priorities

The Commission Work Programme 2011-14

This was updated at the end of 2010. It includes the Simplification Rolling Programme and Administrative Burden Reduction initiatives. For more information see: http://ec.europa.eu/atwork/programmes/docs/cwp2011_en.pdf

The key aspects for IMPEL are likely to be among the following:

From Annex II: "Indicative list of possible initiatives under consideration"

- Review of the list of priority substances under the **Water Framework Directive** (2011)
- **Communication on implementing EU environmental law** and policy: a common challenge (2011)
- Revision to the EIA Directive (**Environmental Impact Assessment**) (2012)

(Although not listed in the Commission work programme, (because it started back in 2007) the review of the **Recommendation Establishing Minimum Criteria for Environmental Inspections (RMCEI)** is still ongoing. The Commission intends to present its final proposal for the review in the third quarter of 2011.)

From Annex III "Simplification Rolling Programme and Administrative Burden Reduction initiatives"

- Legislative proposal on the coherence/simplification of the **waste acquis** (Revision) 2012
- Directive 2004/107 of the European Parliament and of the Council relating to **arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air** (recast) 2013
- Directive 1999/32/EC on the **sulphur content of certain liquid fuels** (recast) 2013

The full annexes can be viewed here: http://ec.europa.eu/atwork/programmes/docs/cwp2011_annex_en.pdf

Fitness checks

These are comprehensive policy evaluations assessing whether the regulatory framework for a policy sector is fit for purpose. Their aim is to identify excessive administrative burdens, overlaps, gaps, inconsistencies and/or obsolete measures which may have appeared over time, and to help to identify the cumulative impact of legislation. Their findings will serve as a basis for drawing policy conclusions on the future of the relevant regulatory framework. Fitness checks will not replace "traditional" evaluations. Evaluation of individual instruments and fitness checks of policy sectors are complementary and mutually reinforcing tools. Evaluations of individual initiatives, although indispensable, do not always show the full picture and a more strategic and global view is often required: fitness checks respond to this need.

In 2010 pilot exercises have started in four policy areas, one of which is environment. The chosen environmental area to look at is "the protection of EU freshwater resources" looking at the following 6 directives: WFD, Groundwater directive, EQS directive, Floods directive, UWWTD, and Nitrates directive. It has just started and is being carried out by a consultant.

First results are expected before summer break 2011, although formal publication may not be until early 2012.

The results of all 4 fitness checks will be presented in 2012 and will show how the measures have worked in practice. After the pilots SECGEN may announce new ones. Waste is a clear candidate. Cluster 3 needs to take account of any future programme of fitness checks, although the actual future programme itself will not be available within the time frame of this project.

Programme for “evaluating the functioning and effectiveness of existing European environmental law”

Over the term of this Commission, SECGEN want to set up a programme of ex-post evaluations. They are trying to develop a methodology. The high level group on better regulation has a working group looking into this. It is expected that all high profile areas in each DG should have an ex- post evaluation. They are working with DGs to see if they can make a more comprehensive and coherent programme. We need to keep in mind that this is an area they are working on. This plan will develop and is something IMPEL should be aware of and IMPEL can make an input into this process.

Relevant to this is “forward evaluation planning”. There is (an incomplete) one for 2011 onwards which is about to be published, but is not available at the time of writing. The 2010 forward evaluation plan can be found here: http://ec.europa.eu/dgs/secretariat_general/evaluation/evaluation_planning_en.htm. The 2011 plan is expected to be published on the same site very soon

The following elements are most relevant to IMPEL Cluster 3:

2011

- Air quality Directive 2008/50/EC (“directive on ambient air quality & cleaner air for Europe”) and Directive 2004/107/EC (directive on arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air).
- Thematic Strategy on Air Pollution (ENV)

2013

- Directive 2004/35 of the EP and Council on environmental liability with regard to the prevention and remedying of environmental damage
- Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste

The high level group of independent stakeholders (also known as the “Stoiber Group”)

The report of the “Stoiber Group” is due to be completed by November. This is a report on best practices in EU states with regard to implementation of EU law. They are aware of the IMPEL work in this area and apparently are impressed by it. They are, of course covering all policy areas. so their report will probably not have a great deal to say on the Environment,

but Cluster 3 should examine the report when published to see if there are opportunities for the cluster to add value by including projects in the future work programme.

The high level group of better regulation experts (HLGBRE)

This group are working on follow ups on the Communication on Smart Regulation such as:

- social impacts
- assessing impacts of substantive amendments
- evaluation
- consultation.

They intend to report in the autumn. Cluster 3 should examine the report when published to see if there are opportunities for the cluster to add value by including projects in the future work programme.

Review of 6th Action Programme and possible development of 7th Action programme:

A lot of work has been undertaken recently by DGENV on reviewing the 6th Environmental Action programme and thinking about the next EAP.

The EEA state of the Environment Report will also feed into the decisions. It was published at the end of 2010.

The review of the 6th EAP was published earlier this year and it raised numerous implementation issues relevant to non-achievement of the 6th EAP. These are listed in Annex F.

Top Four Priority EU legislative instruments for IMPEL: Summary of Issues raised in Questionnaires and Interviews

Waste	IED	Seveso	RMCEI
Waste Framework Directive – it's one of the Commission's priorities because serious implementation gaps have already been identified in the waste legislation. It's also one of the priority work areas for the Portuguese Inspectorate. PT	New Industrial Emissions Directive (IED) – new challenges in permitting and inspections; PT	SEVESO Directive – Domino effect and safety distances; Industrial parks, inspections strategies. PT	Revision of the Recommendation of the Minimum Criteria for Environmental Inspections (RMCEI) PT
The sector with the highest discrepancy between the EU acquis and MS' performance is probably the waste sector and this mainly due to a lack of monitoring. This concerns many different waste areas including illegal waste shipments. Bad performance is to the detriment of the environment, health and also harmonised market conditions. In our view it should be one of the key areas for IMPEL. NGOs	IED Directive – it one of most important areas of work in the Portuguese Inspectorate. This new Directive imposes big challenges for the permitting and enforcement authorities and IMPEL could help these authorities to face and tackle with those challenges. PT	Decontamination of industrial sites (soil and groundwater). PT	We believe that EU counts with a very well developed system of environmental laws. The problem lies on its implementation, compliance and enforcement. We do not need more sophisticated environmental laws but mechanism to guarantee their effectiveness. Inspections is one of the mechanism to identify infringements and deficiencies in implementation. NGOs
(IMPEL should) draw attention to the Fitness Checks and the Policy landscape issue. Waste likely to be next one. And there is a DG Enterprise one about packaging that touches waste. HLGBRE	IMPEL may have influenced IED Directive. Find evidence for this to show value of IMPEL. IEEP	Revision of the SEVESO Directive PT	The review of the Recommendation Establishing Minimum Criteria for Environmental Inspections (RMCEI). L
Waste legislation- focus on landfills; mine waste and sites- mining has big impact on environment; mine waste could contain	I feel that IMPEL should remain focused on its core legislative areas: IPPC/IED,	Seveso Directive (listed as an overall priority for IMPEL) CZ	RMCEI is Important area of EU law EA

