



European Union Network for
the Implementation and Enforcement
of Environmental Law

CHALLENGES IN THE PRACTICAL IMPLEMENTATION OF EU ENVIRONMENTAL LAW AND HOW IMPEL COULD HELP OVERCOME THEM

FINAL REPORT: 23 March 2015

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 7th 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 website at: www.impel.eu.

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European Union Network for
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1. Executive Summary

Background

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international non-profit organisation of environmental authorities in Europe that works for a more effective implementation of environmental legislation. In its project “Implementation Challenges” it sought to identify remaining challenges in the implementation of EU Environmental Law as well as barriers to its enforcement. In 2012, the European Commission published a [Communication](#) on improving implementation and suggested that failure to fully implement environmental legislation costs the EU around €50 billion every year in health costs and direct costs to the environment. Improving the implementation of environmental law is a priority theme of the [7th \(current\) Environment Action Programme](#) of the European Union.

Project structure

IMPEL used a *questionnaire* to ask its members and other relevant networks and organisations to submit information on implementation challenges and how they might be overcome. It carried out a *survey* of relevant documents and held discussions with key officials in the European Commission on current problems and potential solutions. Finally, an expert-*workshop* further explored priorities and actions for more effective implementation. Findings were categorised into sectoral groups (water and land; waste and trans-frontier shipment of waste; industry and air; nature protection) and a cross-sectoral category.

Main findings

The project confirms that significant challenges remain in the implementation of EU environmental law. There is a considerable risk that key commitments, standards and targets in existing legislation will not be met unless progress is accelerated. The study highlighted a number of challenges relating to the implementation of EU environment law such as:

- Waste Framework Directive - achievement of waste targets
- Hazardous waste enforcement
- An integrated regulatory approach for the agriculture sector
- Permitting of installations to reflect Industrial Emissions Directive requirements (BAT Conclusions) and air quality standards
- Inspection and enforcement related to the Birds and Habitats Directives
- Water Framework Directive – achievement of ‘good ecological status’ (physical modification; over-abstraction; and pollution from diffuse sources).

The nature of the implementation challenges varies across different sectors and involves different problems and actors. Of the sectors that present the greatest challenges in implementation Waste Management was the most frequently cited, followed by Chemicals and Agriculture.

The results of the questionnaire show that there are some common underlying factors which are significant causes of poor progress with implementation. Approximately 60% of those who replied to the questionnaire expressed concern about a lack of resources in administrative bodies responsible for enforcing the legislation, including a lack of skills at the municipal level and insufficient capacity in the organisations responsible for environmental regulation and enforcement. Half of those who replied considered that there was insufficient data, evidence and information to support effective implementation. In addition there was frequent mention of inadequate sanctions and a low level of fines for those that breach the law.

These problems are often a consequence of factors related to political decision-making on resource allocation, the effectiveness of environmental governance systems in countries, and lack of awareness of the importance of environmental law in the judiciary.

Role of the IMPEL network

Working as a network of practitioners, IMPEL will shape its strategic priorities, networking and future work plans to address the project findings. There are several important things that IMPEL can do to overcome the barriers to effective implementation. Sharing of knowledge and good practice between countries and developing new approaches and techniques can help to apply scarce resources more efficiently and effectively.

It is clear that further effort needs to be put into improving communication and cooperation between organisations responsible for different parts of the implementation chain, including those responsible for environmental planning, permitting, monitoring, compliance promotion and assessment, enforcement, prosecution, and the judiciary. IMPEL will continue to play an important role in bringing together different actors and building relationships with other networks.

Future work: assessing progress in improving implementation

IMPEL will continue to identify challenges and raise awareness of the importance of effective implementation in Europe. The questionnaire survey should be repeated periodically in the future to assess progress in improving implementation. It could also be developed further to serve as a strategic risk assessment for particular areas and sectors.

2. Introduction

2.1 The Purpose of the Project

There is wide recognition of the extent to which countries sometimes face difficulties in implementing EU environmental legislation. The implementation gap in Member States may arise from failure to adequately transpose and apply EU law (for example, to invest in infrastructure or designate sufficient areas, etc.) or from inadequate enforcement of obligations on regulated entities. The 7th Environment Action Programme highlighted this as one of the key issues for improvement across Europe. The European Commission has engaged with the IMPEL Network on this topic as it is uniquely placed to understand the implementation challenges faced by practitioners and regulators across the European Union.

The purpose of this project was to analyse where there are remaining practical challenges in the implementation of EU environmental law and how IMPEL could help to address these challenges in a way that will also provide the greatest benefit to its members. Furthermore, by helping to define implementation challenges and possible solutions, this project should also make an important contribution to the evidence base for policy makers.

2.2 Project management

The project was designed and executed by a Project Team composed of representatives from IMPEL's member organisations. The work was supported by the use of a consultant. The project report was reviewed and approved by IMPEL's General Assembly.

2.2 Scope and Methodology

The project had four main components:

- i. A questionnaire-based survey of implementation challenges and possible solutions.
- ii. A desk study of available information relating to progress in implementing the EU environmental acquis.
- iii. Interviews with European Commission DG Environment policy units on implementation challenges concerning the main thematic areas of IMPEL's work.
- iv. A technical workshop bringing together experts on EU environmental policy and representatives from IMPEL's member organisations.

The questionnaire was divided into different sections both to make it easier to complete and to help to ensure that the findings were useful for IMPEL.

There was an initial section which provided an opportunity to make general comments on the overall implementation challenge while the rest of the questionnaire reflected the interests of the expert teams in IMPEL, namely Industry Regulation, Waste and Trans-frontier Shipment of Waste, Land and Water, Nature Protection and Cross-Cutting Tools and Techniques. The questionnaire also made it possible to identify challenges which affect all Member States and others which, due to geographical, systemic or historical reasons concern only specific groups of Members. In total, there were 36 responses to the questionnaire and a fairly even balance across the different categories. The responses were from IMPEL member organisations but also from other stakeholders and EU networks (*Annex 3*).

In the desk study (*Annex 4*) we examined a range of documents to look for insights into problems in implementing EU environmental law and possible solutions. These include:

- Reports and web-based information on the state of the environment, particularly those from the European Environment Agency (EEA).
- The 7th Environmental Action Programme and supporting documents.
- Reports and web-based information published by the European Commission on progress with implementing EU law.
- Reports on the Commission's programme of Regulatory Fitness and Performance ('REFIT')¹.
- Other related published material from consultancy and other studies.

We held meetings with key officials in the European Commission which provided further detail on their view of the implementation gap. The information from these meetings is included in the desk study.

On 20 and 21 November 2014 a workshop was hosted in Bristol which considered information already collected and which gave further perspective on implementation challenges (*Annex 5*).

¹ Communication from the Commission on Regulatory Fitness and Performance Programme (REFIT) state of play and outlook. COM (2014) 368, and Regulatory Fitness and Performance Programme (REFIT) state of play and outlook. COM (2014) 368. – Scoreboard. 11 September 2014.

3. The Nature of Implementation Challenges

Over the last forty years the implementation of EU environmental legislation has resulted in some significant improvements in the state of the environment, for example in improving water quality and reducing air pollution. This has contributed to a better quality of life for citizens across Europe. The EU's environment policy has also stimulated innovation and investment in environmental goods and services, generating jobs and export opportunities. However, there has been insufficient progress on legal commitments in some areas and there is a risk that agreed standards and targets will not be met.

There are different stages in the implementation of EU law and challenges and infringements can occur in each stage. The Commission defines these stages as:

- *Non-communication* – where infringements are opened if a Member State fails to notify legislation which transposes a specific directive before a deadline given in a directive.
- *Non-conformity* - where cases are opened if shortcomings are identified in the transposition of a given directive in a Member State.
- *Bad application* – where cases address shortcomings in the application of the transposed provisions of a directive by a Member State.

For the purposes of this project, 'challenges' in implementation were taken to be both process issues, such as promoting compliance with and enforcement of regulatory requirements, and environmental problems, such as environmental pollution and loss of natural habitats and species.

Implementation challenges can be seen to occur at three main levels of governance and organisation. In the lower tier these can involve day-to-day regulatory activities such as permitting and the use of general rules and prohibitions. Challenges can also occur in a middle tier which involves the setting of environmental objectives, designations and plans. Finally failures can also occur in a top tier which involves the drafting and implementation of national legislation which needs to ensure the enforceability of the legislation and the associated powers and rules on proof.

The nature of the specific implementation challenges varies in different sectors. In some cases, implementation problems stem from failures in effective environmental planning, for example in the River Basin Management Plans required by the Water Framework Directive. Failures may occur in compliance with specific standards and permit conditions, such as in the case of emissions from industrial processes and wastewater treatment plants. In some cases, such as in the waste sector there may be problems caused by organised crime. Each of these cases involves different kinds of actors.

The extent of the implementation challenge may depend in part on the attitude of those who are regulated.

This attitude can be on a spectrum from those who are fully compliant and champions of the regulations, who will clearly cause few problems, to those who are essentially criminals and who will be very high risk. In between, and with varying degrees of risk are those who are confused and careless about regulation to those who will get away with what they can, sometimes with social support.

Implementation challenges can also be identified in those bodies which are responsible for ensuring implementation. Ministries have the advantage of being close to the centre but this may also be a weakness and they may also have a conflict of interest, poor procedures and a lack of specialist skills. Environmental agencies will have the specialist skill sets but may suffer from a lack of resources and a tendency to work in particular silos and comfort zones. Local authorities will certainly have the strength of subsidiarity but the resources and specialist skills might be lacking and there is also a potential for conflict of interest.

This was reflected in the findings of the project which also revealed that the complexity and overlapping nature of some legislation could also create challenges as could differing interpretation between countries and the low level of fines. Inadequate data on enforcement could also be a problem.

4. Key findings on priority implementation challenges and how IMPEL could help to address them

This synthesis brings together relevant information from the various different aspects of this project – questionnaire survey, desk study, workshop, and interviews with the Commission – to identify the most important practical implementation challenges faced by regulatory authorities in countries and how IMPEL could help to overcome them.

Overall, it is clear that there is some way to go and much work still to be done to secure full implementation of the existing EU environmental *acquis*. Lack of progress with implementation can cause harm to the environment and human health, generate regulatory uncertainty for businesses and puts in question the level playing field of the Single Market. The long-term remediation costs – for example for clean-up of illegal waste sites and restoration of damaged habitats – can be much higher than the costs of prevention. A report prepared on behalf of the Commission’s DG Environment estimated that the costs of not implementing the environmental *acquis* are around 50 billion euros every year. These costs relate not just to environment, but also to human health impacts, for example, the medical costs and lost work days that can result from exposure to poor air quality.

In 2013 one quarter of all the 1300 open formal infringement cases against Member States across all policy areas were concerned with the application of environmental law, by far the largest number of all the policy areas. Environment continues to be an area which is subject to formal complaints by EU citizens. In 2013, the Commission received 520 complaints concerning the environment, the second highest of all the policy areas.

The analysis is structured according to the five main themes of IMPEL’s new work programme. Where there are generic issues that are relevant to all the themes these have been placed in the section on Cross-Cutting Approaches and Tools.

We have sought to identify how IMPEL could potentially help in addressing these challenges but bearing in mind that IMPEL does not have the expertise or the resources to cover all aspects of the challenges. IMPEL should play to its strengths and focus on the practical application of EU environmental law.

Water and Land

Legislation on water has been a key area of the *acquis* over the last forty years. This has driven significant investment in sectors including industry, agriculture and urban waste water treatment in Member States and resulted in major improvements in the state of the water environment. There is, nevertheless, a considerable way to go in achieving full compliance with existing water law, particularly in achieving the agreed goal of good status for all waters through the Water Framework Directive.

The European Environment Agency's (EEA) 2012 report on the status of Europe's waters and the Commission's assessment of the River Basin Management Plans suggest that good ecological status will be achieved in only just over half of the EU's freshwater bodies by 2015. Other pieces of EU Environmental legislation, such as the Marine Strategy Framework Directive, have a similar legal model in that they ask Member States to determine good quality standards and related targets and there is a common implementation strategy at the Commission level, etc. Consequently, improvements in the implementation of the Water Framework Directive could also be beneficial for other environment sectors.

Key implementation challenges:

- Diffuse-source pollution from agriculture.
- Over-abstraction of water (over-allocation of water resources; illegal abstractions).
- Continuing water pollution problems caused by inadequate investment and failing wastewater treatment and sewerage systems. High costs of installing and maintaining wastewater infrastructure.
- Monitoring and assessment of priority chemicals in water bodies.
- Physical modification of water bodies (affecting hydro-geomorphology/ good ecological status); restoration of water and wetland habitats.
- Regulation for soil protection.
- The environmental impacts of flood protection measures.

Ways in which IMPEL could potentially work to address these challenges:

- Mapping key organisations in countries responsible for water and land regulation and encouraging them to join the developing Water/ Land community within IMPEL.
- Developing close links with the Water Framework Directive Common Implementation Strategy (WFD CIS) framework and its technical groups. For example, linking the peer review process set up for river basin management plans by the WFD CIS and IMPEL's IRIs.
- Sharing best practice and development of best practice guidance on diffuse pollution plans and better cooperation between different authorities responsible for environment and agriculture regulation. Exchanging information on different approaches that have been tried and tested in some countries and could be extended to others, for example, catchment walking.
- Developing and applying licensing, inspection and enforcement approaches that better integrate environmental regulation with regulation of the agriculture sector (cross-compliance with the Common Agricultural Policy).
- Seeking opportunities for carrying out IRIs in the area of water, land and agriculture regulation.
- Sharing know-how on regulation of discharges from waste water treatment processes and urban drainage systems and re-use of treated wastewater.

- Sharing best practices in the area of regulation of soil protection (proposed Soils Conference in Italy would be an excellent starting point) and dealing with legacy issues of contaminated sites. Make links with Industry Expert Team on regulation of land contamination around Industrial Emissions Directive (IED) processes.
- Developing and testing risk-based monitoring, surveillance and inspection tools for targeting effort, for example, the use of established remote sensing techniques for the regulation of water resource abstraction.
- Sharing information on catchment-based approaches to flood risk management which look at the retention capacity of the landscape and thus minimise water runoff and limit irreversible soil erosion.

Waste and Trans-frontier Shipment of Waste

EU legislation concerning waste has developed over many years and provides a comprehensive framework for the management and regulation of waste in Europe. Information from recent assessments shows that there is still some way to go to fully achieve the agreed actions and targets in existing EU law on waste. A recent EEA study of the achievements of 32 European countries in the management of municipal solid waste points to a mixed outlook for the full implementation of the Waste Framework Directive. With regard to the Directive's target to achieve the recycling of 50% of municipal waste by 2020, the report concludes that although five countries have already achieved the target and another six countries will meet the target if they continue to improve their recycling rate at the same pace as in the period 2001 to 2010, the majority of countries will need to make an extraordinary effort to achieve the target by 2020. The increasing trend in the generation of hazardous waste and the gap between the amounts generated and treated continue to be of concern (17% of hazardous waste appears to be unaccounted for across Europe).

The rise in waste crime demands concerted enforcement action and coordination between regulatory authorities, particularly where this involves trans-boundary movements of waste.

Key implementation challenges:

- The definition of waste and achieving a common interpretation and level-playing field for end of waste, particularly where exports/ imports of materials are involved.
- Achievement of re-cycling targets in the Waste Framework Directive (and more stretching targets in the proposed amendment).
- Managing environmental impacts around closure/ after-care of landfill sites.
- Understanding and addressing hazardous waste that is unaccounted for.
- Dealing with specific problem issues, including end of life vehicles, waste electronic and electrical equipment, waste produced in hospitals, dismantling of ships, bio-waste, treatment and disposal

of contaminated soils (for example from oil industries) and management of sludge produced in urban waste water treatment plants.

- Compliance promotion in pre-treatment of waste.
- Inspection and enforcement of trans-frontier shipment of waste – requirement for inspection plans by 2017. Need for improved information and move to electronic recording.
- Growth in illegal activities and serious organised waste crime.
- Nuisance problems caused by poor management at waste sites, including dust, odours and litter.