Waste	IED	Seveso	RMCEI
hazardous substances which need special attention from authorities R	Seveso, waste law. IEEP		
Informing the review of the sludge directive 1989 and identifying implementation issues. The review might broaden the type of sludge that can be applied to land which may have implications for member states particularly where, for example, there are regulatory efforts underway to make sure that only high quality bio-waste is spread to land. SEPA	IED directive- with focus on soil pollution- having in mind The Thematic Strategy for Soil Protection and the proposal for a soil framework Directive and Impact Assessment R	I feel that IMPEL should remain focused on its core legislative areas: IPPC/IED, Seveso, waste law. IEEP	It is important that sufficient flexibility is retained in new or revised legislation, including revision of the EU Recommendation on Minimum Criteria for Environmental Inspections, to take account of the variety of approaches to inspection being developed by regulators. EA
Contribution to reduction of urban waste and to waste management R	IED is a priority legislative area for IMPEL P and EA	It is very important to have a close cooperation with Technical Working Group on Seveso II Directive regarding inspection activities for example. P	Risk based approach to inspections or to broader decisions of who to regulate, by what means etc? Is the review of RMCEI a means to do this?
waste legislation is a priority in the EU programme for reviews/recast etc R and CZ	The Commission will be undertaking work to implement the Industrial Emissions Directive (IED). IMPEL could explore how it might help the Commission with work to prepare for successful implementation of IED. Much of this work will be in 2011 as actions need to be complete before it comes	Seveso is significant because it deals with upper-tier and lower-tier establishments and safety rules.	Risk based inspections and RMCEI are relevant for all member states. Although the preferred approach may vary from country to country. It may be cultural dependent. Some member states like it to be prescribed specifically and don't want too much discretion. So IMPEL may have to focus on those aspects which are of mutual interest to members States. N

Waste	IED	Seveso	RMCEI
	into force in 2013. However there may be scope for IMPEL input in 2012.		
Waste legislation, due to fact that the border between “waste” and “material” today becomes very thin. L	There might be a cluster 3 type work on how do you implement new requirements of IED in least burdensome way and most efficient for regulators. IEEP	It is a shame that the proposed IMPEL review on practicability and enforceability of SEVESO 2 wasn't done. IEEP	There is increasing focus on including more prescriptive inspection in EU law and IMPEL should be in a position to react. IMPEL had a position on RMCEI and that it could be strengthened but its role was as a mechanism to improve and make consistent inspections across all areas IEEP
I think that waste legislation needs attention. (Re functioning and effectiveness of existing European Environmental Law.) Ir	Resource efficiency aspects of IED could be something IMPEL could look at. IEEP		There is mutual interest (between IMPEL and DGCA who deal with EUETS) in compliance, fraud control verification, potential for fraud. They have a lot of experience in verification much more than in EMAS. They work with big and small verification organisations; they deal with all kinds of size industries. We can learn from DGCA about verification for

Waste	IED	Seveso	RMCEI
			instance. Happy to help shape a TOR. DGCA
I feel that IMPEL should remain focused on its core legislative areas: IPPC/IED, Seveso, waste law. IEEP			
I'm sure IMPEL has influenced waste shipment legislation. Find evidence for this to show value of IMPEL. IEEP			
Waste is a priority legislative area for IMPEL P			
Construction waste is a priority. CH			
If there is a fitness check on waste then this would be relevant to IMPEL. EA			
Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (in programme for evaluating the functioning & effectiveness of existing European environmental law) EA			
Exploring the implications of the proposed recast of the WEEE directive for the recovery of, for example, rare earth and other high tech materials. SEPA			
Transfrontier shipment of waste (listed as an overall priority for IMPEL) R and CZ			
Highest number of infringement cases in environmental sector concern Waste and Biodiversity laws - reason to make them high priority for IMPEL. NGOs			
The waste sector is certainly one where a more harmonised inspection system and rules			

Waste	IED	Seveso	RMCEI
could lead quickly to considerable improvements. NGOs			
Waste implementation issue is where EC is mostly worried. There is need for work between IMPEL and EC with regard to waste and illegal disposal. EC			
There are proposals to revise waste shipments regulation and IMPEL may wish to look at that			
Fine tuning is needed, (especially in waste legislation which needs lots of improvement) and particularly WEE. EEA			
Further emphasis by IMPEL on exchange of ideas related to methods on how to inspect and enforce waste management regulations on the ground are welcome. In addition, it is suggested that more emphasis can be made on the implementation of waste Directives and common problems related to this sector. Malta believes that better implementation could be achieved through training activities and exchange of experiences. Malta also feels that a degree of subsidiarity and proportionality is to be respected when adopting any new waste management measures. Malta			

Coherence Issues Mentioned in Questionnaires and Interviews

Coherence Between			Issues and/or reasons quoted	Respondent
Waste FD	Waste shipment		Impact of WFD on enforcement of waste shipment regulation in consequence of end of waste criteria	Portugal
Waste	Waste		Legislative proposals (for 2012 in EC work programme) on the coherence/simplification of the waste aquis	England and Wales
Waste FD	Other waste legislation		Consolidation of legislation across thematic areas. The Waste FD promised that significant amounts of other legislation would fall by the wayside. Reporting needs to be streamlined and should move to similar reporting timeframes e.g. 3_6 years to suit Waste FD	Ireland
Waste	REACH		Waste legislation due to fact that the border between “waste” and “material” has become very thin. Also REACH in terms of waste legislation	Latvia
Water FD	REACH	Other regimes	Chemicals /pesticide management under all those 3	England and Wales
Water FD nutrients management	UWWTD	Nitrates Directive	Cohesions between these	England and Wales
Water FD	Common Agricultural Policy (CAP)		The Commission’s work on land and water policy integration (e.g. linking WFD and CAP) is seen as highly important and it is considered that there are opportunities for IMPEL to contribute by considering implementation issues (how would you make it work in practice} and by gathering experiences on how to secure multiple objectives.	Scotland
Water	Water		Consolidation of legislation in water is important	Ireland
Water	Water		IMPEL should be ready with views on coherence of relevant parts of the water law. (to feed into water fitness check)	IIEP
IED	Energy		Policies on energy and the environment in terms of implementation requirements that link, for example, IED and energy from waste, bio-fuels and clean energy.	Scotland

Coherence Between			Issues and/or reasons quoted	Respondent
IED/Seveso/ Waste (including TFS)	Other e.g. water		It is important to see how IMPEL'S "core*" legislative area is affected by or affects other areas of law/policy e.g. examine interactions with water law	IEEP
IED/Seveso	TFS	RMCEI	The proposed SEVESO revision makes proposals on inspections (harmonising with IED). IMPEL could look at this alongside RMCEI and include TFS where there is a focus on criminal activity. IMPEL might look at generic issues of supervision requirements, to include "inspection" but also alternatives. (More detail in interview notes)	IEEP interview
IED	National Emissions Ceiling Directive		National Emissions Ceiling Directive (NEC Directive) – relationship with IED;	Portugal
Natural Resources	Other law		Natural Resource, with flag ship and road map is a big thing for the commission, but where in any policy are things going to be expressed in EU law. It is likely to come in product policy, encourage recycling re-use. Efficiency of industry is less of an issue but is still relevant. Maybe there is a need to take resource efficiency issue of IPPC. For IMPEL. How do regulators take that more seriously and how do you push that in a regulatory context: maybe something to explore. Is traditional command and control IPPC regulation on emissions, preventing industrial innovation and better production methods, choosing new raw materials, recycling stuff more? - but need to be careful: that you don't sacrifice strict regulation which lots of people want.	IEEP interview
REACH	Environmental Quality Standards Directive		Connection between the 2 of them can drive to source control approach – chemical assessment of the environment.	Romania
Birds Directives	Habitats Directive		Both directives are too general leaving a gap in implementation in the field	Romania
All	All	All	Clarification of definitions and terms of different pieces of legislation	Latvia

Implementation Issues listed as relevant to non-achievement of the 6th Environmental action programme

(Source: Final Report for Assessment of the 6th Environmental Action Programme. Ecologic Institute, 21 February 2011)

1. Climate Change

In some cases, implementation problems at Member State level influence the contribution of measures to the achievement of specific objectives and priority actions of the 6EAP. The most prominent example was the introduction of emissions trading.

Significant implementation challenges of the **2003 Emission trading Directive** included **delayed transposition** in various Member States. The scheme was also found to **lack stringency in the domestic emissions caps** set out in national allocation plans. In many cases, the European Commission had to initiate infringement proceedings against Member States held to have inadequately implemented the measure. The discretion left to the Member States regarding implementation and application of the Monitoring and Reporting Guidelines lead to plurality of 27 national systems. The actual operation of the priority action has deviated in many ways from the ‘ideal’ concept originally envisioned by the European Commission in its early legislative proposals. Notably, **rent seeking, susceptibility to lobbying, concern about international competitiveness effects and other factors** have caused Member States to implement the measure in ways that did not always meet or promote the measure’s objectives (thus, these factors can be seen as **barriers** as well). As a consequence, prices for greenhouse gas emission allowances have been generally lower than anticipated in the legislative process, with direct consequences for the ability of the measure to guide and alter individual and corporate behaviour (making the **low carbon price** level a ‘**secondary**’ barrier). In the early phases of implementation, in particular, the priority action did not perform as envisioned in the legislative process.

2. Nature and Biodiversity

Effective implementation of EU environmental is an important factor driving / hindering the achievement of 6EAP environmental objectives in this thematic area. Some of the main implementation problems identified in the Nature and Biodiversity thematic area, along with some of the reasons behind this are set out below.

The development and implementation of many **BAP** measures has been slow or incomplete (e.g. Natura 2000 in the marine environment), or otherwise stalled during negotiations (e.g. proposed soil framework Directive). Inadequate monitoring has provoked further hindrance across the board towards effective implementation and delivery of results. The BAP failed to outline indicators and baselines for its targets and actions. Whereas the monitoring procedures accompanying some legislative devices associated with the BAP provide useful data for evaluation, other targets lack the prioritisation and measurability required to provoke action and deliver results³⁷⁶. Moreover, whilst there were a series of consultations and meetings in which Member States could influence the form of the BAP, responsibility for its implementation was delegated heavily to the Biodiversity Expert Group and by extension to environment ministries and agencies of the EU and Member States, whose political influence is generally regarded as relatively weak³⁷⁷. This marginalises the BAP and diminishes its influence on other sectors. It is thought the lack of ownership of policy development on the part of Member States has undermined commitment and progress in implementation, with most Member States not taking steps beyond the obligated minimum³⁷⁸.

3. Environment and Health

Effective implementation of EU environmental legislation is an important factor driving / hindering the achievement of 6EAP environmental objectives. A number of measures adopted in the environment and health thematic area are still in the early stages of implementation, thus only some general observations can be made in this regard.

In relation to **REACH**, the implementation process is currently at the stage of meeting registration deadlines as well as identifying substances of very high concern for the candidate list which are subject to eventual authorisation. Within the process of authorization, ECHA has identified 38 substances of very high concern (SVHC) for the candidate list subject to eventual authorization. This low number is disappointing compared to the 356 substances identified of very high concern by the International Chemical Secretariat⁵⁰³. However, this amount is likely to increase in 2011 as approximately 100 SVHC have recently been identified by a group of six Member State Competent Authorities for possible inclusion in the candidate list⁵⁰⁴.

With respect to **air pollution**, it is important to note that there have been improvements in air quality in the last 10 years resulting from reductions in emissions from various sectors. In particular, emissions of sulphur dioxide and heavy metals have been reduced significantly, e.g. see Figure 9. However, these reductions were due to the legislation that was put in place prior to the adoption of the Thematic Strategy on Air Pollution, whereas the legislation arising from the Thematic Strategy has only recently been put in place. Existing problems with air quality, particularly with respect to PM10 and NOx in urban areas, are largely due to the fact that increasing traffic levels have undermined emissions reductions in other sectors, including the improved emissions performance of individual road vehicles. Notwithstanding these improvements, there have been problems with the implementation of previous legislation, which need to be remedied in their successors. For instance, issues relating to compliance and enforcement were identified as problems associated with the previous IPPC Directive 2008/1/EC and the **industrial emissions Directive** 2010/75/EU was designed to address some of these issues. Thus, existing problems should at least be addressed to a large extent by the new Directive. However, given that implementation problems existed with the preceding legislation, it can be anticipated that implementation of the new Directive will be an important factor in the functioning and performance of the measure, particularly where limit values are more stringent or where installations are included for the first time.

The performance and functioning of the **ambient air quality Directive** depends on the performance and functioning of measures introduced at the European level to reduce emissions at source, as well as on the implementation of national, regional and local measures to ensure air quality limit values are met. As noted above, the objectives of the Thematic Strategy are used to justify European measures to limit emissions at source. However, the Commission has taken enforcement action against 19 Member States for failure to bring air quality within the limits specified in previous air quality legislation⁵⁰⁵. In order to meet the objectives of the Thematic Strategy, the Commission's role in assessing and approving any requests for derogations submitted by Member States will continue to be important. Finally, in spite of the fact that the NECD has not yet been revised as proposed by the Thematic Strategy, it is important to note that emissions reductions are expected to be delivered by the various elements of the climate change and energy package⁵⁰⁶.

Although **bathing water** compliance has been steadily increasing since the adoption of the 1976 Directive, implementation gaps remain. Annual reporting on bathing waters indicate

improved compliance, but this is not yet 100%. As the Directive is a legal environmental standard, failure to achieve the objective is an implementation problem. The **Communication on Water Scarcity and Droughts** drew heavily on analysis undertaken under the WFD Common Implementation Strategy. Being a non-legislative Communication, the Communication does not however impose implementation obligations on the Member States and there were few barriers to adoption, however the second follow-up report noted that immediate actions in the 2007 Communication had been met⁵⁰⁷.

4. Natural Resources and Waste

There are several problems of implementation in waste legislation. The most recent reports from Member States for the 2004-2006 period show that implementation and enforcement of EU waste law remain poor, particularly regarding the WFD, the Landfill Directive, and the Waste Shipment Regulation. In many cases, adequate waste treatment infrastructure is missing in Member States and waste is not collected separately. This results in reuse, recycling and recovery targets for waste streams such as WEEE, ELVs or packaging being missed.⁵⁸¹

The Commission is said to receive on a daily basis a vast number of complaints related to illegal landfills lacking the permits required by EU waste legislation. These complaints demonstrate the general and persistent nature of significant implementation deficiencies in a large part of the EU. According to preliminary information received from Member States an estimated figure of over thousand landfills do not comply with the requirements of the Landfill Directive. If the outcome of the Commission's investigation confirms this figure a high number of Member States would not have met the deadline of 16 July 2009 by which all sub-standard landfills that existed before the introduction of the Landfill Directive need to comply with its requirements.⁵⁸² In 2009, 13 non-conformity cases and 11 bad application cases related to the Landfill Directive were pending against Member States.

Only one third of WEEE in the Community is reported as appropriately treated. The other two thirds are going to landfills and potentially to sub-standard treatment sites inside or outside the EU. The illegal trade and shipment of WEEE to non-EU countries continues to be widespread.⁵⁸³

There are also a high number of cases of illegal shipments of waste due to lack of adequate controls and inspections. Thus the problems of poor implementation or enforcement have doubtless hampered the attainment of the objectives.