Ways in which IMPEL could potentially work to address these challenges:

- Sharing best practice on waste regulation and enforcement and transfer of know how between countries that are making good progress and countries that are facing implementation challenges to help to improve overall level of compliance and achievement of required actions and targets.
- Working with others (EEA, European Commission, Eurostat) to contribute to improving understanding of the underlying reasons for unaccounted hazardous waste and how the problems can be tackled.
- Sharing information and best practice on specific problem issues, and establishing task teams for developing solutions.
- Continuing to develop an active international community of practitioners both within and outside the EU to deal with trans-frontier shipment of waste and further developing the intelligence-led systems and procedures for inspection and enforcement.
- Working with regulators and industry to develop improved electronic data systems for the tracking of waste generation, movement, treatment and disposal.
- Sharing best practice on stopping organised waste crime and coordinating action against waste criminals.
- Looking at how experience and practice already developed on TFS could benefit other areas of waste regulation and could be extended to other areas such as wildlife crime.

Nature Protection

The EU Biodiversity Strategy sets out targets and actions needed to halt the loss of biodiversity and the degradation of ecosystem services by 2020 and restore them as far as feasible. Assessments of the state of biodiversity in the EU show that biodiversity is still being lost, many ecosystems are seriously degraded, and there is a risk that the policy targets for biodiversity will not be met. There is still some way to go to secure the full implementation of the existing Birds and Habitats Directives.

The 7th Environmental Action Plan highlights poor progress on biodiversity legislation and status. For example, only 17% of species and habitats assessed under the Habitats Directive have favourable conservation status.

Key implementation challenges:

- Lack of progress in enforcement of the EU Birds Directive in achieving protection for key habitats and species in Natura 2000 sites through the Habitats Directive.
- Regulation of environmental pressures impacts arising from industry, agriculture, new developments and land use planning in and around nature protection areas designated under the Habitats Directive (particularly sections 6.3 and 6.4).
- Supporting the implementation of the EU Timber Regulation.
- Tackling wildlife crime.

Ways in which IMPEL could potentially work to address these challenges:

- Mapping key organisations in countries responsible for nature protection and regulation of sectors and activities affecting nature protection and building a ‘green’ community and programme within IMPEL.
- Developing integrated and risk-based tools and approaches for licensing, inspection and enforcement of installations and activities in and around Natura 2000 sites.
- Supporting capacity-building in implementing organisations through peer reviews, sharing of experiences and best practices, technical exchanges and training.
- Joining-up of inspection/
- enforcement between countries to address wildlife crime (also drawing on experience from coordination between countries in TFS), developing information and intelligence-led approaches and improving coordination between with environmental authorities, police, and customs.
- Seeking opportunities to make an input into the current ‘Fitness Check’ on nature legislation being carried out by the European Commission to ensure that it reflects the views and experience of practitioners in implementing organisations on progress with the implementation of EU wildlife law.

Industry and air

The regulation of emissions from industry has a long history in Europe and has been the subject of a series of EU Directives over the last forty years. Despite this, assessments of the impact of industrial emissions show that they are still causing significant damage to human health, ecosystems and the economy. For example, a recent study published by the European Environment Agency evaluated a number of harmful impacts caused by air pollution including premature death, hospital costs, lost work days, health problems, damage to buildings and reduced agricultural yields.

It concluded that air pollution from Europe's largest industrial facilities cost society at least €59 billion, and possibly as much as €189 billion in 2012. Half of these damage costs were caused by just 1% of the industrial plants.

Key implementation challenges:

- The effective implementation of the Industrial Emissions Directive (IED) and how this will overcome the legacy problems caused by historical bad application of the IPPC Directive.
- Conclusions on the definitions of Best Available Techniques (BAT) for different industry sectors through the IED that are practical, achievable and enforceable, and deliver a level playing field across Europe. Understanding how the ranges in emission limit values (ELVs) are applied in practice.
- Evaluating the impact of emissions from industries on ambient air quality and the achievement of ambient air quality standards, and the implications for setting ELVs (particularly in relation to Article 18 of the IED and the possibility of setting more stringent ELVs than defined by BAT in areas where environmental quality standards are exceeded).
- Soil contamination around IED installations and dealing with legacy problems caused by historical contamination.
- Implementing the public access to information provisions in the IED; improving information, public participation and transparency; sharing information on regulatory activities such as inspection reports with the public; improving the handling of complaints.

Ways in which IMPEL could potentially work to address these challenges:

- Continuing IMPEL's work on risk-based approaches and tools for the environmental regulation of industry - including licensing, inspection and enforcement – to enable more effective targeting of interventions and helping to ensure a level playing field across Europe.
- Further developing programmes to support capacity building in regulatory authorities, including through country visits and peer reviews (IRIs), carrying out joint inspections, and technical training.
- Sharing information and best practice on specific problem issues, and establishing task teams for developing solutions, for example, on improving industrial safety in relation to the requirements of the Seveso III Directive.
- Supporting the development of BAT definitions under the IED to ensure that they are practical and enforceable.
- Sharing information on the practical application of the IED provisions in different countries, including how the ranges in ELVs are applied in practice and how ELVs are set with respect to ambient air quality standards.

- Sharing information and best practices in addressing of soil contamination and dealing with historic contamination problems.
- Sharing of best practices and approaches for implementing public access to information requirements.

Cross-cutting tools and approaches

This section summarises implementation challenges and possible solutions that cut across IMPEL's work programme themes. It addresses the underlying causes of problems being experienced by IMPEL's member organisations and how organisations could work more effectively together to help each other.

Key implementation challenges:

- Dealing with the complexity of the *acquis* and potential conflicts between different areas of policy and legislation.
- Lack of political will and allocation of the necessary resources for environmental authorities to fully implement the *acquis*.
- Integrating and harmonising regulatory regimes across different environmental media and different sectors, for example nature protection, water and agriculture.
- Fragmented approach because of compartmentalisation of environmental issues through separate technical legislation.
- Insufficient capacity within implementing authorities (resources and technical competence) to deal with the technical complexity and administrative burden of regulatory requirements.
- Insufficient evidence and information for effective planning, operations and regulatory decision-making within environmental authorities.
- Responsibility for different parts of the regulatory chain being carried out by different authorities with different regimes and governance arrangements – planning, permitting, monitoring, inspection, enforcement and prosecution – and lack of effective coordination between them.
- Lack of coordination between authorities in countries on trans-boundary problems, and different approaches and standards leading to uneven playing field.
- Lack of awareness of the consequences of non-compliance and illegal activities and low-levels of fines and other sanctions that do not act as a deterrent.

Ways in which IMPEL could potentially work to address these challenges:

- Continuing to improve information and awareness on the state of implementation of EU environmental law.
- Proactively providing feedback from practitioners in the development of new/ revised EU policy and legislation, for example, by seeking opportunities to make an input to the Commission's

'REFIT' programme to provide a perspective from practitioners on what has worked/not worked on the ground and how the regulatory framework could be streamlined for the future.

- Mobilising information on which countries/organisations are performing well in what areas of the *acquis* and how interventions that have worked well in some countries could be shared more widely to benefit others. This could include a possible 'dating service' for peer to peer assistance based on informal dialogue and identification of problems/ solutions.
- Developing self-assessment tools and indicators to allow countries member organisations to measure progress with implementation and use this information to better target IMPEL's interventions.
- Extending and diversifying IMPEL's programme of peer reviews (IRIs) to include areas where specific implementation challenges are being encountered.
- Identifying gaps in technical competencies in environmental authorities to focus IMPEL's work on country support through technical exchanges, country visits, joint inspections, peer reviews and targeted training.
- Identifying critical gaps in knowledge, evidence and information needed for effective implementation and developing links with others, for example European Commission DG Research and Innovation and other EU Commission DGs, European Environment Agency, Eurostat to look at how these could be addressed.
- Helping to improve and/or integrate systems and tools for monitoring, data collection and reporting and dissemination of information, for example through the EU 'INSPIRE' Directive.
- Helping to improve awareness and cooperation between different authorities involved in the implementation chain, for example by workshops on specific problem areas involving environmental regulators, the police, customs, prosecutors and judges.
- Facilitating better cooperation between authorities in different countries on trans-boundary issues, building on experience with IMPEL's work on trans-frontier shipment of waste.
- Further developing links with the European Network of Prosecutors for the Environment and EU Forum of Judges for the Environment to promote awareness and improved coordination in strengthening implementation.
- Further developing links with other networks both within and outside the EU to explore innovative compliance and enforcement approaches and methodologies.
- Helping to identify follow-up surveys to assess progress in improving implementation.

5. General conclusions and recommendations

This project has confirmed that significant challenges remain in the implementation of EU environmental law in the thematic areas in which IMPEL is working: water and land; waste and trans-frontier shipment of waste; industry and air; and nature protection. There is a risk that key commitments, standards and targets in existing legislation will not be met unless progress is accelerated.

The nature of the specific implementation challenges varies in different sectors and involves different problems and actors. However, there are some common underlying factors which are significant causes of poor progress with implementation, including: lack of resources, insufficient capacity in the organisations responsible for environmental regulation and enforcement, and inadequate sanctions and low level of fines for those that breach the law.

These problems are often related to political decision-making on resource allocation, to the effectiveness of environmental governance systems in countries, and lack of awareness of the importance of environmental law in the judiciary. IMPEL can play a role in helping to identify problems and raise awareness of the importance of effective implementation, but it has no specific remit to intervene on policy issues in countries.

However, working as a network of practitioners there are many things that IMPEL can do to improve progress on the practical implementation of environmental law across Europe. This study has identified some important ways in which IMPEL can help to improve the sharing of knowledge and good practice between countries, develop new approaches and techniques to improve the efficiency and effectiveness of environmental regulation, and to improve communication and cooperation between different actors involved in compliance and enforcement.

It is recommended that IMPEL's five Expert Teams should consider the findings of this project to help to identify short-, medium- and long-term priorities in the respective programmes to focus IMPEL's work on specific practical implementation challenges and how these can be addressed. This should include for each programme: the shaping of strategic priorities (5 year-horizon); the development of the necessary communities of organisations and practitioners (1 to 3 year horizon); and the framing of specific priority projects (1 year horizon).

The Expert Teams need to ensure that a balance between strategic (top-down) priorities emerging from this study and (bottom-up) priorities identified by member organisations is achieved in the overall work programme.

Building on past achievements, further effort needs to be put into improving communication and cooperation between organisations responsible for different parts of the implementation chain, including those responsible for environmental planning, permitting, monitoring, compliance promotion and assessment, enforcement, prosecution, and the judiciary. IMPEL can play an important role in bringing together different actors in projects and building relationships with other networks within and outside the EU.

The questionnaire survey should be repeated in the future to assess progress in improving implementation. It could also be developed further to serve as a strategic risk assessment for particular areas and sectors. IMPEL should take over the ownership of the survey tools. The Expert Group on Cross-cutting Tools and Approaches could play a role in helping to identify follow-up surveys.

The findings from this study should be disseminated to a range of different audiences that have an interest in the implementation of EU environmental law, including: IMPEL member organisations, countries, regions, European Parliament, Commission (DG Environment and DG Research), Committee of the Regions, and other professional networks. IMPEL's Communications Group could help by developing a communications plan.

This study has addressed a very wide area of the EU environmental *acquis*. Further work could be done in the future to drill down into different thematic areas and sectors in more detail. Priorities for further assessment should be considered by the Expert Teams.

Annex 1 Terms of Reference

TOR Reference No.:	Author(s): Elen Strahle
Version: 1	Date: 12/08/2014

1. Work type and title

1.1 Identify which Expert Team this needs to go to for initial consideration	
Industry	<input type="checkbox"/>
Waste and TFS	<input type="checkbox"/>
Water and land	<input type="checkbox"/>
Nature protection	<input type="checkbox"/>
Cross-cutting – tools and approaches -	<input checked="" type="checkbox"/>
1.2 Type of work you need funding for	
Exchange visits	<input type="checkbox"/>
Peer reviews (e.g. IRI)	<input type="checkbox"/>
Conference	<input type="checkbox"/>
Development of tools/guidance	<input type="checkbox"/>
Comparison studies	<input type="checkbox"/>
Assessing legislation (checklist)	<input checked="" type="checkbox"/>
Other (please describe):	<input checked="" type="checkbox"/> The project will define the implementation gap and identify strategic issues for the IMPEL Network to focus Expert Team activities around

1.3 Full name of work (enough to fully describe what the work area is)
A view from practitioners on the implementation challenges with EU Environment legislation
1.4 Abbreviated name of work or project
The Implementation Challenge

2. Outline business case (why this piece of work?)

2.1 Name the legislative driver(s) where they exist (name the Directive, Regulation, etc.)	
<p>Improving implementation has been a key priority for the European Commission for some time. Compliance promotion and a reduction in infringements of EU Environmental Law is key to achieve improved implementation. The importance of better implementation has been highlighted by the recently published 7th EAP which sets the framework for EU Environment Policy for the next 6 years. The Commission has previously also published a communication on improving implementation of EU Environment law in 2012 and this suggested that failure to fully implement environment legislation cost the EU around €50 billion every year in health costs and direct costs to the environment. Improved implementation will not only protect human health and the environment but contribute to creating a level playing field for industry across EU Member States, aid job creation and support resolution of trans-national environmental issues. Identifying practical obstacles to implementation and eliminating them can reduce administrative burdens and reduce costs of implementation. IMPEL can make an important contribution by identifying the implementation challenges and also has an important role to play in developing practical approaches which can contribute towards closing these gaps. The IMPEL Network has an important role to play in identifying implementation challenges, its causes and possible remedies and are uniquely placed to do this from the view of practitioners.</p>	
2.2 Link to IMPEL MASP priority work areas	
<ol style="list-style-type: none"> 1. Assist members to implement new legislation 2. Build capacity in member organisations through the IMPEL Review Initiatives 3. Work on 'problem areas' of implementation identified by IMPEL and the European Commission 	<input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>

2.3 Why is this work needed? (Background, motivations, aims, etc.)

Many discussions have been held about the implementation challenges relating to EU Environment Legislation on a European and MS level. The 7th EAP has highlighted this as one of the key issues to improve across Europe. The European Commission has engaged with the IMPEL Network on this topic as it's uniquely placed to understand the implementation challenges faced by practitioners and regulators across the European Union.

This work will enable IMPEL to identify where and how to best focus its efforts on projects which will deliver the greatest value to its members. By defining the implementation gap and possible remedies this work will also make an important contribution to the evidence base for policy makers.

2.4 Desired outcome of the work (what do you want to achieve? What will be better / done differently as a result of this project?)

Identify implementation challenges faced by IMPEL Members in order to better understand how best to focus the IMPEL work programme on key issues. For this it seems necessary to first identify those categories of implementation challenges which IMPEL is able to influence with its work, and focus on them. Within those categories, a distinction should be made between challenges which affect all Member States and others which, due to geographical, systemic or historical reasons concern only specific groups of Members. The project will also ensure we better understand where and how to best support members in order to improve implementation of EU Environment Legislation. It is important to distinguish between practical problems caused by lack of technical know-how, approaches, methodology and political problems caused by lack of political will such as transposition issues and lack of resources. We, as IMPEL, need to focus on where IMPEL can help and make a difference. We must gain insight in where the problems do occur across Europe. Are they common problems across all countries, or are some problems or challenges specific to a particular region or group of countries. Where is there potential for IMPEL to help in sharing knowledge, best practice and tools to help countries to improve compliance.

2.5 Does this project link to any previous or current IMPEL projects? (state which projects and how they are related)

This work links to previous work done by the IMPEL Task Group and previous work done for the Multi Annual Strategic Work Programme (MASP).