5. Strategic Approaches and Instruments

This section aims to identify the main drivers and barriers to the achievement of the 6EAP objective of encouraging a more effective implementation and enforcement of EU environmental legislation (in relation to the horizontal measures mentioned in the previous section). It should be noted, however, that this is a rather general analysis of drivers and barriers to implementation and enforcement and does not analyze in detail the barriers and drivers within each of the thematic areas – for that refer to the section of the report on thematic areas.

More effective implementation of EU environmental law

A number of factors (drivers and barriers) can be identified which explain why implementation of EU environmental law by Member States can be relatively smoothly or becomes troublesome including political support or resistance, domestic societal mobilization

in favour or against full and correct implementation, (in)sufficient administrative capacities in Member States, (in)sufficient enforcement capacities and mechanisms in Member States and at the EU level (see this section), bureaucratic and institutional contexts and traditions in Member States (i.e. national structures and procedures and national administrative and political cultures which fit or do not fit what is required for implementing adequately EU legislation), Commission's activities to prevent and address infringements, and the quality of legislation.^{1078 1079} The increased efforts of the Commission to guide Member States in implementing EU environmental law (in combination with the strategic approach) has pushed forward implementation in many Member States in several areas of EU environmental policy. The organization by the Commission of bio-geographical seminars has helped Member States correctly apply EU nature conservation legislation and in particular to establish (correctly) the Natura 2000 network.

The general priority attached to 'implementation' by the Commission and the European Parliament helped push forward the adoption of the 2008 Communication on implementing European Community environmental law.¹⁰⁸⁰ The 2007 Communication on applying Community law¹⁰⁸¹ from the Secretariat-General, which in particular expresses the priority attached to implementation by the Commission as a whole, had for its part a major influence on the 2008 Communication, in particular as to the wording. However, the fact that the 2008 Communication had to be adapted to fit the 2007 general Communication, delayed its publication for two years.

More effective enforcement of EU environmental law

At Member State level

Recommendation 2001/331/EC on minimum criteria for environmental inspections appears to have had a positive impact on inspection systems in most Member States, even though most Member States have only partially implemented the Recommendation. Many Member States have started to reform their inspection systems because of the Recommendation.¹⁰⁸² The inspection requirements included in the recently adopted industrial emissions Directive (recast of IPPC Directive) are expected to be a future driver for further improving inspections of installations in the Member States.

Another driver for achieving more effective enforcement of EU environmental law at Member State level is the work done by IMPEL, in particular through its guidance of Member States in improving inspections and enforcement and through informal peer-reviews of Member States' inspection authorities.

A major barrier towards more effective enforcement of EU environmental law at national level, relates to the lack of political priority to environmental inspections in some Member States and as a result the limited resources available for inspecting authorities to develop an effective system of environmental inspections. This explains in part problems in relation to implementation of Recommendation 2001/331/EC. Other barriers to effective enforcement and implementation of Recommendation 2001/331/EC relate to differing interpretations by Member States of the definitions and criteria of the Recommendation.¹⁰⁸³ The lack of harmonization of the type and level of criminal penalties is generally considered to be another barrier to the effective enforcement of EU environmental law, as various studies have shown that penalties currently in place in Member States are not always sufficient to tackle the increasing problem of environmental crime and as a result to effectively implement EU's environmental policies.¹⁰⁸⁴ The Commission aimed to harmonize criminal penalties through its proposals for a Directive on the protection of the environment through criminal law, but was not successful. It took several years for the proposed Directive to go through the co-

decision procedure – the first Commission proposal on this issue was published in 2001, whereas the Directive was only adopted in 2008 – due to opposing views between the Commission and the Council on whether to adopt a Directive under the EC Treaty or a framework decision under the third pillar of the EU Treaty and to related ECJ judgements. The adopted Directive does not provide for a certain level of approximation of the criminal penalties in place in Member States, as the ECJ had judged in 2007 this was not possible within the Community's sphere of competence and as a result bolstered the position of opponents within the Council to such harmonisation. However, the new Directive will to some extent drive more effective enforcement of EU environmental law at national level as it defines and harmonizes criminal offences in the environment field, harmonizes the scope of liability, and defines liability for legal persons/companies and those acting on their behalf.

At EU level

Several barriers to effective enforcement of EU environmental law remain at the EU level. One of which is the lengthy nature of the pre-litigation stage of the infringement process. As a result of this, much of the damage has already been done by the time the Commission intervenes and Member States are hardly stimulated to take corrective action promptly. There have been cases where a Member State clearly relied on the length of the procedure to deliberately delay implementation.¹⁰⁸⁵

Another barrier is the limited resources of the Commission, which does not have the resources to carry out systematic and comprehensive checks on the application and enforcement of all EU law.¹⁰⁸⁶ Although Member States are required to provide full information about the formal transposition of Directives into national or regional law, there is limited information about the organizational stage of implementation (in which the legal and administrative framework for the proper application and enforcement of the transposing laws is set up) and even less about the operational stage of implementation (compliance in practice).¹⁰⁸⁷ DG Environment tries to overcome this problem by applying a strategic approach towards addressing infringements and by outsourcing ex-post evaluations of EU environmental legislation. Unlike other policy areas of European law, such as competition, veterinary, customs, regional and fisheries policy, the Commission does not have investigative powers in the environmental field that extend to the territory of the Member States. 'The Commission may ask the Member State to allow for inspections, but this lies completely within the discretion of the Member State and such requests are not likely to be honoured in cases where infringements may be discovered.'¹⁰⁸⁸

The lack of access to justice for environmental NGOs is also considered by many observers as a barrier to effective enforcement of EU environmental law. Environmental NGOs are hardly involved in ECJ cases. If they are involved, these cases concern the request from national courts for a preliminary ruling. In practice, access to EU courts is not possible for environmental NGOs which have seen all their actions in the past declared inadmissible as they were considered not to be directly and individually concerned. The narrow construction by the ECJ of direct and individual concern has therefore shut the door in practice for private enforcement in direct actions at EU level. This was expected to change with the Community's ratification of the Aarhus Convention, however according to observers such as Krämer¹⁰⁸⁹ and Wenneras¹⁰⁹⁰, Regulation (EC) No 1367/2006 which intends to implement the Convention falls short of this in several respects and is therefore not in compliance with the requirements on access to justice of the Convention.¹⁰⁹¹

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Note of IMPEL workshop on 1 July 2011 of IMPEL members and stakeholders regarding priority implementation issues for IMPEL

The agenda and list of participants is attached at annex 2.A

1. **Welcome and introduction.** Ed Mitchell, Director of Environment & Business, Environment Agency for England and Wales (Workshop Chair)
Ed explained that the aim of the workshop was to gain a better understanding of the priority areas for improving the implementation of EU law from a number of perspectives: inspectorates and regulators on the ground; colleagues in the European Commission and other organisations working to improve the implementation of EU environmental law such as the European Environment Bureau (EEB) and the Institute for European Environmental Policy (IEEP). He also hoped to get a sense of the priorities and timescales and how we could work together.

2. **Improving implementation of EU environmental law from the perspective of IMPEL.** Jan Teekens, Co-Chair IMPEL Better Regulation Cluster, Inspectorate of Housing, Spatial Planning and the Environment, Netherlands
Jan clarified IMPEL's mission and the development of its work and collaboration with other partner organisations. He also outlined the forward direction for IMPEL and in particular Cluster 3. He added some of his personal observations that IMPEL might take forward such as:
 - Further engagement with stakeholders
 - Increase IMPEL's involvement in relevant policy debates
 - Strengthen links with Member countries
 - Combine practical and strategic work
 - Promote IMPEL's added value
 - Keep IMPEL's ambitions and priorities under review
 - Review IMPEL's own organisation and working methods where necessary.He posed these questions for the workshop:
 - What role should IMPEL play in the debate about implementation and enforcement?
 - As well as helping find the best way to deliver environmental outcomes, does IMPEL also have a role in finding the best way to ensure European businesses play their part without unnecessary administrative burdens?

3. **Improving implementation of EU environmental law from the perspective of the European Commission Secretariat General (SECGEN).** Michel Jeanson, Unit for Simplification and Administrative Burden Reduction, SECGEN
Michel Jeanson said that his unit in SECGEN are looking at how to improve EU legislation and have various initiatives such as:
 - How to improve the implementation of regulation from the perspective of SMEs and micro-entities. They have introduced an SME test to be included in Impact Assessments (IAs) and a new initiative is that the whole of the EU acquis will be screened to look at the impact on micro-entities.
 - The recent establishment of an Impact Assessment Board, which is independent and which scrutinises all the IAs produced by Commission Officials.
 - Simplification. This includes recasts and codification to bring together various pieces of law into an easy understandable whole. They have an open consultation process and encourage input from practitioners who use and enforce legislation - so they

welcome IMPEL's feedback to improve legislation and make it more implementable. IMPEL can feedback at two stages: at the time that a 'Roadmap' is being developed and later at the formal consultation stage.

- The setting up of the Stoiber group to make recommendations and advise the SECGEN on how to reduce administrative burdens. They identified 13 priority areas, with initial objective of a 25% reduction in administrative burdens. As a result the Commission has made proposals which they believe will actually achieve 31% reduction. The Stoiber Group will deliver its final report in 2012. After that, SECGEN want all the DGs to internalise the recommendations.
- Ex-post evaluations after implementation. These cover specific individual pieces of legislation. They each address four specific aspects: was it relevant (to achieving the original goals), was it effective, was it efficient and has it delivered results.
- Fitness checks are in addition to evaluations of single instruments. They are an evaluation on a wide range of instruments in a policy area. There are currently four fitness checks and the one on environmental law is on six pieces of water legislation. This is the most advanced. Results are to be presented in 2012.

In answer to questions from Zofia Tucinska, Michel clarified that:

- The SECGEN supports the Impact Assessment Board, but the board members are independent. Also within DGs there are people to support the IAs within their acquis. The IAs are done by each DG. In DG ENV the people who do it are in economic unit.
- Administrative burden reduction was initially focussed on the burden upon enterprises, but 18 months ago they were asked to widen the scope to include burden reduction on government bodies.

In answer to a question from Sigrún Ágústsdóttir, Michel said that SECGEN supports direct feedback from municipalities.

Andrew Farmer made a point that the Commission may need to take care over the position it takes about 'gold-plating'. Andrew felt it is up to member states as to whether they add requirements over and above those in Directives. It is a subsidiarity and competence issue. On Impact Assessment, Andrew said there are limits to what can be done with IAs. For example, where legislation is broad in terms of outcomes and limited in detail of the actual requirements it is very difficult to do IAs.

4. **Improving implementation of EU environmental law from the perspective of the European Commission DG Environment (DG ENV).** Jean-Francois Brakeland, Head of Unit, Compliance Promotion, Governance and Legal Issues, DG ENV

Jean-Francois recognised and valued the role that IMPEL had in inputting to the Commission's Communication on Implementation of EU Environmental Law. DG ENV had no plans for new law, but they will review how well existing law is working, including implementation problems. He expressed the following reasons why *environmental* law is particularly difficult to get right and difficult to implement:

- 1) There are typically lots of levels of administration: national, regional, local etc.
- 2) It needs lots of infrastructure and building to achieve its aims, such as new sewage treatment works.
- 3) It is extremely diversified: pollution, waste, nature etc.
- 4) Enforcement issues are very local.
- 5) DG ENV does not have EU inspection powers which other DGs have.
- 6) All EU legislation is very complicated and based on science and you need to find specialists in each area to understand it.

The 2008 Communication on Implementation set the following priorities for enforcing the implementation of EU law: they will focus on non communication (to the

Commission) and non-conformity with EU law. Then they looked at other aspects of implementation such as:

- Where could DG ENV incentivise implementation by using their power to cut new financing?
- Which non-implementation issues have the biggest effect on environment and health?
- Where have there been court rulings? They check if MS are enforcing court rulings and where not DG ENV is starting to ask for fines from the relevant MS.

The main aspects of EU law with infringements are water, waste and nature each of which makes up about 21-24% of the total. But Jean-Francois said that infringement cases say nothing about the real problems with implementation. So they are looking at ways of getting better information such as:

- Using Aarhus information powers.
- Asking each MS very early after adoption about their plans for implementation and what are their risks to implementation? This is more pro-active than in the past when they would produce a Directive allowing two years for transposition and wait until the two years were up before contacting the MS. Now they have a much earlier and useful dialogue with each MS, but on the other hand they will use the option of asking for fines if this doesn't work.
- The Environment Commissioner is concerned about the lack of data about implementation. He wants more and better information based on real and reliable data.

The new Communication on Implementation of EU Environmental Law will address the above issues and IMPEL has a role. This communication is a building block to the successor to the 6th Environment Action Programme. It has overarching themes of knowledge and governance. Jean-Francois gave some examples of current thinking:

- They want MS to make information available in order that citizens can be better informed and become more involved. This might provide a democratic push to get governments to get things done.
- They want more links between the different levels of governance in MS.
- More involvement of networks would be welcome especially longstanding and stable networks like IMPEL.
- They feel they need some improvement in verification of implementation, but they are not suggesting an EU inspectorate.
- They wish to improve access to justice for all the environmental acquis. The Commission will revise its access to justice directive to help MS with that and in Seveso III they are including access to justice.
- They would like to see dispute resolution within each MS a matter of course before infringements are reported to the Commission. For example in each MS, they want to see if there is an existing body that might act as some sort of mediator to allow access to justice and solve problems. Such a body could adopt a role to look at compliance with EU environmental law to reduce the need for citizens to go direct to the Commission.
- They want IMPEL to provide input around inspections. Jean-Francois said that traditional inspection has a role, but he recognised that 'inspectors' have a broader role, and he wants to include the newer and wider approaches such as self disclosure.

5. Improving implementation of EU environmental law from the perspective of the European Environment Bureau. Pieter De Pous, EU Policy Director, European Environment Bureau (EEB)

Pieter said that EEB have a strong interest in implementation. They presented a list of implementation issues to the Commission's recent conference regarding the Communication on Implementation.

He stressed the role of technology for monitoring and suggested the Galileo satellite is made more use of to generate information and work out how we interact on it. By this means feedback on progress or problems could be done more quickly. He gave the example of Brazil which tracks de-forestation by satellite every two weeks.

He said there are weaknesses in resources in some MS to administer EU Environmental law which needed addressing, but also each MS could join up resources and skills across boundaries more.

Pieter also commented that he would like to see IMPEL widen its role to include biodiversity and nature, and do work on cross-compliance (in agriculture).

6. Understanding the priority implementation issues and areas for action: A report on the survey of IMPEL members and Key stakeholders. Chris Booth, Consultant, Environment Regulation

Chris summarised the findings of the report – a copy of which had been provided in advance to all workshop members.

- The Priority areas of EU legislation for IMPEL seemed to be: Industrial Emissions Directive (IED); Waste (numerous aspects of); The Recommendation establishing minimum criteria for environmental inspections; and Seveso II Directive on the control of major accident hazards.
- Another priority aspect of EU legislation was coherence of different pieces of EU law. 17 different examples were given. Most involved IED and/or waste and/or water.
- “Supervision” is a key area for IMPEL to support, in particular: inspection / assessing compliance; complementary approaches; prioritising supervision resources; and how to select appropriate approaches according to context.
- Some other aspects of the regulatory practitioner's role in improving implementation were raised by many participants in the survey such as: implementation; outcomes; simplification; clarification; alignment etc; methods to set priorities; public participation; access to justice.
- “Smart Regulation” was thought to raise important issues for IMPEL, in particular: administrative burden reduction; simplification; evaluation; and fitness checks.