3. Structure of the proposed activity

3.1 Describe the activities of the proposal (what are you going to do and how?)

1. **Desk Top Exercise** – review key existing documents to inform the drafting of a questionnaire and interview questions. This will also define key stakeholders and appropriate people to engage with or within IMPEL/Commission and other associated networks dealing with implementation issues (Prosecutors Network/ Heads of EPA Network/ENCA). **To be conducted by the consultant**
2. **Questionnaire/Interviews** – These will be structured on two levels: on a systemic level (MS/Commission/MiW and other Networks) and on a Local level, addressing in particular practitioners of environmental authorities working in the field. **Questionnaire and guidance to be drafted by the consultant. Interviews not covered in the current quotation but may be with additional funding – however some interviews need to be done by project team members which will be discussed in Iceland.**
3. **Workshop** - to share results of interviews/questionnaire and to further discuss the appropriate focus for the IMPEL work programme going forward. **Workshop currently not covered in the consultant quotation for (€10,000). However, additional funding could mean this could be covered also. Facilitation and preparation will need to be supported by project team in particular the logistics.**
4. **Analysis** – this will identify key implementation challenges and define the focus for the continued work of the IMPEL Network. It can also identify key issues which can support continued collaboration between the IMPEL and other key European Networks such as the Heads of EPA network/ENCA/Prosecutors Network. **To be done by the consultant.** The project team will act as a q/a and approve/guide format of this.
5. **IMPEL Engagement** – Discussions of preliminary results to be held at the General Assembly in Rome.
6. **Report writing** – The report will be prepared by the consultants along the lines determined by the project team. The project team will act as a sounding board to ensure the report is fit for purpose.
7. **IMPEL approval** – Report to be circulated to IMPEL Members by written procedure to ensure appropriate engagement with IMPEL members and their organisations.

3.2 Describe the products of the proposal (what are you going to produce in terms of output / outcome?)

A report highlighting key implementation challenges and a draft work programme of suggestions for appropriate projects for the IMPEL Network Expert Teams. Identify common problems and challenges with implementation across the EU and identify groups of countries with similar problems

to identify where there is potential for IMPEL to help sharing knowledge and best practise to improve compliance. It will also give strategic input for the work plan for 2016 and beyond.

3.3 Describe the milestones of this proposal (how will you know if you are on track to complete the work on time?)

An overview of planned activities are detailed below:

1. Planning activities – end of Aug
2. Defining the work – end of Aug
3. Engaging Consultants – end of Aug
4. Conduct Desk based research and analysis – End of Sep
5. Draft Questionnaire – End of Sep
6. Identify stakeholders for interviews and prepare guidance –Early Sep
7. Circulate questionnaire & interviews – Mid October
8. Interviews with the Commission – End Sep
9. Interviews with IMPEL Members – End Sep
10. Workshop – First week of November
11. Conduct Analysis and write up results – October-November
12. Report complete – Early 2015

3.4 Risks (what are the potential risks for this project and what actions will be put in place to mitigate these?)

1. Scope creep – clear boundaries will be set around what areas we will review this includes focusing on practical implementation issues only and areas which are relevant to the IMPEL Network e.g. TFS/Waste, Industry Regulation, Land and Water, Nature and cross cutting (Inspections, Enforcement, compliance) and which IMPEL can influence and improve by its work.
2. Tight timescales for delivery – this will be managed by recruiting two additional team members to the project team and by engaging a consultant to support the team
3. Reluctance of national experts to uncover existing difficulties/implementation issues in their national administration for fear of ‘blame and shame’ or infringement procedures. Clear assurances will be give that individual questionnaire responses will be anonymised and responses will be treated confidentially and that findings reported will not be linked to individual authorities or Member States.
4. Difficulties in separating implementation challenges resulting from domestic Member State legislation and challenges arising from EU Legislation.

4. Organisation of the work

4.1 Lead (who will lead the work: name, organisation and country) – this must be confirmed prior to submission of the TOR to the General Assembly)
Chris Dijkens (Netherlands)
4.2 Project team (who will take part: name, organisation and country)
1 Kristina Rabe (Germany) 2 Elen Strahle (UK) 3 Allison Townley (UK) 4 Chris Dijkens (Netherlands) 5 Henk Ruessink (Netherlands)
4.3 Other IMPEL participants (name, organisation and country)
4.4. Other non-IMPEL participants (name, organisation and country)
Heads of EPA Network/Prosecutors Network (ENPE)/Commission/Water Directors/ENCA

5. High level budget projection of the proposal. In case this is a multi-year project, identify future requirements as much as possible

	Year 1 (exact)	Year 2	Year 3	Year 4
How much money do you require from IMPEL?	2,250			
How much money is to be co-financed	25,000			
Total budget	27,250			

6. Detailed event costs of the work for year 1

	Travel € (max €360 per return journey)	Hotel € (max €90 per night)	Catering € (max €25 per day)	Total costs €
<u>Event 1</u>	€9000	€2,250	1,000	
<i>Workshop</i>				
<i>Third week of October</i>				
<i>Berlin/Bristol</i>				
<i>25</i>				
<u>Total costs for all events</u>	€9,000	€2,250	€1,000	

7. Detailed other costs of the work for year 1

7.1 Are you using a consultant?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
7.2 What are the total costs for the consultant?	€15,000
7.3 Who is paying for the consultant?	IMPEL/Germany/Netherlands
7.4. What will the consultant do?	<ul style="list-style-type: none"> • Do the analysis of selected documents and reports • Prepare texts for communication • Prepare and design the questionnaire • Facilitate the workshop with selected stakeholders to discuss the draft outcome of the research and the project report

7.5 Are there any additional costs?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Namely:
7.6 What are the additional costs for?	N/A
7.7 Who is paying for the additional costs?	N/A
7.8. Are you seeking other funding sources?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Namely:
7.9 Do you need budget for communications around the project? If so, describe what type of activities and the related costs	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Namely:

8. Communication and follow-up (checklist)

	What		By when
8.1 Indicate which communication materials will be developed throughout the project and when <i>(all to be sent to the communications officer at the IMPEL secretariat)</i>	TOR ^{✓*}	<input checked="" type="checkbox"/>	End of August
	Interim report ^{✓*}	<input checked="" type="checkbox"/>	Mid October
	Project report ^{✓*}	<input checked="" type="checkbox"/>	Spring 2015
	Progress report(s) [✓]	<input checked="" type="checkbox"/>	Sep 2014 and Dec 2014
	Press releases	<input checked="" type="checkbox"/>	
	News items for the website ^{✓*}	<input checked="" type="checkbox"/>	April 2015
	News items for the e-newsletter	<input checked="" type="checkbox"/>	April 2015

	Project abstract [∨] *	<input checked="" type="checkbox"/>	
	IMPEL at a Glance [∨]	<input type="checkbox"/>	Early Nov
	Other, (give details):	<input checked="" type="checkbox"/>	Trade press in 2015
8.2 Milestones / Scheduled meetings (for the website diary)			
8.3 Images for the IMPEL image bank	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
8.4 Indicate which materials will be translated and into which languages	None (to be reviewed if required)		
8.5 Indicate if web-based tools will be developed and if hosting by IMPEL is required	No		
8.6 Identify which groups/institutions will be targeted and how	The Commission IMPEL Members Heads of EPA Members Policy makers in European Member States		
8.7 Identify parallel developments / events by other organisations, where the project can be promoted	BRIG Meeting 30 October Heads of EPA Plenary meeting in spring 2015 Make it Work project dates not identified		

[∨]) Templates are available and should be used. *) Obligatory

9. Remarks

Is there anything else you would like to add to the Terms of Reference that has not been covered above?

Annex 2 Questionnaire

Questionnaire – understanding the challenges in implementing European environmental law and where IMPEL can help in overcoming them

Introduction

What is this questionnaire for?

The questionnaire is aimed at improving understanding of the **practical challenges** that are faced by organisations responsible for applying the requirements of EU environmental legislation on the ground in countries and seeks the views of practitioners on how IMPEL could help to address them. The information will then be used by IMPEL's Expert Teams to help to focus IMPEL's work programme and to identify specific projects and activities.

When we refer to 'challenges' in implementation we mean both process issues, such as promoting compliance and enforcement of regulatory requirements, and environmental problems, such as environmental pollution and the loss of natural habitats and species.

During the development of IMPEL's new strategic direction it became clear that we need to gain a better understanding of barriers to effective implementation to help us focus effort and resources for the future. It was agreed that a project should be initiated to identify the most important challenges and how IMPEL could help to overcome them. This questionnaire is a key part of this project.

We fully appreciate the scale of the challenges faced by implementing organisations. Many have seen their budgets reduced over recent years and availability of resources is a key issue. This is not something that IMPEL can resolve itself. However, there are many things that IMPEL can do to support professionals in their work, for example, sharing know-how and expertise, producing methodology and guidance, facilitating cooperation between agencies. The questionnaire is therefore aimed at identifying the most important things that IMPEL can realistically do with the limited resources that it has at its disposal.

This questionnaire is an **informal** exercise. It is intended to assist IMPEL to formulate its work programme in a way that will help overcome implementation challenges. It is ***not*** intended to be an audit or comparison of relative performance of different countries in implementing EU environmental law. Nor is it aimed at identifying political issues concerned with the transposition of EU legislation and reporting to the European Commission. These are matters for the official channels between Member State representatives and the European Commission, and not for IMPEL.

Target audience for the questionnaire

The questionnaire is aimed at gathering the views of **practitioners** on implementation challenges so that IMPEL can better support practitioners in the future. It will be distributed via IMPEL's National Coordinators. It is important that Coordinators seek the views of organisations in their countries that are directly responsible for the practical application of environmental regulation. These may be environmental protection agencies and regional and local authorities. As organisational arrangements differ widely from country to country, we leave it to National Coordinators to determine the best way of getting a representative sample of views from practitioners.

Confidentiality

The value of this questionnaire depends upon respondents being open and honest in their responses. We want to provide an opportunity for practitioners to share the challenges that they face in a non-threatening environment. We will therefore fully respect the confidentiality of respondents where they tell us that they do not wish their responses to be made public and quoted in the project report. We would, of course, welcome information and examples that can be shared and from which we can all learn, but we will not identify specific countries or organisations where they ask us not to.

How can IMPEL contribute to more effective implementation?

IMPEL has an important role to play in identifying implementation challenges, its causes and possible remedies and is uniquely placed to do this from the view of practitioners.

There are several important ways in which IMPEL can help strengthen the implementation of environmental law in Europe, including:

- *helping countries get to compliance more quickly*, for example, by sharing knowledge, skills and good practices, and carrying out peer reviews (IRIs);
- *helping implementing organisations use their limited resources more effectively*, for example, by producing technical guidance and promoting the use of risk-based approaches to target effort;
- *coordinating action between countries*, for example, in the enforcement of regulations to tackle illegal trans-frontier movements of waste;
- *facilitating communication between different actors and networks*, for example, prosecutors, judges and ombudsmen; and
- *informing policy* with practical experience and expertise.

Structure of the questionnaire

The questionnaire is structured to look at implementation challenges through several different 'lenses':

- the *four thematic areas* of the new work programme that IMPEL is now progressing as part of its new strategic direction. We would of course ask you to complete in these sections only those areas of work which are relevant to your organisation:

- Industry regulation
- Waste and Trans-frontier Shipment of Waste (TFS)
- Water and Land
- Nature protection

- *cross-cutting* implementation issues through the *regulatory cycle*, including: permitting, compliance promotion, inspections, enforcement, prosecutions.

- *trans-boundary issues* and cooperation on improving implementation across borders.

- the *coherence between environmental legislation and other sectors* and opportunities for *streamlining and smarter regulatory approaches*.

The importance of real-life case examples

The value of the information from this questionnaire will be greatly enhanced if respondents can give specific real-world examples of areas where implementation challenges are being encountered in their countries. This will help others to better understand the nature of the challenges and how the IMPEL community can help to address them. So, respondents are asked to be specific in their answers and, wherever possible, to provide clear examples from which others can learn. Case material can either be included in the answers to the questionnaire, or attached as an annex.

Questionnaire

Please answer questions as concisely as possible, giving specific examples and making reference to relevant EU legislation wherever possible. If you wish to submit more detailed technical information on case examples that you think would contribute to the objectives of this project, please append it to the questionnaire or provide it in a separate file.

1. Details of respondent and organisation

Question 1.1: Name, job title and role, and contact details of respondent?

Question 1.2: Brief details of the role of your organisation?

Question 1.3: Is your organisation responsible for environmental regulation for the following areas (please mark check box if yes)?

- | | |
|-------------------|--------------------------|
| Industry | <input type="checkbox"/> |
| Waste and TFS | <input type="checkbox"/> |
| Water/ Land | <input type="checkbox"/> |
| Nature Protection | <input type="checkbox"/> |

Question 1.4: Where your organisation is not responsible for any of the four areas above can you please indicate which organisations are responsible in your country?

Question 1.5: Is your organisation responsible for the following roles (please mark check box if yes)?

- | | |
|--|--------------------------|
| Environmental planning | <input type="checkbox"/> |
| Environmental permitting | <input type="checkbox"/> |
| Compliance promotion and assessment | <input type="checkbox"/> |
| Environmental monitoring | <input type="checkbox"/> |
| Environmental assessment and reporting | <input type="checkbox"/> |
| Inspections | <input type="checkbox"/> |
| Enforcement | <input type="checkbox"/> |
| Environmental prosecutions | <input type="checkbox"/> |
| Judging of environmental court cases | <input type="checkbox"/> |

2. Industry regulation

IMPEL has a long history of working to improve the regulation of industry across Europe and has already produced a significant body of technical guidance and methodology to support regulatory organisations and professionals. Examples include recommendations on minimum criteria for inspections and the development of risk-based approaches for targeting inspections. However, significant challenges remain in implementing major pieces of legislation, such as the Industrial Emissions Directive. Emissions to air and air quality are also recognised as a key area in which IMPEL could develop its work programme. Industry regulation will therefore remain an important part of IMPEL's strategic direction over the forthcoming years

Key existing legislation relating to industry regulation includes:

- Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) – the 'Industrial Emissions Directive'.
- Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community (and subsequent amendment Directives) – the 'EU Emissions Trading Scheme' (EU ETS);
- Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from Large Combustion Plants;
- Directive 2001/81/EC on national emissions ceilings for certain atmospheric pollutants;
- Directive 2008/50/EC on ambient air quality and cleaner air for Europe.
- Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances (the 'Seveso III Directive').

A new 'Clean Air Policy Package' with proposals for new measures and Directives on national emission ceilings, emissions from medium-sized combustion plants and on long-range trans-boundary air pollution was also adopted in December 2013.

Question 2.1: What are the main outstanding challenges concerning the environmental regulation of industry in your country/ region?

Question 2.2: Are there specific industry sectors and processes that present greater challenges than others?

Question 2.3: What are the key challenges in the control of emissions to air and their impact on ambient air quality?

Question 2.4: What are the main underlying reasons and causes of problems in achieving the requirements of relevant EU legislation (please mark check box)?

- Unclear aims and objectives
- Unclear technical specifications and definitions
- Insufficient evidence, data and information
- Inadequate technical understanding and knowledge
- Insufficient capacity in regulatory institutions
- Disproportionate costs

Please state any other major reasons that do not appear in the list above:

Question 2.5: How could IMPEL help regulatory organisations and professionals address and overcome implementation challenges in industry and air quality regulation?

- Sharing knowledge, skills and good practice
- Providing technical guidance
- Coordinating action between countries
- Facilitating communication between different networks
- Informing policy with practical experience and expertise

3. Waste and trans-frontier shipment of waste regulation

IMPEL has a long history of working to improve regulation of trans-frontier shipment of waste (TFS) and has achieved significant success in bringing together organisations and professionals from many different organisations across Europe to tackle problem areas. In developing IMPEL's strategic direction it was recognised that whilst TFS will remain a critical area of IMPEL's work there are other important aspects of waste regulation that need urgent attention. IMPEL's work on waste will therefore be broadened to include other priority implementation issues.

Key existing EU legislation relating to the regulation of waste and trans-frontier shipment of waste includes:

- Directive 2008/98/EC on waste and repealing certain Directives - the 'Waste Framework Directive'.
- Directive 1999/31/EC on the landfill of waste.
- Directive 2000/76/EC on the incineration of waste.

- A range of Directives on waste originating from consumer goods, including: packaging and packaging waste (94/62/EC); batteries and accumulators (2006/66/EC); end of life vehicles (2000/53/EC); waste electrical and electronic equipment (2002/96/EC).
- Regulation (EC) No 1013/2006 on shipments of waste and Regulation (EU) No 660/2014 amending Regulation (EC) No 1013/2006 on shipments of waste.
- Directive 2011/70/Euratom establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste.
- Regulation (Euratom) No 1493/93 on shipments of radioactive substances between Member States.
- Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel.
- Directive 2006/21/EC on the management of waste from extractive industries.

Question 3.1: What are the main outstanding challenges concerning the regulation of waste and TFS in your country/ region?

Question 3.2: Are there specific sectors, activities and processes that present greater waste regulation challenges than others?