The survey also picked up views on ways of working for IMPEL. Traditional projects are valued, but there is an appetite for quicker more flexible activities, preparatory work in advance of major initiatives and more collaborative work.

7. Discussion groups

The workshop participants split into three groups as follows to discuss the following priority implementation issues and areas for action:

- A. Priority areas of EU law/ implementation issues including coherence
- B. The regulatory practitioner's role in improving implementation
- C. Aspects of smart regulation.

Each group considered the following questions:

1. Are the issues identified in the survey the right ones? Are there any gaps?
2. For each of these issues/work areas:

- What work could be done by whom and when (giving particular thought to where/how IMPEL may play a role)?

The groups put their ideas on post-it notes, and then at the end of the discussion stuck them on a ‘timeline’ on the wall. After completing the ‘timeline’, each group explained their proposals followed by questions and discussion. Then everyone had the opportunity to add extra proposals and explain them. Similar proposals were grouped together.

8. **Prioritising the issues/ areas we’ve identified**

After a discussion of the proposals, all workshop participants then voted on the proposals to identify their top three priorities. Each had three votes except the project manager and consultant (Louise and Chris) who did not vote and Michel and Pieter who left before the voting.

After the workshop, the consultant and project manager developed a fuller description / clarification of each proposal along with some coalescing of proposals which reflects the above feedback and discussion. It also shows votes given and provides a ranking of proposals. This is attached as Annex B.

9. **Ways of working together.** Terry Shears, Vice Chair of IMPEL and Michael Nicholson, IMPEL Secretariat.

Terry Shears said that co-operation and collaboration is fundamental to what IMPEL does. Terry and Michael Nicholson described several examples of IMPEL’s collaborative work including:

- Work with the Network of Heads of EU EPAs on the joint ‘Better Regulation Checklist’.
- Work with OECD on indicators and work with the Commission on various issues.
- The enforcement project of TFS had brought various different authorities together such as Customs, Police, Basel Convention etc.
- IMPEL co-organised with France a conference in southern France with over 200 members to talk about Seveso issues and major accidents. They have started to work with the technical working group of Seveso II.

The following points were discussed:

- Use of new technology such as video conferencing and use of on-line seminars, on line presentations using “share-point” for example.
- IMPEL can respond quickly (e.g. to requests from the Commission), but would need an incentive and would provide a better response if we knew the reason for a question. Sometimes it would be helpful to have had an earlier conversation with the Commission to ensure that consultants ask the right questions.
- The IMPEL Board can act on things quickly and we should use that facility more often.
- IMPEL’s National Coordinators can be used more to elicit views of relevant experts in each member country.
- IMPEL should not promise more than it can deliver.
- IMPEL and the Commission should have more regular contact, particularly on specific important dossiers.
- Many cluster 1 projects include better regulation aspects in them. Cluster 3 should ensure it considers and uses those findings.
- IMPEL might improve its engagement with networks on chemicals because in some countries (e.g. Sweden), the people delivering on the ground are the same ones.

- It was suggested IMPEL should review available information on how successful networks operate (e.g. research work presented at IMPEL Conference and discussions at recent INECE Conference).
- IMPEL needs to sort out what its priorities are and agree a work programme to fulfil those priorities.

10. Drawing together the day's discussions

Ed Mitchell thanked all the project team and said that he thought the external presenters' presentations were good and he valued fact that they included some ideas and thoughts which were at an early stage for us to think about. He summarised the day as follows:

- IMPEL's core role was valued and should not be taken for granted or diminished.
- IMPEL might want to think about doing more in areas such as climate change and water.
- IMPEL still needs to do more to work up exactly what the implementation issues are for waste and what role it will play.
- The workshop produced a number of specific proposals with a clear indication of timing and priority which the project team will work up.
- IMPEL should consider additional types of working to give added value alongside the annual cycle of projects.
- New ways of working together and other ideas such as video conferences etc should be explored.
- Regular contact with the Commission, particularly around key dossiers was important.
- IMPEL should use national co-ordinators more to quickly find expertise on specific issues when asked to provide input / advice on specific issues.

Chris Booth

10 July 2011 (revised following comments 22 July 2011)

IMPEL workshop
Working together to improve the implementation of EU
Environmental law

09:00 – 15:00, 1 July 2011

Scotland House, Rond-Point Schuman 6, 1040 Etterbeek, Brussels



09:00	Welcome and introduction	Ed Mitchell , Director of Environment & Business, Environment Agency for England and Wales (Chair)
09:10	Improving implementation of EU environmental law from the perspective of: <ul style="list-style-type: none"> • IMPEL • The European Commission <ul style="list-style-type: none"> – Secretariat General – DG Environment • European Environment Bureau 	<ul style="list-style-type: none"> - Jan Teekens, Co-Chair IMPEL Better Regulation Cluster, Inspectorate of Housing, Spatial Planning and the Environment, Netherlands - Michel Jeanson, Unit for Simplification and administrative burden reduction, SEC GEN - Jean-François Brakeland, Head of Unit, Compliance Promotion, Governance and Legal Issues, DG ENV - Pieter De Pous, EU Policy Director, EEB
10:30	Coffee	
10:50	Understanding the priority implementation issues and areas for action <ul style="list-style-type: none"> • Overview of findings from IMPEL's survey 	Chris Booth , Environment Regulation
11:10	Discussion groups Louise Wolfenden , IMPEL Project Manager Understanding the priority implementation issues and areas for action <ul style="list-style-type: none"> A. Priority areas of EU law/ implementation issues including coherence B. The regulatory practitioner's role in improving implementation (e.g. through supervision and other cross-cutting themes) C. Aspects of Smart Regulation (e.g. admin burden reduction, simplification, fitness checks) 	
12:30	Lunch	
13:30	Prioritising the issues/ areas we've identified	Aileen Kirmond , Head of Future Regulation, Environment Agency for England & Wales
14:00	Ways of working together <ul style="list-style-type: none"> • Short examples of collaborative work • Discussion 	Terry Shears , Vice Chair of IMPEL
14:45	Drawing together the day's discussions	Ed Mitchell
15:00	Close	

List of Workshop Participants

Sigrún Ágústsdóttir	Director Department for Legal and Administrative Affairs	Environment Agency of Iceland
Chris Booth	Consultant	Environment Regulation
Jean-Francois Brakeland	Head of Unit, Compliance Promotion, Governance and Legal Issues	DG Environment European Commission
Trudie Crommentuijn	Senior Advisor	Transport and Water Management Inspectorate, Netherlands
Agata Duch-Szczensna	Specialist	Chief Inspectorate of Environmental Protection, Poland
Andrew Farmer	Director of Research and Head of Industry, Waste and Water Programme	Institute for European Environmental Policy
Michel Jeanson	Unit for Simplification and administrative burden reduction	Sec Gen European Commission
Aileen Kirmond	Head of Future Regulation	Environment Agency of England and Wales
Hans Lopatta	Policy Officer: Legal Issues	DG Environment European Commission Unit A.1 (Enforcement, infringements coordination & legal issues)
Silviu Megan	Regional Commissioner	National Environmental Guard - Timis Regional Commissariat, Romania
Ed Mitchell	Director of Environment & Business / Workshop Chair	Environment Agency of England and Wales
Michael Nicholson	Secretariat	IMPEL
Pieter De Pous	EU Policy Director	European Environmental Bureau
Daniella Sammut	EU Affairs Team	Malta Environment & Planning Authority
Terry Shears	Senior EU Relations Advisor / Vice Chair of IMPEL	Environment Agency for England and Wales

Jan Teekens	Co-Chair IMPEL Better Regulation Cluster	Inspectorate of Housing, Spatial Planning and the Environment, Netherlands
Zofia Tucinska	EU and Multilateral Environmental Agreements Unit / Chair of IMPEL	Swedish Environmental Protection Agency
Louise Wolfenden	Senior Advisor / IMPEL Project Manager	Environment Agency of England and Wales

Suggestions for Future Work derived from Discussion Groups and Voting Exercise at IMPEL workshop on 1 July 2011.

A) Project suggestions

2012 Projects (in priority order based upon votes cast)

Top Priority (More than 4 votes):

1. Develop a strategic approach / common vision with regard to inspections (and other “supervision” activities) in EU law. This might be incorporated into an IMPEL position on RMCEI which is under review. **(7 votes)**
2. Promote / strengthen sharing of good practice from IMPEL work into member countries **(5 votes)**

Medium Priority (3 or 4 votes):

3. Co-operation and integration of different Agencies within a country. Integrated licences and integrated inspections and integrated self reporting. Including Climate Issues such as administration of EU ETS system. Maybe we could analyse strengths and weaknesses of different approaches. Where are opportunities to co-ordinate and simplify and get better service and improve effectiveness and efficiency. To include reporting of climate substances - CO2 and other emissions **(4 votes)**
4. Choosing the right intervention mix to ensure compliance and achieve environmental outcomes – collaborative project with input from academics. To be completed by Sept 2012 and presented at IMPEL conference under “new approaches” theme. **(3 votes)**
5. Peer reviews to review performance of environmental authorities (EAs) and provide more meaningful reports than current system. This should include governance issues (link to the Network of Heads of EU EPA’s work which is looking at governance and has identified 4 or so typical governance “models”) and how well the EAs are using appropriate tools to achieve compliance / implementation / outcomes. This could also include resourcing issues in terms of number of and quality/capacity/seniority of staff in MS **(3 votes)** [Note the existing IRI-Scheme may cover this already.]

Low Priority (1 or 2 votes)

6. Project on waste fitness check. This should include the issue of coherence and the examples of coherence issues from the survey would be a good place to start. **(2 votes)**
7. Non-CO2 Greenhouse Gases (GHGs): Review the EU Environmental acquis (in co-operation with INECE who have agreed to review world- wide environmental law) to look at how existing law allows regulators to reduce “non- CO2” GHGs and then review and exchange views opportunities, experiences across IMPEL members on how to maximise regulatory efforts on these GHGs so as to minimise global warming potential of industries regulated under the EU Environmental acquis. Share report with INECE to influence other environmental regulators throughout the world. **(2 votes)**
8. Implementation of Industrial Emissions Directive (before transposition). Break it down into a number of manageable bits e.g. inspections. Engage with the Commission

have who have said they want to do work with IMPEL in 2012 before transposition. **(1 vote)**

9. Stakeholder workshop on implementation issues of water law to feed into the Commission's Water Blueprint which is coming out later in 2012. By holding a stakeholder workshop which deliberately targets experts in water we could start to engage and draw expert practitioners in water regulation into IMPEL. **(1 vote)**
10. Sharing good practice around closing illegal waste sites. **(1 vote)**
11. Coherence. We could start by prioritising coherence issues identified in the survey and see if there are any more and then link these with other EU work planned or IMPEL projects and propose new project(s) for any which will not otherwise be tackled. This exercise can give us ideas to feed into the evaluation programme. And also we can spot coherence issues that single issue "desk officers" might not know about. **(1 vote)**
12. Implementation of Environmental Liability Directive (ELD). IMPEL could contribute to ELD discussions. **(1 vote)**

Other Proposals with no votes:

13. Complementary approaches to prosecution. Provide a "carrot" to encourage other means such as "settlement". An INECE workshop in June 2011 provided some useful examples.
14. Continue working with DG ENV waste unit to understand priorities and clarify how and when IMPEL could help with improving implementation in this area.
15. Evaluate the results of the 4 pilot fitness check projects.

2013 Projects

16. Implementation of Industrial Emissions Directive Key Issues. After transposition deadline of 6 January 2013. Suggestion to break this work down into a number of manageable bits.
17. Improving the language of reports/documents presented to the public. This is really about increasing public participation by "translating" the very technical information that is currently made available to them. This might improve compliance / implementation etc by increasing knowledge and stimulating interest in the public about environmental issues and about who is responsible for dealing with them – e.g. which companies, which inspectorates, which govt departments etc.

B) Other suggestions raised in the workshop

The workshop also made suggestions for other ideas that IMPEL might choose to consider in terms of improving implementation of EU law. Whilst these are not necessarily suggestions for projects they are recorded here for completeness.

- Strengthen IMPEL's annual process of screening the Commission's work programme and discussing those things that IMPEL might do **(4 votes)**

- Review the way IMPEL provides input to the Commission in response to issues where there is not time to set up a formal project **(3 votes)**
- Consider IMPEL's scope of work. Questions were asked as to whether IMPEL should consider doing more on Water and Climate issues e.g. EU ETS, biodiversity and nature, and cross compliance in agriculture.
- Support Waste as a candidate for the Commission's next fitness checks and then consider whether IMPEL would wish to run a project to support this. It was suggested that IMPEL may wish to input to the choice of subsequent fitness checks and support/ input to them.
- Meet with the Stoiber Group and the Group of Better Regulation Experts to discuss IMPEL's issues and concerns about the implementation of EU environmental law and hear about their work that is relevant to IMPEL.
- Work annually with the Commission (in spring) to share IMPEL's views on implementation priorities to help input to the selection of areas for evaluation and for fitness checks in following year. Then in autumn share IMPEL's views around the time that the Commission's work programme is developed, and identify any possible areas where IMPEL could consider running a project to input practical implementation issues around a particular issue **(4 Votes)**
- Regular evaluation of the implementation of priority areas of environmental legislation. During the evaluation process we could identify what the problems are with existing instruments. Then we can input into our findings to the Commission. **(1 vote)**
- Evaluate the results of the Commission's fitness check projects as they are completed to see what lessons there are for IMPEL members

Inside of back of the cover: list of all the IMPEL reports that have been published and are available on the IMPEL web site

The back page of the cover: logo of the lead country and maybe of the participating countries and organisations.