Question 3.3: What are the main underlying reasons and causes of problems in achieving the requirements of relevant EU legislation (please mark check box)?

- | | |
|--|--------------------------|
| Unclear aims and objectives | <input type="checkbox"/> |
| Unclear technical specifications and definitions | <input type="checkbox"/> |
| Insufficient evidence, data and information | <input type="checkbox"/> |
| Inadequate technical understanding and knowledge | <input type="checkbox"/> |
| Insufficient capacity in regulatory institutions | <input type="checkbox"/> |
| Disproportionate costs | <input type="checkbox"/> |

Please state any other major reasons that do not appear in the list above:

Question 3.4: What are the most important things IMPEL could do to help regulatory organisations and professionals address and overcome the implementation challenges in the regulation of waste and trans-frontier shipments of waste?

- | | |
|---|--------------------------|
| Sharing knowledge, skills and good practice | <input type="checkbox"/> |
| Providing technical guidance | <input type="checkbox"/> |

Coordinating action between countries

Facilitating communication between different networks

Informing policy with practical experience and expertise

4. Water and land regulation

IMPEL has carried out some projects related to water and land regulation in the past but it has not hitherto been a major theme in IMPEL's programme. In developing IMPEL's strategic direction for the future it was recognised that there are major implementation challenges in EU water and land legislation and IMPEL could play an important part in addressing them.

It was also recognised that there are important links between water and land, particularly in the successful delivery of the river basin management plans that are required by the Water Framework Directive, and Directives aimed at the protection of groundwater and reducing pollution from nitrate from agriculture. It was for this reason that the decision was taken to introduce a new theme and Expert Team aimed at addressing water and land issues in an integrated way.

Key existing EU legislation relating to the regulation of water and land includes:

- Directive 2000/60/EC establishing a framework for Community action in the field of water policy – the 'Water Framework Directive'.
- Directive 2007/60/EC on the assessment and management of flood risks.
- Directive 91/271/EEC concerning urban waste water treatment.
- Directive 98/83/EC on the quality of water intended for human consumption.
- Directive 2006/7/EC concerning the management of bathing water quality.
- Directive 2008/56/EC establishing a framework for Community action in the field of marine environmental policy – the 'Marine Strategy Framework Directive'.
- Directive 2008/105/EC on environmental quality standards in the field of water policy.
- Directive 2006/118/EC on the protection of groundwater against pollution and deterioration.
- Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources.

Question 4.1: What are the main outstanding challenges concerning water/ land regulation in your country/ region?

Question 4.2: Are there specific sectors, activities and processes that present greater water/land regulation challenges than others (examples might include: diffuse pollution from agricultural or urban sources; point source discharges from industry and wastewater

treatment plants; physical modification of the natural water environment; over-abstraction of water; and flooding – but there are many other kinds of pressures that may give rise to problems)?

Question 4.3: What are the main underlying reasons and causes of problems in achieving the requirements of relevant EU legislation (please mark check box)?

- Unclear aims and objectives
- Unclear technical specifications and definitions
- Insufficient evidence, data and information
- Inadequate technical understanding and knowledge
- Insufficient capacity in regulatory institutions
- Disproportionate costs

Please state any other major reasons that do not appear in the list above:

Question 4.4: What are the most important things IMPEL could do to help regulatory organisations and professionals address and overcome the implementation challenges in the regulation of water/ land?

- Sharing knowledge, skills and good practice
- Providing technical guidance
- Coordinating action between countries
- Facilitating communication between different networks
- Informing policy with practical experience and expertise

5. Nature Protection

Halting and reversing the loss of biodiversity by 2020 is a key policy objective within the EU. The implementation of EU nature legislation (the Birds and Habitat Directives) is essential to achieve this target, but it is widely recognised that implementation and enforcement need to be improved. Only 17% of both species and habitats of importance are currently in favourable condition. Nature legislation is the source of a relatively high number of complaints and infringement procedures.

In developing its future strategic direction, IMPEL has recognised the potential contribution it could make to improving the implementation of nature protection legislation, particularly by applying its experience in regulation, inspection and enforcement. Nature protection was included as a new theme and an Expert Team has been established to take this work forward. Projects on the illegal killing of wild birds, and nature protection in permitting and inspection of industrial installations are in progress.

Key existing EU legislation relating to nature protection includes:

- Directive 2009/147/EC on the conservation of wild birds.
- Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora – the ‘Habitats Directive’.

A ‘Fitness Check’ on nature protection legislation has also been initiated by the European Commission.

Question 5.1: What are the main outstanding challenges concerning nature protection regulation in your country/ region?

Question 5.2: Are there specific sectors, activities and processes that present greater nature protection regulation challenges than others?

Question 5.3: What are the main underlying reasons and causes of problems in achieving the requirements of relevant EU legislation (please mark check box)?

- | | |
|--|--------------------------|
| Unclear aims and objectives | <input type="checkbox"/> |
| Unclear technical specifications and definitions | <input type="checkbox"/> |
| Insufficient evidence, data and information | <input type="checkbox"/> |
| Inadequate technical understanding and knowledge | <input type="checkbox"/> |
| Insufficient capacity in regulatory institutions | <input type="checkbox"/> |
| Disproportionate costs | <input type="checkbox"/> |

Please state other major reasons that do not appear in the list above:

Question 5.4: What are the most important things IMPEL could do to help regulatory organisations and professionals address and overcome the implementation challenges in nature protection regulation?

- | | |
|---|--------------------------|
| Sharing knowledge, skills and good practice | <input type="checkbox"/> |
| Providing technical guidance | <input type="checkbox"/> |
| Coordinating action between countries | <input type="checkbox"/> |
| Facilitating communication between different networks | <input type="checkbox"/> |

Informing policy with practical experience and expertise

6. Cross-cutting implementation challenges through the regulatory cycle

Much of IMPEL's work in the past has concentrated on regulatory approaches and techniques. Regulatory checklists and projects such as 'Doing the right things' have looked at processes through the whole regulatory cycle. In IMPEL's new programme structure a theme and a new Expert Team have been included to take forward work on cross-cutting approaches and techniques.

Question 6.1: Are there specific problems or difficulties in the processes within the regulatory cycle that create particular barriers to effective implementation of EU environmental law in your country/ region- including: permitting, compliance promotion, inspections, environmental monitoring, compliance assessment, enforcement, and prosecution?

Question 6.2: What are the main underlying reasons and causes of problems in achieving the requirements of relevant EU legislation (please mark check box)?

Unclear aims and objectives

Unclear technical specifications and definitions

Insufficient evidence, data and information

Inadequate technical understanding and knowledge

Insufficient capacity in regulatory institutions

Disproportionate costs

Please state any other major reasons that do not appear in the list above:

Question 6.3: What are the most important things IMPEL could do to help regulatory organisations and professionals address and overcome the implementation challenges in nature protection regulation?

Sharing knowledge, skills and good practice

Providing technical guidance

Coordinating action between countries

Facilitating communication between different networks

Informing policy with practical experience and expertise

7. Trans-boundary implementation challenges

Many environmental processes and issues are trans-boundary in nature and effective environmental regulation depends upon technical cooperation between countries. IMPEL's work on TFS is a good example of how the Network can bring together organisations in different countries to tackle problems that extend beyond the borders of individual countries. The project on 'enforcement actions', for example, has demonstrated the power of the network in sharing intelligence and coordinating operations to crack down on environmental crime.

There are other major areas of environmental legislation that also require trans-boundary approaches, for example, the management of river basins that may cross several countries, long-range transport of air pollution, chemicals, and wildlife crime. There may be an important role for IMPEL in extending its work on trans-boundary environmental issues for the future.

Question 7.1: What are the main outstanding implementation challenges in your country that require trans-boundary approaches and technical cooperation with other countries?

Question 7.2: Are there specific implementation problems in your country that are caused by differences in approach or standards across borders with other countries?

Question 7.3: What are the most important things IMPEL could do to help regulatory organisations and professionals address and overcome trans-boundary implementation challenges?

- Sharing knowledge, skills and good practice
- Providing technical guidance
- Coordinating action between countries
- Facilitating communication between different networks
- Informing policy with practical experience and expertise

8. Coherence within environment and between environment and other sectors

Lack of coherence between legislation on different aspects of environmental regulation and between the environment and other socio-economic sectors is often cited as a source of implementation problems. For example, actions taken to mitigate or adapt to a changing climate can create other kinds of environmental impacts.

A recent review by the European Court of Auditors on regulation in the agriculture sector pointed to a lack of join-up between regulation connected to the Common Agricultural Policy (cross-compliance) and other areas of environmental regulation (water, nature protection). The European Commission has recently encouraged IMPEL to look at the

possibility of developing guidance that delivers more integrated and streamlined regulatory approaches across sectors.

Question 8.1: Are there specific implementation challenges in your country that are caused by lack of coherence or conflicts between different areas of environmental regulation?

Question 8.2: Are there specific implementation challenges in your country that are caused by lack of coherence or conflicts between environmental regulation and regulation that applies in other sectors?

Question 8.3: Do you see opportunities for improved efficiency and better regulation by adopting more integrated approaches to regulation across different sectors?

Question 8.4: What are the most important things IMPEL could do to help regulatory organisations and professionals address and overcome implementation challenges caused by lack of coherence between different sectors?

- Sharing knowledge, skills and good practice
- Providing technical guidance
- Coordinating action between countries
- Facilitating communication between different networks
- Informing policy with practical experience and expertise

9. Concluding questions

Question 9.1: Overall, what are the top 3 most important implementation challenges facing your organisation right now?

Question 9.2: Are there any other implementation issues in your country that you think are important but have not been covered in previous questions in this questionnaire?

Question 9.3: Is your organisation happy to be named in the list of organisations to have taken part in this questionnaire that will be included in the report (please mark check box if yes)?

Question 9.4: Is your organisation happy for us to cite any specific information or examples that you have given in the report (please mark check box if yes), either:

- **Anonymously:** **or Named:**

THANK YOU VERY MUCH FOR YOUR PARTICIPATION IN THIS QUESTIONNAIRE – IT IS GREATLY VALUED!

Annex 3 Summary of responses to the questionnaire

The questionnaire is at Annex 2. It was circulated widely to encourage a broad response.

There were 38 replies in total. The respondents came from organisations with a good balance of responsibilities as can be seen from this table.

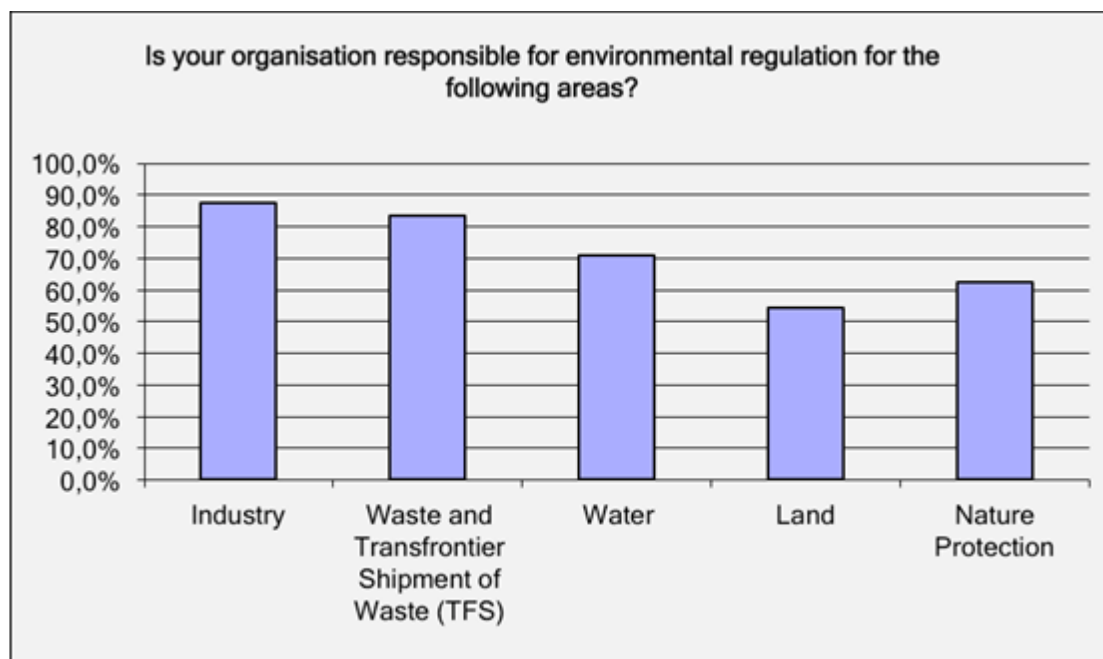


Figure 3.1 Areas of environmental regulation for which respondents' organisation has responsibility

1. Overall Implementation Challenges

While there is relatively little concern over the clarity and purpose of EU environmental legislation, there are concerns about perceived overlaps between legislation. The overlaps occur between pieces of environmental legislation and also with other areas of legislation, such as agriculture and spatial planning. One respondent referred to different interpretation and levels of enforcement between countries with many parties having different roles and another thought that some Small and Medium sized Enterprises (SMEs) were not implementing legislation properly. For some, there is a problem over the low level of fines being imposed which are failing to act as a deterrent. In one case, a lack of knowledge of the law was mentioned as a problem and changes in legislation added to the difficulties of enforcement.

A lack of resources was mentioned by some respondents, in particular in the area of enforcing the legislation. There was particular mention of a lack of skills at the municipal level with a suggestion that resources were being spread too thinly.

Of the sectors that that present the greatest challenges in implementation Waste Management was the most frequently cited, followed by Chemicals and Agriculture. Other areas mentioned include Flood prevention, Iron and Steel, Glass, Pulp and Paper, Cement and Ambient Air Quality.

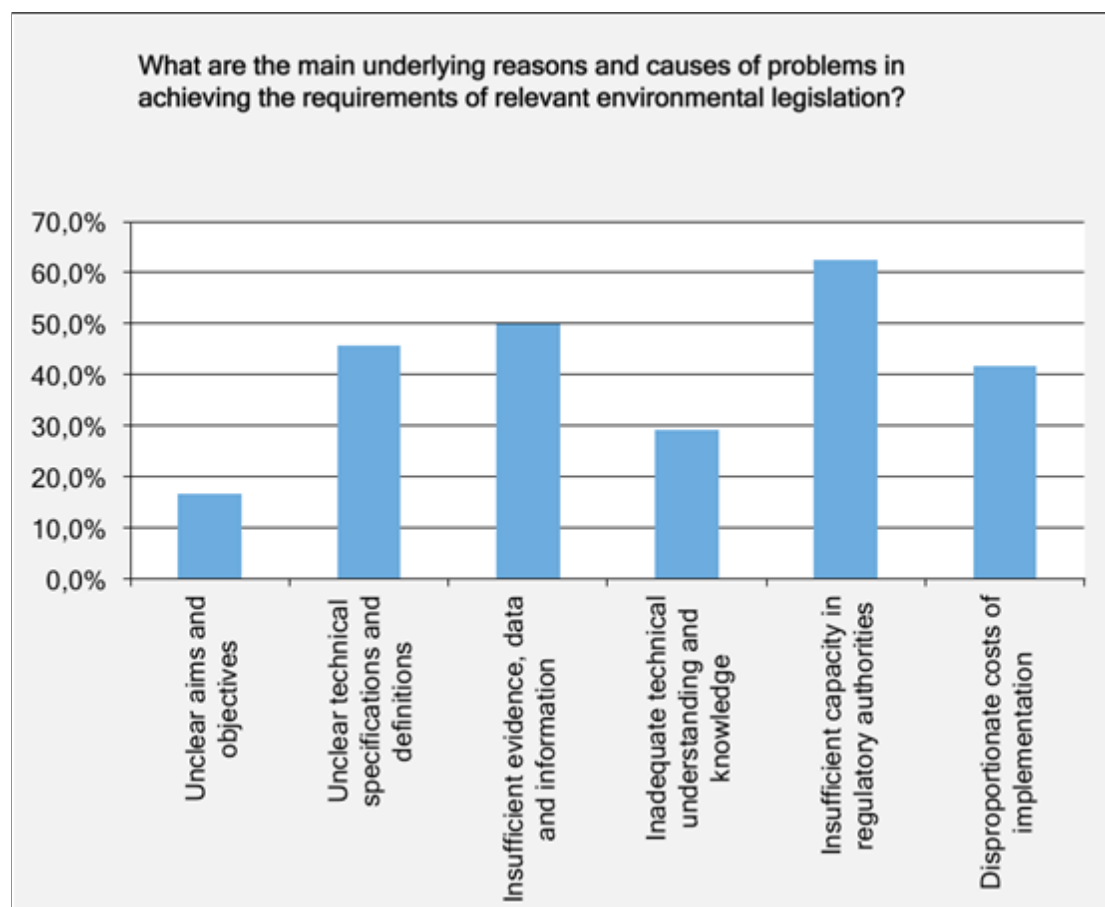


Figure 3.2 Main underlying reasons and causes of problems in achieving requirements of relevant environmental legislation

The table shows that the main underlying reason is insufficient capacity in regulatory authorities (mentioned by over 60%), followed by insufficient data, evidence and information on 50%. Unclear aims and objectives is the least mentioned reason.

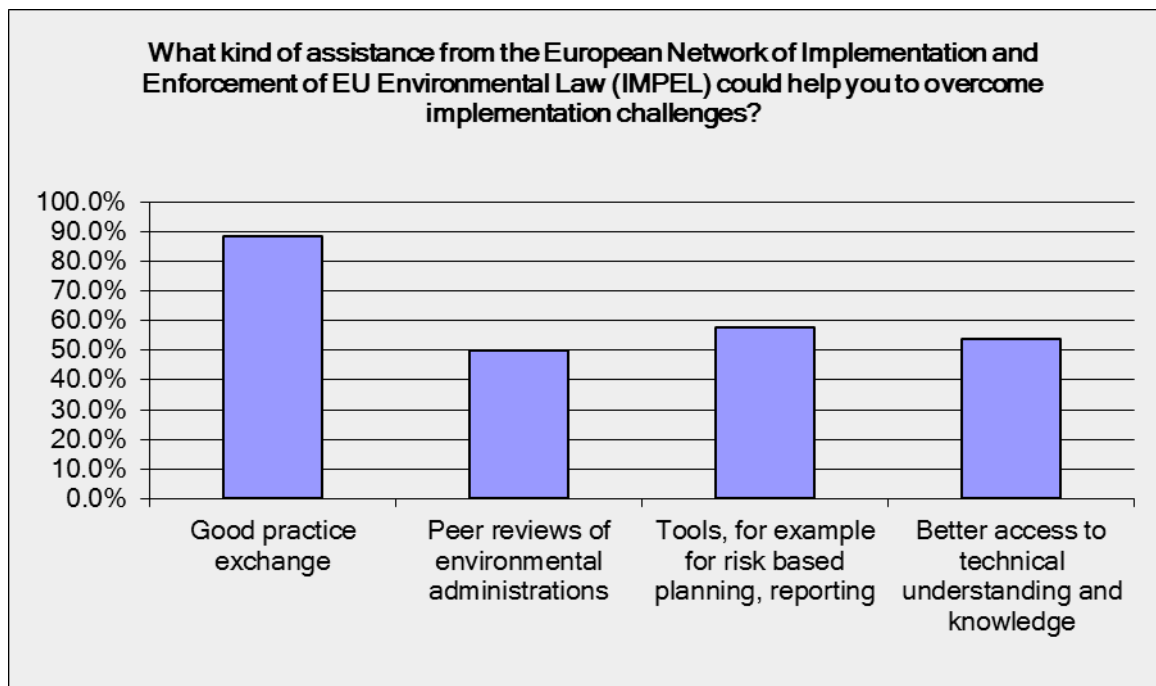


Figure 3.3 Potential assistance from IMPEL to help overcome implementation challenges

This table shows that the exchange of good practice was seen as the most useful overall assistance that IMPEL could provide, with the support for the other types of assistance being all roughly 50%.

2. Environmental Regulation of Industry

The main concern here is over the implementation of the Industrial Emissions Directive. One made the point that implementation timescales for EU legislation are unrealistic. Another mentioned difficulties over the inspection plans for IED and Seveso III with a particular problem being a lack of resources for inspections and a lack of trained staff. Best Available Techniques reference documents (BREFs) were a problem, not least because the BREFs were not always available in languages other than English.

Several specific industry sectors were mentioned though none stands out especially. These included metallurgy, poultry and pig farming, food and drink, onshore oil and gas regulation cement and chemicals. Revised BAT conclusions for the glass/cement sector are setting challenging emission limit values which will feed into derogations that the relevant companies will apply for.

On the question of emissions to air, traffic is identified as a major source though it was noted that industry is required to fit more abatement equipment. There is a trade-off between abatement and CO₂ emissions given that increased abatement uses more energy and generating that energy creates more CO₂.

Odour is also an issue. One saw SO₂ emissions as a problem given that coal with high sulphur content was burnt and there was a delay in the construction of desulphurisation plants. Another raised a point about Emission Limit Values which for installations not covered by IED require site specific controls depending on location, scale and nature of the installation and are not set in legislation. Furthermore, there is not a direct and transparent relationship between ELVs and ambient air quality and the frequency of sampling can be different from one region to another.

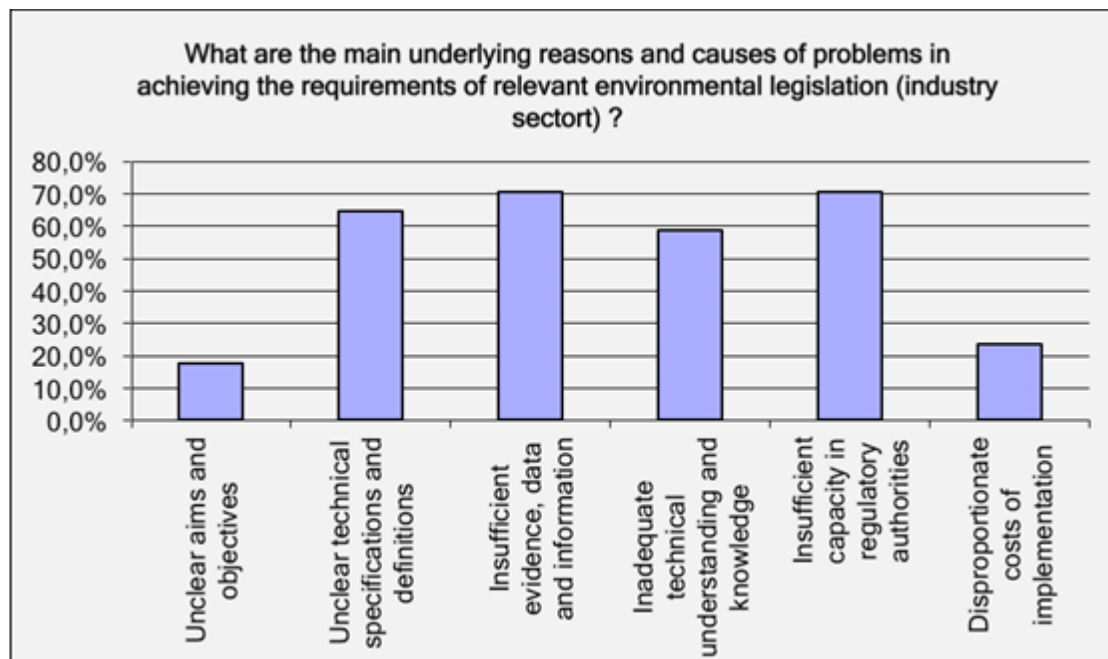


Figure 3.4 Main underlying reasons and causes of problems in achieving the requirements of relevant environmental legislation (industry sector)

This table shows that in the industry sector there is a fairly even balance between the reasons for problems in implementation, except that few people cited unclear aims and objectives (just under 20%) or disproportionate costs of implementation (just over 20%). The principal reasons, both on 70%, are insufficient evidence, data and information, and insufficient capacity.

Possible IMPEL work on Environmental Regulation of Industry

The most common suggestion was IMPEL should continue to provide opportunities for exchange of good practice. Some also suggested combined inspections and training programmes. A forum to discuss ongoing and newly developing challenges was suggested as were conferences on specific topics. The peer reviews (IRI) were seen as helpful too. A particular suggestion was made for running a project on treatment and disposal of contaminated soil.

3. Waste and Transfrontier Shipment of Waste (TFS)

A major issue identified is the question of the definition of waste. Some countries have a different interpretation of what they see as waste. Importation of end of life vehicles as second hand cars and waste electronic and electrical equipment as second hand electrical equipment was mentioned. Also there are differing standards which can change regularly and which make it difficult for competent authorities and industry to know what standards are required in any given country. Policies in countries outside the EU can also change and there is no specific mechanism for countries outside the EU to notify the Commission of requirements in that country. For example, plastic waste which is minimally contaminated may no longer be accepted.

Most TFS work is completed using notifications on paper or by email. A live tracked system would be beneficial to both industry and regulators and would help ensure the timeliness and correctness of information. Currently there is a lack of electronic data interchange dedicated to the management and exchange between the relevant parties of information and documentation related to waste shipments.

There is a transition in the waste industry from mostly disposing by landfill to treatment and recovery and there is a challenge in ensuring that operators have the right technical and financial competency to manage the change in risk profile.

Some Member States face disadvantages associated with small size and remoteness. Waste exporters lack choice in finding the right shipping line to export the waste from one country to another for further treatment. These problems are compounded in those countries which are islands and which have no alternative means of transport such as road or rail, which could result in higher costs to transport the waste to an authorised facility abroad.

Poor management of dangerous waste (contaminated soil) from oil industry, in particular in the field of oil exploitation was mentioned. Some companies did not give an appropriate level of priority to environmental issues and requirements. There is a challenge too with prosecution: sometimes a mistake is made in some part of the chain of regulations and in the end the evidence is not sufficient for a conviction.

Several specific examples were mentioned as being among the major challenges. End of waste and regulation of waste issues including end of life vehicles, waste electronic and electrical equipment, waste produced in hospitals, dismantling of ships and management of sludge produced in urban waste water treatment plants. Waste management sites cause problems in terms of poor performance, notably non-compliance with regulations relating to dust, odour and noise. Growth in bio waste treatment presents challenges to ensure that operators have the right equipment and technical competency to operate processes satisfactorily.

Few actual examples were provided of actual implementation challenges encountered. One mentioned a lack of cooperation between the various stakeholders in the shipment of waste together with a legal ambiguity relating to different definitions for the same terms across EU waste legislation. Another mentioned a particular case involving 100,000 tonnes of contaminated soil from historical sites of oil exploitation (hazardous waste) which were treated by chemical and bioremediation processes. The outputs of the treatments were disposed of into an industrial landfill which is not complying with Landfill Directive requirements. The samples taken from landfill showed high concentrations of TPH (total petroleum hydrocarbons) above established limit. The investigation found that the permit for treatment installation did not set a limit for TPH for treated waste. There are no limits established by national legislation for this type of treatment of waste.

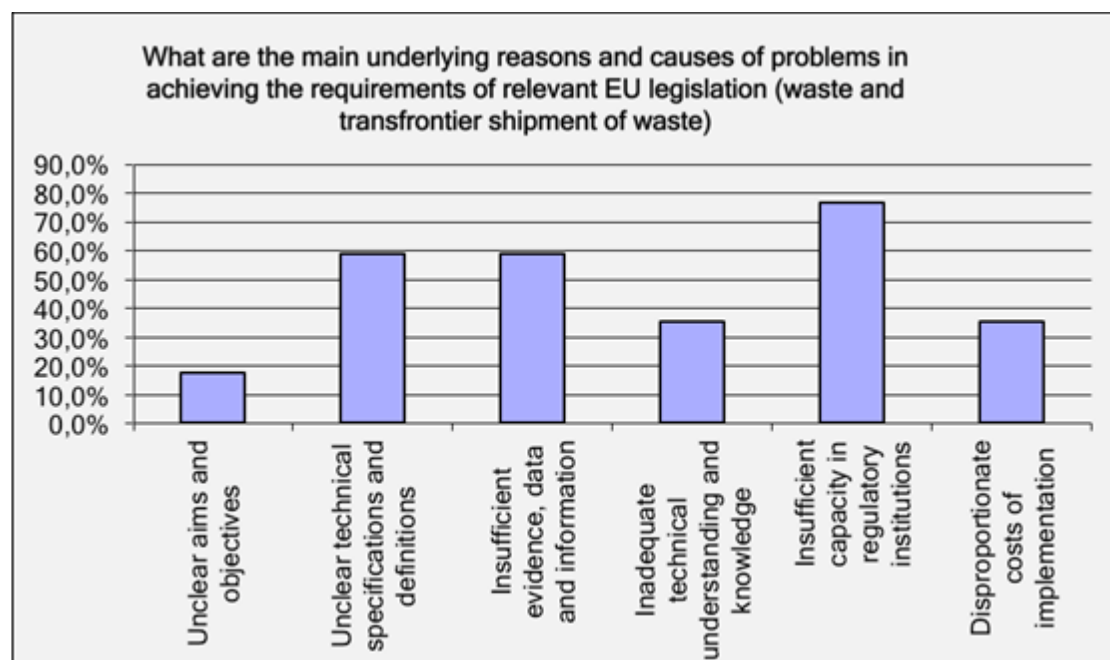


Figure 3.5 Main underlying causes of problems in achieving the requirements of relevant EU legislation (waste and transfrontier shipment of waste)

Insufficient capacity is the main cause mentioned here (nearly 80%). 60% of respondents mentioned unclear technical specifications and definitions while under 20% mentioned unclear aims and objectives.

Possible IMPEL work on Waste and Transfrontier Shipment of Waste

For possible IMPEL work in this area, the most frequently mentioned were information exchange and the identification of good practice. There should be expert technical groups to help address and overcome technical challenges and the interpretation of regulations together with continuing support for the implementation of the Basel Convention. Common manuals on procedures were also suggested.

It would be helpful to share best practice on stopping organised waste crime and to coordinate action against waste criminals. One suggestion was to have a project on treatment and disposal of contaminated soil and another thought it would be useful to share good practice on regulating small scale nuisance sites.

4. Water/Land Regulation

Diffuse pollution from agriculture was mentioned as a challenge by several respondents and one said that they were reviewing regulatory controls as a result. One mentioned nitrates in groundwater and strengthening biodiversity by improving passability in rivers and streams. Water abstraction is a problem and the regulation of water rights needs to become more flexible to meet pressures from population growth and climate change. One saw this problem as linked to intensive land use of a limited land area. Contaminated storm water run-off was also a problem.

One said that specialist skills and know-how in the water sector is limited and that there is sometimes an incomplete understanding of regulatory roles and the responsibilities of different regulatory authorities. Part of the problem was a lack of historical monitoring data and scientific research.

A concern was expressed over the large quantity of legislation which increases complexity in the enforcement activities. The growing trend of reusing treated wastewater is posing doubts as there is a lack of knowhow and this kind of practice is difficult to assess/evaluate and control.

Flood protection measures were causing difficulties in one area where the main approach taken is to increase the capacity of the channels and to accelerate water runoff, which only pushes the problem further downstream. It was seen as preferable to improve the retention capacity of the landscape and thus minimise water runoff and limit irreversible soil erosion.

Waste water treatment was often the responsibility of municipalities which sometimes lacked funding: indeed, overall costs for monitoring, reporting and general administration regarding water were seen as high. Furthermore, infrastructure was sometimes old and there were problems with leakage.

The funding of the remediation of contaminated sites is an issue.

A specific sector mentioned by several people is hydromorphological changes of the river structures together with dams for hydropower. Diffuse sources of pollution were also commonly cited. One respondent suggested that there should be better engagement with the farming community to implement the Nitrates Directive and also that there was scope for improving river basin management.