Terms of Reference for IMPEL project

No	Name of project
	<i>Engaging stakeholders around priority implementation issues for EU law for 2012 to 2015</i>

1. Scope

1.1. Background	<p>One of the Commission's key priorities is the effective implementation of EU law. As a network of regulatory practitioners IMPEL is ideally placed to help improve implementation of EU law through the practical knowledge and experience of its members. This project will engage key stakeholders – including IMPEL members, other environmental authorities, industry, NGOs, European Commission and other networks – to discuss priority areas and identify issues and potential areas of activity for the Better Regulation Cluster to help improve implementation of EU law.</p> <p>In consultation with IMPEL members and also input from key stakeholders including the Commission, this project aims to identify and inform future issues and timings for the IMPEL Better Regulation Cluster to carry out projects to improve implementation of areas of EU law for the period 2012 to 2015. This might include applying the Better Regulation Checklist or by comparing implementation to see what works well. This work will inform the Better Regulation Cluster's multi-annual work programme.</p> <p>The benefits of running this work as a project are that it enables IMPEL to use a consultant to provide the resources to:</p> <ul style="list-style-type: none"> – gather in and assess views of IMPEL members on priority implementation issues for EU law; – to gather information from key stakeholders such as the Commission about their work programme, timings and their priority implementation issues; – to facilitate a discussion with first, the Better Regulation Cluster and then via a workshop with key stakeholders to identify issues and potential work activities that will improve the implementation of EU law and add the most value to the Commission's legislative programmes, while targeting areas of most concern to IMPEL's members and other stakeholders. <p>This work (which would be very difficult to resource without the use of a consultant) will then provide useful information to better inform the Better Regulation Cluster's multi-annual work programme.</p>
1.2. Link to MAWP and IMPEL's role and scope	<p>This project is in line with the following IMPEL strategic goals outlined in the Multi annual work programme:</p> <p><u>III Development of good practices</u></p>

	<p>Learning from each other and identify good practices in implementing EU law.</p> <p><u>IV New instruments in environmental protection</u></p> <p>Identify new instruments as alternatives or complementary to regulation.</p> <p><u>V Providing feedback to policy makers</u></p> <p>It will also assist in the aim to “continue the activity of providing feedback to the Commission or EU Institutions on better legislation issues, gathering information on experience of implementing EU legislation”.</p>
1.3. Objective (s)	<p>To engage with key stakeholders to identify priority issues around the implementation of EU law for 2012 to 2015.</p> <p>To inform the Better Regulation Cluster’s multi-annual work programme by identifying potential projects that will improve the implementation of EU law and add the most value to the Commission’s legislative programmes, while targeting areas of most concern to IMPEL’s members and other stakeholders and to identify the right time to carry out these projects to add the most value.</p>
1.4. Definition	<p>The project will have the following phases:</p> <ul style="list-style-type: none"> • Gathering information and input from IMPEL members (and where appropriate information from other networks such as Network of EU EPAs, European Commission, European Business Groups, NGOs). • Analysis and discussion of initial findings and issues with the Better Regulation Cluster. • Further input from key stakeholders including via a workshop with IMPEL members, NEPA representatives and senior Commission officials from DG ENV and SECGEN to identify issues and potential activities to improve the implementation of EU law. • Producing recommendations for proposed work areas and timings for the IMPEL Better Regulation Cluster to carry out projects to improve implementation of areas of EU law for the period 2011 to 2015.
1.5. Product(s)	<p>Output from discussions with IMPEL members and from key stakeholders including via a workshop with key officials identifying key implementation issues and possible activities and timings for IMPEL input.</p> <p>A recommendation for proposed work areas and timings for the IMPEL Better Regulation Cluster to carry out projects to improve</p>

	implementation of areas of EU law for the period 2011 to 2015. The recommendations will then be taken forward for consideration through the process of agreeing the multi-annual work programme.
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2. Structure of the project

2.1. Participants	Better Regulation Cluster Members, together with representative(s) from Cluster 1 and other interested parties from within IMPEL European Commission (suggest DG ENV and SEC GEN participation) Network of EU EPA's Better Regulation Interest Group participation
2.2. Project team	Nominations welcome
2.3. Manager Executor	UK to lead
2.4. Reporting arrangements	Early findings from IMPEL members' input and stakeholder discussions will be submitted to the Better Regulation Cluster and Cluster 1 in Mar/April 2011. Full findings and recommendations from IMPEL members' input and stakeholder engagement will be submitted to the IMPEL Plenary Meeting in Autumn 2011 and will inform the revised multi-annual work programme.
2.5 Dissemination of results/main target groups	Commission, IMPEL, Network of Heads of EU EPAs, other stakeholders A communications plan will be produced as part of the project to ensure that the project findings are disseminated in the most appropriate ways to key stakeholders.

3. Resources required

3.1 Project costs and budget plan		2011 €
	<i>1. Overhead (organisation) costs :</i>	
	<i>2 Project meeting costs:</i>	
	<i>Project team meetings: 2</i>	
	No of Participants: 5 of which 4 covered by this budget	
	Travel ¹ : 2 x 4 x € 500	4,000
	Accommodation ² : 2 x 4 x € 125	1,000
	Catering:	
	Meeting venue:	

¹ normative: €500/person

² normative: €125/person/night

	Workshop No of Participants: 25	
	Travel: 25 x € 500	12,500
	Accommodation: 25 x € 125	3,125
	Catering: 1 x 25 x € 50	1,250
	Venue:	3,000
	<i>3. Other costs:</i>	
	Consultant:	8,000
	Translation:	
	Dissemination:	
	TOTAL project cost €	32,875
3.2. Fin. from IMPEL budget	<i>2. Project meeting costs:</i>	20,625
	<i>3. Other costs (Consultant):</i>	8,000
	<i>Total:</i>	28,625
3.3. Co-financing by MS (and any other)	<i>1. Overhead costs:</i>	
	<i>2. Project meeting costs:</i>	
	Environment Agency: Workshop Venue and Catering	4,250
	<i>3. Other costs (Consultant):</i>	
3.4. Human from MS	See Annex 1	

4. Quality review mechanisms

The quality of the final product will be reviewed by the Better Regulation Cluster and Cluster 1. The Better Regulation Cluster will finalise the report.

5. Legal base

5.1. Directive/Regulation/Decision	A. 1996 Commission Communication on Implementing Community Environmental Law in which IMPEL's role was recognised. B. Recommendation on Minimum Criteria for Inspections (2001/331/EC) 6 th EAP
5.2. Article and description	Not specifically one article
5.3 Link to the 6th EAP	Environment and health, Natural resources and waste, Environmental policy making.

6. Project planning

6.1. Approval	Draft ToR in Better Regulation Cluster - September 2010 Tor in General Assembly – Autumn 2010
(6.2. Fin. Contributions)	
6.3. Start	January 2011
6.4 Milestones	January 2011 – Project starts, Project team meets February 2011 – Input from key stakeholders March/April 2011 – Discussion at Better Regulation Cluster meeting

	<p>April/May 2011 – Further input from key stakeholders including via a workshop to bring together IMPEL members, NEPA representatives and Commission officials from DG ENV and SECGEN</p> <p>May 2011 – Final project team meeting (telecom)</p> <p>September 2011 – Project submitted to the Better Regulation Cluster and Cluster 1 for quality review.</p> <p>November 2011 – Project adopted at General Assembly</p>
6.5 Product	Final draft report will be submitted to the Better Regulation Cluster and Cluster 1 in September 2011 for quality review.
6.6 Adoption	November 2011

Annex 1 Draft project plan

Milestone	Tasks	Consultant Days
Develop project plan		1
Mid-January 2011 – Project team meets		1
February 2011 – Input from key stakeholders	<p>Seek info on priorities from IMPEL members (e.g. by questionnaire or telephone calls)</p> <p>Seek info from the COM about work programme and implementation priorities (e.g. from published info, telephone calls)</p> <p>Seek info from other key stakeholders e.g. European business groups, Network of Heads of EU EPAs</p> <p>Analyse and collate info and circulate to BR Cluster at least 2 weeks before Mar/Apr meeting</p>	5
March/April – Discussion at Better Regulation Cluster meeting		1
April/May – Further input from key stakeholders including via a workshop with key officials and other stakeholders	<p>Following up actions from BR Cluster discussion</p> <p>Prepare information for and run workshop</p>	4
May 2011 – Final project team meeting (telecom)	Finalise report for submission to Sept BR Cluster	2
September 2011 – Project submitted to the Better Regulation Cluster and Cluster 1 for quality review.		
November 2011 – Project adopted at General Assembly		
Total		14