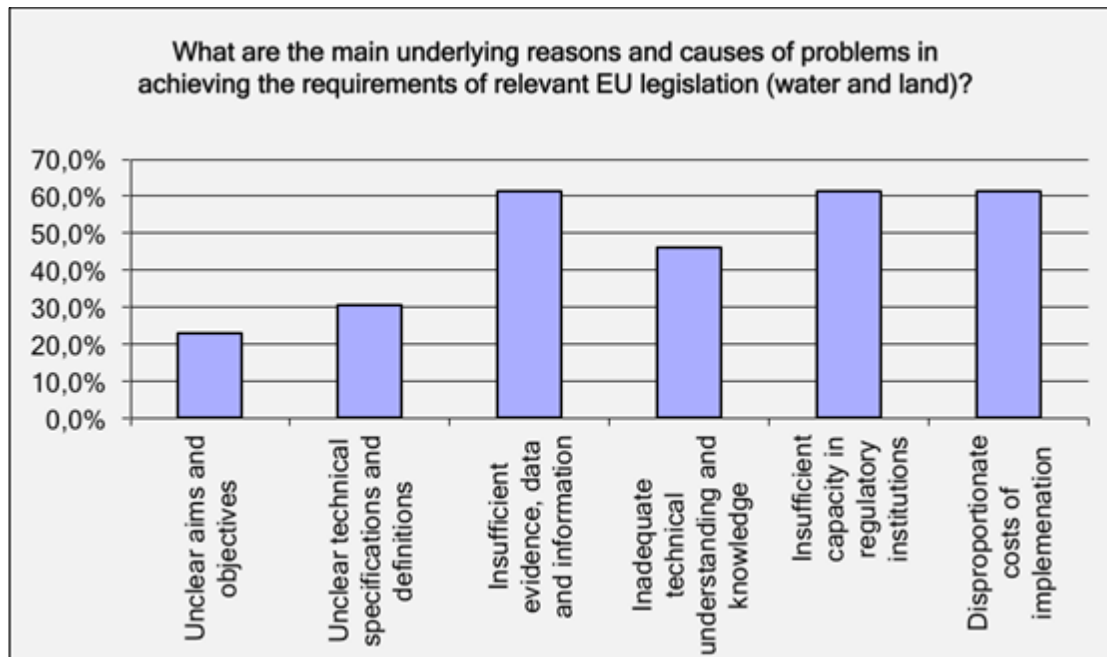


Figure 3.6 Main underlying causes of problems in achieving the requirements of relevant EU legislation (water and land)

The main issues identified in this table are insufficient evidence, data and information; insufficient capacity; and disproportionate cost of implementation which are each mentioned by over 60%. The least important is unclear aims and objectives which is mentioned by just over 20%.

Possible IMPEL work on Water/Land Regulation

Several respondents suggested that IMPEL should share good practice in these areas, with one proposing that IMPEL should develop the evidence base to show the cost and effectiveness of different regulatory tools. Some identified a need for professionals in the water sector to develop their knowledge and skills and IMPEL would be able to help with that. There was a suggestion too that IMPEL could assist in building networks between comparable member countries that are susceptible to similar problems. A further proposal was for IMPEL to identify innovative approaches to regulation (e.g. satellite remote sensing to assess compliance levels) and share understanding and knowledge of how this may be put into operational practice.

5. Nature Protection

There was slightly less of a consistent theme in terms of the challenges on Nature Protection. In one case the issue was intensive hunting and poaching and loss of habitats (though this latter was mentioned by others as well). There was also mention of links to other Directives such as Environmental Impact Assessment (EIA) and Environmental Liability.

One mentioned that there are challenges concerning the management of some Natura 2000 sites. These are mainly the sites in the mountain regions where the local population wants to develop different activities like tourism and the NGOs on the other hand have the view that no activities at all have to be developed there.

Another saw conflicts with physical/spatial planning regulations and also with land use (exploitation and development). There was a lack of cooperation at a national level between authorities – especially for cases concerning the protection of species. There are connections between nature protection regulation and water regulation, but inspectors and desk officers who handle cases often do not have detailed knowledge of both regulations.

Particular areas mentioned included raised bogs and peatlands, forestry, hunting and intensive agriculture. Another challenge mentioned is the balance between the protection of the natural environment with the conflicting economic, social and cultural requirements. An issue was the lack of public awareness and insufficient understanding of legislative procedures as well as which species are protected and why restrictions apply. This was linked to a need for a committed coordinated front on the part of the various key entities involved in order to ensure implementation of Nature law.

For actual examples, one mentioned that, in the field of nature, there are no definite or clear lines since everything is based on scientific interpretation which is different. There are few norms or standards as there are for example for the industrial sector (BREFs, BAT, risk criteria etc.) There are also seen to be overlaps, ambiguities and grey areas between the different directives.

One respondent mentioned a lack of staff and of understanding and experience which contribute to the lack of assessment on the minimisation and compensation measures. There was a lack of specific conditions imposed by the permits regarding Nature Conservation and also the lack of a systematic risk evaluation to provide knowledge about the real effect of the activities over Nature Conservation interest sites. Such conditions would also help establish obligations on the operators concerning Nature Conservation interests whenever there is a protected site near the installation.

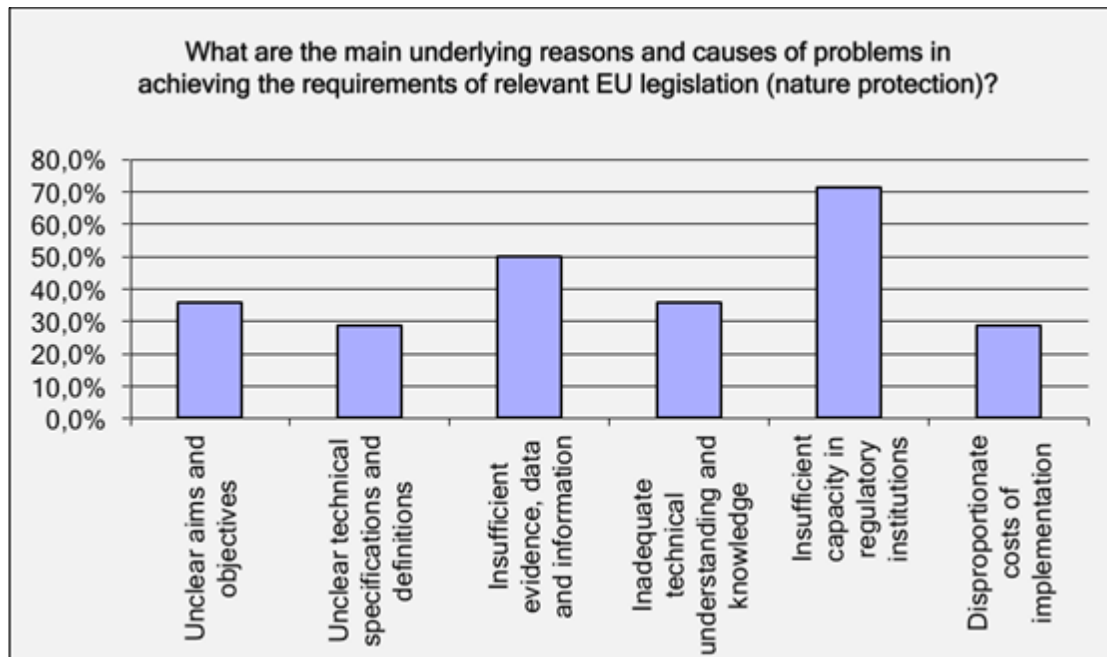


Figure 3.7 Main underlying causes of problems in achieving the requirements of relevant EU legislation (nature protection)

The main cause identified here is insufficient capacity, mentioned by just over 70%. Nothing else is over 50% though insufficient evidence, data and information is on 50%. Interestingly, unclear aims and objectives are the next highest on 35%.

Possible IMPEL work on Nature Protection

IMPEL could help by assisting regulatory bodies in terms of capacity building with for example training and providing information exchanges on the implementation challenges faced and the measures taken to tackle such challenges. Guidance could be developed to support the assessment of impact on species and habitats. IMPEL's work on illegal killing of birds could be expanded to cover other species and it should help to develop an EU network of green enforcement agencies, departments and organisations.

One respondent raised the question of how to measure the loss of habitat area and to analyse its impact and how then to use that information in decision-making. How should favourable status of the conservation of habitats and species be assessed and who should supply the necessary information? A database on nature conservation in all member states would provide an opportunity to share information.

6. Cross-cutting implementation challenges through the regulatory cycle

There was a feeling that enforcement and prosecution processes and cooperation needed more development, in particular with strengthening of knowledge of the police regarding environmental rules and objectives. Another identified common problems as being the lack of information, large turnover in the workforce, and a lack of funding and political support. In one case the Inspectorate was not the permitting authority and there was a need to improve the cooperation with the permitting authorities, namely the exchange of information using IT tools, in order to share the data in a more effective way. Environmental legislation is often questioned and can be in conflict with other interests (e.g. business, spatial planning/development). In addition inspectors and permit-writers may have insufficient knowledge about the often extensive regulations and their implementation.

The compartmentalisation of environmental issues and objectives through separate technical legislation was seen as resulting in a fragmented approach to environmental protection which limited the possibility to adopt a holistic and integrated approach to environmental assessment. Monitoring regimes for pollutants differ across Europe as do standards. If flexibility of implementation across and within member states should be allowed (for example, prescribing one element of the regulatory cycle such as frequency inspection, rather than allowing the MS implementing legislation to choose the most appropriate interventions according to circumstances). Member States should be able to make choices to enable them to help achieve EU (and their own) environmental objectives with optimum use of their capacity and resources.



Figure 3.8 Main underlying causes of problems in achieving the requirements of relevant EU legislation (cross-cutting implementation challenges)

In this table, the main challenges are in insufficient capacity (75%) and insufficient evidence, data and information (70%).

Possible IMPEL work on Cross-cutting challenges

There were several suggestions about the identification and exchange of good practice. Assistance with training would also be useful, in particular for staff involved with environmental assessment staff to help them to integrate environmental considerations into sectoral plans and decisions. One mentioned a possible broader focus on issues concerning protection and "reset" of river systems. There were challenges regarding protection of rivers (among others, to protect salmon, trout and other species, and to protect the landscape/nature in general). There was a question of how to reset rivers/river system that for many years had been in a not sufficient condition because of different users (especially power plants that cause low water flow, among others). Several authorities and interest groups were involved in these issues, so it is a little complex matter to deal with, and it would be useful to share good practice. There was also mention of the value of Peer Reviews.

7. Trans-boundary challenges

The River Rhine was mentioned for TFS and the River Danube mentioned for water pollution, TFS and the Danube Delta. Indeed, waste movements were mentioned by several respondents. One mentioned that the main challenges they faced were international regulations that were different, a lack of traceability for waste and the fact that many parties and companies were involved in the waste cycle which might each have a different agenda. Another cited the Water Framework Directive, Industrial Emissions Directive and safety issues related to Nuclear Installations. While they had no nuclear installations themselves there were some in a neighbouring country and at least one of them was close to the border.

Few specific implementation challenges were identified. One mentioned cross border consultation during the EIA process and taking account of the points of view expressed in the neighbouring country. Another said that some countries have not fully implemented the WEEE Directive and that there were problems with return shipments.

Possible IMPEL work on Transboundary Challenges

IMPEL could promote information exchange and a list of national contact points to facilitate information exchange between its members. Another wanted to create a platform for the development of tools and exchange of information which would also provide an opportunity to give feedback to the Commission on implementation problems. A further suggestion was for IMPEL to promote better join up between prosecutors in different states, and between regulators and prosecutors within states (possibly jointly with the European Network of Prosecutors for the Environment).

8. Implementation challenges caused by lack of coherence or conflicts between different areas of environmental regulation

Generally, there seemed to be few common themes in this area and overall there was little sense of a lack of coherence or conflicts. One mentioned a lack of harmonisation between inspection for air, water and waste. Another said that the complexity and extent of the regulations, with many different authorities active in different areas, meant that there were many opportunities for improvement in efficiency and information exchange. The problem of mainstreaming environmental requirements into other policy areas and decisions taken by other sectoral public authorities/departments was mentioned. Specific issues included the question of how to balance the objectives of the Water Framework Directive against BAT, the contradiction between achieving renewable energy targets and Natura 2000 legislation and diffuse ground pollution through agricultural practices. There was mention too of aquaculture and fish farming, because of the complexity of the regulations and the fact that several authorities were involved in both permitting and inspections.

One respondent said that there were too many reporting requirements and differing reporting cycles, for example within water legislation: there should be commonality between data reporting periods and the way releases are reported.

For lack of coherence with regulation in other sectors, several mentioned the conflict with physical and spatial planning. Some mentioned the approaches of individual ministries (environment, transport, agriculture, regional development). They might have a different view of woods, watercourses or protected areas of nature conservation or communications (roads, railways), or other priorities in the use of agricultural land – e.g. support of afforestation or uncontrolled (production only) restoring grassland regardless of the value of natural habitats. Another gave the example of ambient air quality and emission limit values for vehicles.

Opportunities for a more integrated approach included making sure that the different sectors are aware of environmental obligations, in particular sharing responsibility for environmental protection across sectors. One respondent said that improved sharing of responsibility for environment protection is required across sectors, together with improved understanding that sectoral decisions could result in irreversible environmental damage and/or the opportunity to address recurring and emerging environmental issues. Another had recently started a project in cooperation with the agriculture authorities to try to establish a more coordinated system for inspection: it was possible that permitting would be included later in this process. A further suggestion was for there to be a joined up approach at an EU legislative level and a greater consistency of outcomes and objectives, while allowing member states to develop effective approaches.

Better integration of environmental issues within all sectors of the economy is needed.

It was suggested that if measures were taken to ensure that environmental aspects were included from as early stages as possible when planning industrial facilities, infrastructure, residential areas etc. efficiency and a much improved implementation of the environmental regulations would most likely be achieved.

Few actual examples were quoted. One said that air inspectors did not know when colleagues from water or waste were on site. Another mentioned that the shutdown of old and polluting installations created many social problems as well as energy security issues.

Possible IMPEL work on lack of coherence or conflicts between different areas of environmental regulation

Several respondents suggested that IMPEL could help by identifying and sharing good practice and peer reviews were also mentioned. One suggested that it was important to focus on IMPEL's main objectives and to make a careful prioritisation of focus areas in the new Expert Teams as human resources for participation in projects were often limited.

Furthermore it was important that the work of IMPEL be conducted in a transparent way and that the members of IMPEL make more use of the project results and also improve their communication regarding the work being conducted.

One suggestion was to review data reporting requirements and protocols adopted by other regulators across the environmental acquis to identify where improvements could be made to report environmental data in the simplest and least burdensome way. Also it would be useful to identify areas where EU legislation needs to be updated to realise the benefits that modern digital technology can bring to the collection, reporting and access to environmental emission data

Annex 4 Desktop survey of relevant documents

Desk study on progress in implementing EU environmental law and outstanding challenges

1. Approach

This desk analysis of relevant reports and information sources is a key component of the project to identify Implementation Challenges. We have examined a range of documents to look for insights into problems in implementing EU environmental law and possible solutions. These include:

- Reports and web-based information on the state of the environment, particularly those from the European Environment Agency (EEA).
- The 7th Environmental Action Programme and supporting documents.
- Reports and web-based information published by the European Commission on progress with implementing EU law.
- Reports on the Commission's programme of Regulatory Fitness and Performance ('REFIT')².
- Other related published material from consultancy and other studies.

The implementation gap in Member States may arise from failure to adequately transpose and apply EU law (for example, to invest in infrastructure or designate sufficient areas, etc.) or from inadequate enforcement of obligations on regulated entities. This analysis considers both these aspects to provide the context for considering practical implementation problems and how IMPEL could help to overcome them.

The analysis first considers information on overall progress with implementation and then looks at the five main themes in IMPEL's work programme: water and land; waste and trans-frontier shipment of waste (TFS); nature protection; industry and air; and cross-cutting approaches and tools.

² Communication from the Commission on Regulatory Fitness and Performance Programme (REFIT) state of play and outlook. COM (2014) 368, and Regulatory Fitness and Performance Programme (REFIT) state of play and outlook. COM (2014) 368. – Scoreboard. 11 September 2014.

2. Overall progress in implementing EU environmental law

Over the last forty years the implementation of EU environmental legislation has resulted in some significant improvements in the state of the environment, for example in improving water quality and reducing air pollution. This has contributed to a better quality of life for citizens across Europe. The EU's environment policy has also stimulated innovation and investment in environmental goods and services, generating jobs and export opportunities³.

However, there has been insufficient progress on legal commitments in some areas and there is a risk that agreed standards and targets will not be met. In its 2010 European Environment State and Outlook report⁴, the European Environment Agency (EEA) concluded that "the EU appears to be locked in a number of status-quo and downward trends which are moving away from, rather than toward, sustainability".

The European Commission has stressed the importance of effective implementation of agreed legislation and the need to improve the delivery of benefits from environmental measures⁵. It concludes that delayed or inadequate implementation harms the environment and human health, generates regulatory uncertainty for industry and puts in question the level playing field of the Single Market. The long-term remediation costs – for example for clean-up of illegal waste sites and restoration of damaged habitats – can be much higher than the costs of prevention. A report prepared on behalf of the Commission's DG Environment⁶ estimated that the costs of not implementing the environmental *acquis* are around 50 billion euros every year. These costs relate not just to environmental but also to human health impacts, for example, the medical costs and lost work days that can result from exposure to poor air quality.

³ The economic benefits of environmental policy (IES, Vrije Universiteit Amsterdam, 2009); COM(2012) 173; Implementing EU legislation for Green Growth (BIO Intelligence Service 2011).

⁴ The European environment. State and outlook 2010 – Synthesis. European Environment Agency, 2010.

⁵ Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness. Commission Communication. COM (2012) 95 Final, 7 March 2012.

⁶ The costs of not implementing the environmental *acquis*. Consultants' report prepared for European Commission, DG Environment, ENV.G.1/FRA/2006/0073, September 2011.

2.1 Infringements of EU environmental legislation

The Commission publishes summary information on the number of infringements against EU law. It is not really possible to gain a good understanding of the underlying causes of implementation problems as the details of individual cases are not freely available for obvious legal reasons. However, the summary data do provide some insight into the areas and sectors in which problems are being encountered by Member States.

The most recent (31st) annual report from the European Commission on monitoring the application of EU law⁷ provides an assessment of the state of play on the different stages of implementation including transposition, infringements and steps being taken to resolve problem areas. It covers all areas of EU law, but does make some references to environmental law. (The Commission has, in the past, produced reports specifically concerning the implementation of environmental law⁸, but this has not been done recently and these assessments are now somewhat out of date).

Environment continues to be an area which is subject to formal complaints by EU citizens. In 2013, the Commission received 520 complaints concerning the environment, the second highest of all the policy areas.

At the end of 2013 there were 1300 open formal infringement cases against Member States across all policy areas. One quarter of these concerned application of environmental law, by far the largest number of all the policy areas.

Although there has been a decreasing trend in infringement cases in recent years (Fig 1), in 2013 there was an increase in the number of cases compared with the previous two years.

⁷ 31st annual report on monitoring the application of EU law (2013).

Report from the European Commission. 1 October 2014. COM (2014) 612 final.

⁸ Seventh annual survey on the implementation and enforcement of Community environmental law 2005. Commission Staff Working Document, SEC (2006) 1143, 8 September 2006.

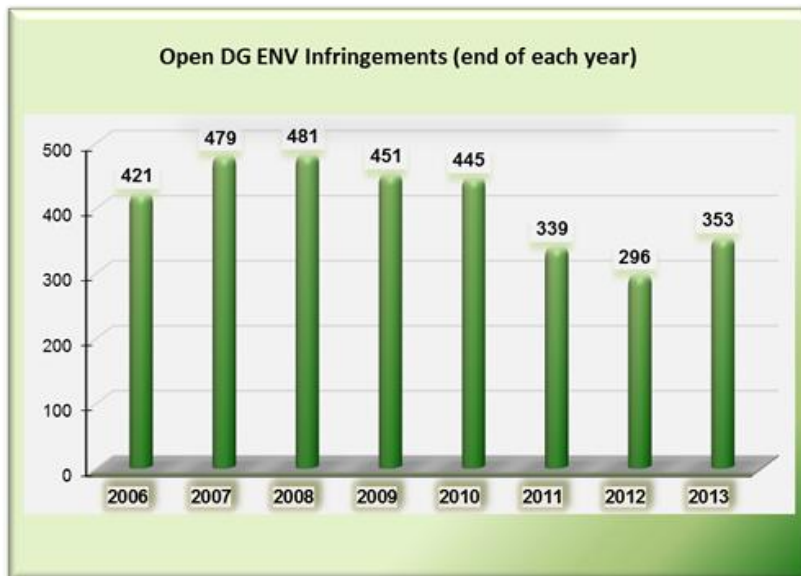


Figure 4.1 Open infringement cases involving environmental legislation

The breakdown according to different areas (Figure 2) of environmental legislation shows that water and waste have the greatest number of infringements, accounting for more than half the total.

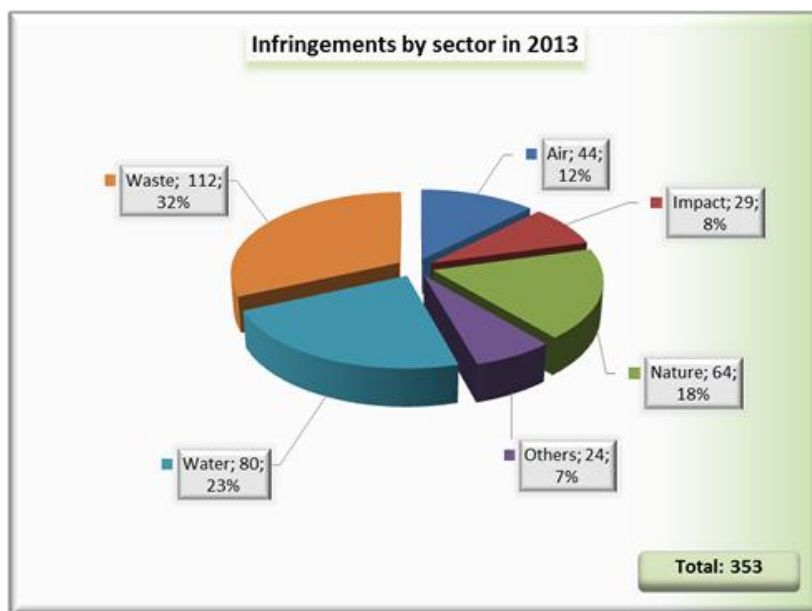


Figure 4.2 Open infringement cases by environmental sector

Data are also available on the number of infringements according to the stage in the application of the law (Figure 3). The highest number of infringement cases concern ‘Bad application’. This is significant in that it is the stage in which regulatory authorities are involved in applying the transposed law in their own countries.



Figure 4.3 Open infringement cases by stage in application

Non-communication infringements are opened if a Member State fails to notify legislation which transposes a specific directive before a deadline given in a directive.

Non-conformity cases are opened if shortcomings are identified in the transposition of a given directive in a Member State.

Bad application cases address shortcomings in the application of the transposed provisions of a directive by a Member State.

The Commission has cooperated with Member States on Implementation Plans to help to ensure the correct transposition and application of EU law. Some of these concern environmental legislation, for example, the reduction of national emissions for certain atmospheric pollutants.

2.2 European Commission's Regulatory Fitness and Performance programme

The European Commission's Regulatory Fitness and Performance programme (REFIT) was introduced in 2010 with the objective of making EU law simpler and to reduce regulatory costs. The programme covers a wide range of initiatives that are set out as 'roadmaps' for specific areas of EU legislation. These also look at the use of horizontal regulatory instruments - including impact assessments, stakeholder consultation, evaluation, assessment of costs and benefits and reporting - and how they can be applied to reduce administrative obligations. The Commission recently published a Communication on the state of play and outlook for REFIT and a scoreboard aimed at tracking progress with individual initiatives.

An important element of REFIT is the use of ex-post evaluation, referred to as 'Fitness Checks' which look at coherence and consistency between and within regulatory areas and whether the regulatory frameworks for whole policy areas are fit for purpose. They examine policy areas against a set of agreed criteria:

- Effectiveness (Have the objectives been met?)
- Efficiency (Were the costs involved reasonable?)
- Coherence (Does the policy complement other actions or are there contradictions?)
- Relevance (Is EU action still necessary?)
- EU added value (Can or could similar changes have been achieved at national/regional level, or did EU action provide clear added value?)

Fitness checks can give some insight into the question of implementation of EU law in that they look at the extent to which policy and legislation have been effective in achieving their purpose. In the Environment area Fitness Checks have so far been completed for EU Freshwater Policy and for five waste stream Directives and have been applied as a key part of reviewing policy in those areas. A further Fitness check has recently been launched in the area of EU Nature legislation. Relevant findings from these evaluations are included in the sections below on specific themes.

2.3 The 7th EU Environment Action Programme

The 7th EU Environment Action Programme⁹ was adopted in November 2013. It set out a 2050 vision for living well within the limits of our planet and provides a framework of policy priorities and actions to 2020.

⁹ Decision no 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet'.

These are defined according to three key thematic priorities (nature capital, resource efficiency, environment-related pressures and risks to health and well-being).

The 7th EAP also sets out an 'Enabling Framework' which includes specific objectives for maximising the benefits of EU environmental legislation by improving implementation (Priority Objective 4). These include a range of measures aimed at strengthening implementation, some of which are very relevant to IMPEL's areas of work, including:

- Improving the dissemination of information on implementation.
- Drawing up voluntary partnership implementation agreements between Member States and the Commission.
- Developing inspection support capacity at Union level backed up by support for networks of professionals, such as IMPEL, and by the reinforcement of peer reviews and best practice sharing.
- Introducing binding criteria for effective Member State inspections and surveillance.
- Improving the handling of complaints about implementation of environment law.
- Ensuring effective access to justice in environmental matters and effective legal protection as well as support for non-judicial dispute resolution.

The 7th EAP specifically mentions IMPEL as a key organisation in its agenda to strengthen implementation. This presents some important opportunities and challenges for IMPEL in framing its work programme priorities for the future. These are considered further in relation to the five themes for IMPEL's work programme below.

3. Implementation challenges for Water and land

The Commission has carried out a major assessment of progress in implementing EU law in the water sector and further actions that are necessary through its 'Water Blueprint'¹⁰ initiative. This was informed by its 'Fitness check' of fresh water policy¹¹. The European Environment Agency's synthesis of the state of the water environment¹² provides important under-pinning evidence to support the assessment of progress.

¹⁰ Commission communication. A Blueprint to Safeguard Europe's Water Resources. COM (2012) 673 Final. 14 November 2012.

¹¹ The Fitness Check of EU Fresh Water Policy. Commission Staff Working Document, SWD (2012) 393 Final. 15 November 2012.

¹² European waters – current status and future challenges. Synthesis. Report by the European Environment Agency, 9/2012

The Water Framework Directive (WFD)¹³ is the main over-arching piece of legislation concerning the management of the water and land environment. It requires that River Basin Management Plans (RBMPs) are established with the objective of achieving ‘good ecological status’ in all bodies of surface and groundwater by 2015.

The EEA’s State of Water report and the Commission’s assessment of the RBMPs show that good ecological status is currently achieved in 43 % of the reported freshwater bodies and that the additional measures included in the plans are expected to increase this to 53 % by 2015.

There are many reasons why waters are failing to achieve good status in different countries. However, assessment of the reports from the EEA and the Commission suggests that there are three key pressures, common in many countries, which are the underlying cause of the gap in meeting good ecological and chemical status. These are:

- *Physical modification of water bodies:* is a widespread pressure (reported by 19 Member States) originating from physical changes to water bodies (so-called hydro-morphological pressures). These changes affect around 40% of water bodies across Europe. They concern changes made to the natural shape and flow of water bodies by river straightening, dams, dikes, barriers and water abstraction. They can degrade and destroy valuable habitats for wildlife and affect the movement of migratory species.
- *Over-abstraction of water:* is also reported to be a major pressure (in 16 Member States). The main underlying causes of excessive abstraction are *over-allocation* of water to users in river basins due to failures in water resource planning and management, and *illegal abstraction*, where water is taken without a permit or in breach of a given permit.
- *Water pollution:* remains a major factor in the failure to achieve good chemical status in many water bodies. *Diffuse-source pollution*, particularly from agriculture, is the most widespread pressure affecting around 40% of EU rivers and coastal waters. Around 25% of groundwater bodies are also reported to have a poor status and a key factor is diffuse-source pollution, particularly from nitrogen compounds from agricultural land use. Although significant improvements have been made in reducing emissions from urban wastewater treatment and industry *point-source pollution* continues to be the cause of poor status in 20-25% of EU water bodies.

¹³ Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy. OJ L327, 22.12.2000.

Substantial progress has been made over the last 25 years in the implementation of key water legislation, including the Urban Waste Water Treatment (UWWTD)¹⁴ and Nitrates¹⁵ Directives, though full compliance has not yet been reached and this prevents achievement of their environmental objectives.

The Water Blueprint sets out a range of actions for the Commission and for Member States to address outstanding gaps in achieving the requirements of EU water legislation. A key part of this is the collaborative work that is being taken forward through the 'Common Implementation Strategy' (CIS), established through the EU Water Directors' Group. The CIS has a range of technical working groups that are addressing solutions to key problem areas. IMPEL has initiated a dialogue with the CIS to look at priorities for work on water and land, how the two networks can complement each other, and areas for future collaboration

4. Waste and trans-frontier shipment of waste

EU Waste Policy

The European Union's approach to waste management is based on the "waste hierarchy" which sets the following priority order when shaping waste policy and managing waste at the operational level: prevention, (preparing for) reuse, recycling, recovery and, as the least preferred option, disposal (which includes landfilling and incineration without energy recovery).

In line with this the 7th Environment Action Programme sets the following priority objectives for waste policy in the EU:

- To reduce the amount of waste generated;
- To maximise recycling and re-use;
- To limit incineration to non-recyclable materials;
- To phase out landfilling to non-recyclable and non-recoverable waste;
- To ensure full implementation of the waste policy targets in all Member States.

Information from recent assessments and data from sources including Eurostat's Environmental Data Centre on Waste show that there is still some way to go to achieve agreed actions and targets in existing EU law concerning waste.

¹⁴ Council Directive 91/271/EEC concerning urban waste-water treatment. OJ L135, 30.5.91.

¹⁵ Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources. OJ L375, 31.12.91.

Waste and waste management in the EU

In Europe, we currently use 16 tonnes of material per person per year, of which 6 tonnes become waste. Although the management of that waste continues to improve in the EU, the European economy currently still loses a significant amount of potential 'secondary raw materials' such as metals, wood, glass, paper, plastics present waste streams. In 2010, total waste production in the EU amounted to 2,5 billion tonnes. From this total only a limited (albeit increasing) share (36%) was recycled, while the rest was landfilled or burned, of which some 600 million tonnes could be recycled or reused. Just in terms of household waste alone, each person in Europe is currently producing, on average, half of a tonne of such waste. Only 40 % of it is reused or recycled and in some countries more than 80% still goes to landfill (source: Environmental Data Centre on Waste, Eurostat).

Performance in relation to the Waste Framework Directive

The existing Waste Framework Directive¹⁶ is a key piece of EU legislation establishing principles, definitions, required actions and targets for the management of waste. A recent EEA assessment of the achievements of 32 European countries in the management of municipal solid waste¹⁷ points to a mixed outlook for the full implementation of the Waste Framework Directive. With regard to the Directive's target to achieve the recycling of 50% of municipal waste by 2020, the report concludes that although five countries have already achieved the target and another six countries will meet the target if they continue to improve their recycling rate at the same pace as in the period 2001 to 2010, the majority of countries will need to make an extraordinary effort to achieve the target by 2020.

The results of this assessment are also supported by a study carried out on behalf of the European Commission that reviewed waste management performance in EU Member States¹⁸. The study aimed to identify those countries with the greatest implementation gaps in relation to the application of the Waste Framework Directive. It identified three distinct groups of countries according to a range of criteria related to municipal waste management performance: a first group of 10 countries with above-average performance; a second group

¹⁶ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

¹⁷ Managing municipal solid waste - a review of achievements in 32 European countries. EEA Report No.2/2013.

¹⁸ BiPRO (2012): Screening of waste management performance of EU Member States. . Report submitted under the EC project "Support to Member States in improving waste management based on assessment of Member States' performance". Report prepared for the European Commission, DG ENV, July 2012.

of 5 countries with average performance; and a third group of 12 countries with the largest implementation gaps. This assessment of relative performance could be useful in the context of IMPEL's work on exchange of best practice with potential for practitioners in better performing countries to assist those with poorer performance in finding practical solutions to improve compliance with obligations and targets.

Hazardous waste

The safe treatment and disposal of hazardous waste continues to be a challenge. Analysis of data collected from European countries by Eurostat shows that the overall amount of hazardous waste has increased significantly over the last ten years. One area that requires further investigation is that there appear to be a significant gap observed between the generated and treated amounts of waste (17% of hazardous waste appears to be unaccounted for across Europe). The extent of the gap also varies between different countries. The underlying reasons for this are not clear. It may be partly explained by the way hazardous waste is reported, for example, where part of the reported generated waste is pre-treated, implying a lower amount of reported treated waste. This may be the case for discarded vehicles, in particular, where the non-hazardous part of the waste is dismantled and only the hazardous part is reported as treated. It is understood that further work will be carried out to gain a better understanding of this situation. Dependent upon the outcome of further investigation, there may be areas where IMPEL may be able to help in finding solutions through sharing of best practices in hazardous waste regulation and coordination of enforcement action between countries.

Trans-frontier shipment of waste

The EU regulatory framework for protecting the environment from shipments of waste is established through the 2006 Regulation¹⁹. Collaboration on TFS regulation has been an important part of IMPEL's programme and the Network has played a key role in the effective implementation of the Regulation. IMPEL's TFS Cluster also made an important contribution to the development of the recent amendment to the Regulation²⁰ which aims to strengthen inspection regimes in Member States. Collaboration between countries on TFS inspection and enforcement will remain an important part of IMPEL's programme and the Network will continue to play a key role in the implementation of TFS law for the future.

¹⁹ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.

²⁰ Regulation (EU) No 660/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EC) No 1013/2006 on shipments of waste.

Review of EU waste policy and legislation

The Commission has recently carried out a major review of existing EU waste policy and legislation involving a review of key targets and related elements and an ex-post evaluation ('fitness check')²¹ of five of the EU Directives dealing with separate waste streams: sewage sludge, polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT), packaging and packaging waste, end of life vehicles, and batteries.

The Fitness Check followed the approach adopted under the Commission's REFIT programme using four key evaluation criteria: effectiveness, efficiency, relevance, and coherence. Its overall conclusion was that the waste Directives examined are examples of meaningful European law-making with very few outdated provisions or inconsistencies. All the directives assessed have been effective in achieving the environmental and resource efficiency objectives for which they were designed.

The evaluation did identify some implementation gaps. A case of bad implementation was found in the PCB Directive, for example. The Directive is clear in its structure, free of ambiguity or contradiction but it has still not been properly implemented by a majority of Member States. Other examples of bad implementation may concern the End of Life Vehicle (ELV) directive (illegal exports and ELVs of unknown whereabouts) and the batteries directive (marketing of non-compliant batteries). Legislative action may be needed, if appropriate, improving the design of legislation, to address those and other implementation gaps.

The European Commission has recently adopted a legislative proposal²² and annex to review recycling and other waste-related targets in the EU Waste Framework Directive, the Landfill Directive 1999/31/EC²³ and the Packaging and Packaging Waste Directive 94/62/EC²⁴.

²¹ Ex-post evaluation of five waste stream Directives. Commission Staff Working Document, SWD (2014) 209 Final, 2 July 2014.

²² Proposal for a Directive of the European Parliament and of the Council amending Directives 2008/98/EC on waste, 94/62/EC on packaging and packaging waste, 1999/31/EC on the landfill of waste, 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment /* COM/2014/0397 final - 2014/0201 (COD)

²³ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.07.1999, p. 1).

²⁴ Directive 96/42/EC of European Parliament and Council of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

The aim of the proposal is to help turn Europe into a circular economy, boost recycling, secure access to raw materials and create jobs and economic growth. It does so by setting ambitious targets and adding key provisions on the instruments to achieve and to monitor them. The proposal is presented as part of the circular economy package.

The main elements of the proposal include:

- Recycling and preparing for re-use of municipal waste to be increased to 70 % by 2030;
- Recycling and preparing for re-use of packaging waste to be increased to 80 % by 2030, with material-specific targets set to gradually increase between 2020 and 2030 (to reach 90 % for paper by 2025 and 60% for plastics, 80% for wood, 90% of ferrous metal, aluminium and glass by the end of 2030);
- Phasing out landfilling by 2025 for recyclable (including plastics, paper, metals, glass and bio-waste) waste in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25%;
- Measures aimed at reducing food waste generation by 30 % by 2025;
- Introducing an early warning system to anticipate and avoid possible compliance difficulties in Member States;
- Promoting the dissemination of best practices in all Member States, such as better use of economic instruments (e.g. landfill/incineration taxes, pay-as-you-throw schemes, incentives for municipalities) and improved separate collection;
- Improving traceability of hazardous waste;
- Increasing the cost-effectiveness of Extended Producer Responsibility schemes by defining minimum conditions for their operation;
- Simplifying reporting obligations and alleviating burdens faced by SMEs;
- Improving the reliability of key statistics through harmonised and streamlined calculation of targets;
- Improving the overall coherence of waste legislation by aligning definitions and removing obsolete legal requirements.

It seems likely that these measures collectively would continue to require major and sustained efforts by Member States. Waste regulation and enforcement is clearly important in ensuring effective implementation of waste policy and legislation. IMPEL can play an important role in supporting implementing organisations in achieving the existing and new policy objectives.

5. Nature protection

Progress on EU Biodiversity policy and legislation

The EU Biodiversity Strategy²⁵ sets out targets and actions needed to halt the loss of biodiversity and the degradation of ecosystem services by 2020 and restore them as far as feasible. Assessments of the state of biodiversity in the EU show that biodiversity is still being lost, many ecosystems are seriously degraded, and there is a risk that the policy targets for biodiversity will not be met²⁶.

The existing Birds²⁷ and Habitats²⁸ Directives are key pieces of legislation that support the EU Biodiversity Strategy. However, there is still some way to go to secure the full implementation of these Directives. The 7th Environmental Action Plan highlights poor progress on biodiversity legislation and states that only 17% of species and habitats assessed under the Habitats Directive have favourable conservation status.

Nature legislation Fitness Check

As part of the Commission's 'Refit' programme, it has launched a Fitness Check of EU nature policy and legislation. This is to be organised to accompany the evaluations required under Article 17 of the Habitats Directive and Article 12 of the Birds Directive. It covers Natura 2000 but also applies more generally to the Birds and Habitats Directives and related actions.

The fitness check will be carried out according to the agreed criteria (see section 2.2 above). It will examine:

- Implementation and integration successes and problems
- The costs of implementation and of non-implementation of the legislation
- Opportunities for improving implementation and reducing administrative burden without compromising the integrity of the purpose of the directives
- The situation of implementation in different EU countries
- The views of key stakeholder groups

²⁵ The EU Biodiversity Strategy to 2020.

²⁶ Assessing biodiversity in Europe – the 2010 report. EEA Report 5/ 2010.

²⁷ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds.

²⁸ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

The next steps in the process include:

- Launch of a Study Contract to support the Commission in collecting and assessing evidence for the fitness check (March/April 2014 to autumn 2015)
- Public internet consultation (end 2014/start 2015)
- EU assessment of Article 17 Habitats Directive and Article 12 Birds Directive national reports (first half of 2015)
- Stakeholder meeting at Green Week (June 2015) or another appropriate forum to discuss the preliminary outcome of the assessment
- The Commission will report on the findings of the Fitness check at the end 2015/early 2016.

IMPEL has gained an important insight into the implementation of nature legislation through its recent projects on inspection and enforcement of the Birds Directive and also licensing and inspection in relation to the Habitats Directive. IMPEL should take the opportunity to make an input to the Nature Fitness Check as a key consultee and stakeholder in the process.

6. Industry and air

Impact of industrial emissions

The regulation of emissions from industry has a long history in Europe and has been the subject of a series of EU Directives over the last forty years. Despite this, assessments of the impact of industrial emissions show that they are still causing significant damage to human health, ecosystems and the economy. For example, a recent study published by the European Environment Agency²⁹ evaluated a number of harmful impacts caused by air pollution including premature death, hospital costs, lost work days, health problems, damage to buildings and reduced agricultural yields. It concluded that air pollution from Europe's largest industrial facilities cost society at least €59 billion, and possibly as much as €189 billion in 2012. Half of these damage costs were caused by just 1% of the industrial plants. Of the 30 individual facilities identified as causing the highest damage, 26 are power-generating facilities, mainly fuelled by coal and lignite.

²⁹ Costs of air pollution from European industrial facilities 2008-2012 – an updated assessment. EEA Technical Report No.20/ 2014.

EU legislation relating to industry emissions

The main pieces of EU legislation relating to emissions from industrial installations are:

- The Industrial Emissions Directive (IED)³⁰ which sets out the main principles for the permitting and control of installations based on an integrated approach and the application of best available techniques (BAT). This framework Directive has already repealed and replaced previous Directives on integrated pollution prevention and control (IPPC), waste incineration, activities using organic solvents and titanium dioxide production.
- The Directive on large combustion plants (LCP)³¹ which sets emission limit values for sulphur dioxide, nitrogen oxides and dust from combustion plants with a rated thermal input of 50 MW or more. (The LCP Directive will be repealed and replaced by the IED from 1 January 2016).
- Directives on petrol storage & distribution^(32 and 33) which aim to prevent emissions to the atmosphere of volatile organic compounds (VOCs)
- Regulation on the European Pollutant Release and Transfer Register (E-PRTR)³⁴ which gives the public access to detailed information on the emissions and the off-site transfers of pollutants and waste from around 30,000 industrial facilities.

Implementation of the Industrial Emissions Directive

The IED was introduced as a major rationalisation of previous legislation. It will cover more than 50,000 industrial installations across Europe when fully implemented.

³⁰ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

³¹ Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants.

³² European Parliament and Council Directive 94/63/EC of 20 December 1994 on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations.

³³ Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations.

³⁴ Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC.

According to Article 80(1) of the Directive, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive's provisions by 7 January 2013. The majority of Member States did not, or only partially, transpose the Directive by this deadline. According to the Commission's annual report on the implementation of EU law, 168 late transposition infringements were launched against 20 Member States because of the late transposition of the IED. Information published on the Commission's web site suggests this situation has improved, with 19 Member States having completed communication of the national legislation that transposes the requirements of the IED. Information may be made available in due course on conformity of the legislation and application of the requirements. The picture on overall progress with the implementation of the IED in Member States is therefore incomplete and we do not yet have a good understanding of specific implementation gaps.

Some of IMPEL's member organisations are actively engaged in the expert groups that underpin the implementation of the IED, for example, the Industrial Emissions Expert Group (IEEG) that has been set up to facilitate the exchange of experiences and good practices concerning interpretation, transposition and implementation of the IED. IMPEL has also carried a range of projects to support the practical implementation of the IED, such as the current project aimed at producing guidance for applying the derogation provisions.

7. Cross-cutting approaches and tools

The 7th Environment Action Programme – enabling measures

The enabling framework of the 7th EAP (see section 2.3 above) sets out a series of measures designed to address the shortfall in progress in implementation of the environmental acquis. These include a range of horizontal issues that are relevant to IMPEL's theme of cross-cutting tools and approaches.

Information on implementation

IMPEL's potential role lies in helping to bring together data and information from countries on progress with implementation and how this could be better communicated. There are a few examples of well organised and disseminated pan-European information on compliance with EU Directives, such as the EEA's annual report on Bathing Water Quality and its interactive map-based system on the state of bathing water quality across Europe. However, overall, information of the state of play with implementation of EU environmental law is quite fragmented and often difficult to obtain. There may be opportunities for IMPEL to work with others, including the EEA, to help promote more coherent and effective dissemination of information on implementation across Europe.

Capacity-building on environmental inspections and enforcement

The 7th EAP recognises the need for developing capacity for environmental inspections and enforcement in regulatory bodies in Member States as a key element in addressing the lack of progress in the implementation of EU law.

There are wide differences in governance and institutional framework for inspections and enforcement in different Member State, involving organisations at national, regional and local levels. A recent study carried out on behalf of the European Commission³⁵ looked at inspection and enforcement regimes for a representative cross-section of Member States in the policy areas of water, nature protection and trade in certain environmentally sensitive goods.

The study identified distinct types of inspection and enforcement regimes, including

- Reliance on self-monitoring and reporting by regulated entities with minimal site-based intervention by regulators.
- Routine inspections to check compliance with operational conditions (the basis for much industrial inspection, urban waste water treatment, nitrates, etc.).
- Incident-based controls, responding to reported cases of non-compliance, environmental quality problems, concerns by citizens (e.g. poisoning of species, pollution incidents, etc.).
- Intelligence-led investigation, e.g. for CITES, wildlife crime and waste shipment.

It showed that there were many examples of good practice, but there were also severe significant constraints on the effective enforcement of the environmental *acquis*. There were wide differences in approach, costs and capacity both between different countries and between policy areas.

Legal instrument for environmental inspections

Recognising that there was a wide disparity between inspection systems in the Member States, the European Parliament and the Council adopted Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States (RMCEI)³⁶. IMPEL played an important role in the preparation of the RMCEI and through its activities has also played an important role in its implementation.

³⁵ Information collection and impact assessment of possible requirements for environmental inspections in the area of EU legislation on water, nature protection and trade in certain environmentally sensitive goods. Report on behalf of the European Commission, July 2013.

³⁶ Recommendation of The European Parliament and of the Council

The RMCEI contains non-binding criteria for the planning, carrying out, following up and reporting on environmental inspections. Its objective is to strengthen compliance with EU environment law and to contribute to its more consistent implementation and enforcement in all Member States.

The content of the RMCEI has strongly influenced provisions on environmental inspections in several sectoral pieces of environment and climate change legislation including: industrial emissions; control of major accident hazards involving dangerous substances; waste electrical and electronic equipment (WEEE); landfill of waste; and ozone depleting substances.

One of the key measures in the 7th EAP is to introduce binding criteria for inspections and surveillance, building on the existing voluntary approach of the RMCEI. The Commission has been working on developing a proposal for framework legislation on environmental inspections. It carried out a major consultation exercise on this subject during 2013 and hosted a workshop involving experts from across Europe to gain feedback on developing ideas. IMPEL has cooperated with the Commission in helping it to develop its ideas on the inspections' framework and will hold a joint workshop with the Commission in December 2014 on the subject of compliance promotion and risk-based approaches for inspections.

Annex 5 Outcome of workshop in Bristol, UK

The workshop took place over two days in Bristol 20-21 November 2014. It began with presentations from Liam Cashman of the European Commission and Andrew Farmer of the Institute for European Environmental Policy giving their perspectives on the implementation challenge.

Liam Cashman spoke about the levels at which the implementation challenges occur. He saw the top level as being the national implementing legislation where IMPEL could help on questions of enforceability and rules on proof. The next level was environmental objectives, designations or plans which could help IMPEL to prioritise. The third level was permits, general rules, prohibitions etc. which were IMPEL's core business.

Pollution from point sources were a major concern for water, industrial installations, air quality (multiple sources) and waste: for water, over-abstraction was also an issue. In the chemical sector the problem was a failure to respect processes and illegal developments were an issue for both waste and horizontal matters.

There were also different levels of causation and responses to implementation challenges, ranging from compliant to criminal. All subject areas could of course be compliant, and they could also be in the category of 'careless and confused' where there was a lack of awareness leading to an increasing risk to the environment. The 'opportunistic law-breaker' also presented an increasing environmental risk and this category was to be found in chemicals, nature and biodiversity, water and waste. Water and waste also appeared in the 'can't comply/won't comply' category and here there was a high environmental risk.

Environmental bodies with responsibility for implementation had certain strengths but also some weaknesses. For example, local and regional government had the benefit of subsidiarity but sometimes lacked resources and had the potential for conflicts of interest. Environmental agencies had the necessary skill sets and could prioritise but occasionally tended had a tendency to work within comfort zones in particular silos.

In his presentation, Andrew Farmer began by looking at why implementation is a problem. For many years the Commission had not focussed on implementation so it remained poor in some older Member States. He raised the question of whether the implementation timetables agreed during accession for new Member States had been realistic. New environmental law was fairly comprehensive and contained relatively complex requirements. The current economic crisis provided a challenge for resources and had led to new priorities.

There were difficulties for the Commission in checking implementation. The fact that some legislation required more effort to check meant that actors in some Member States could get implementation wrong or even deliberately avoid full implementation.

There was also the implementation delay which raised the question of how old was the implementation status that the Commission was looking at.

A failure to understand the benefits could result in a decision not to implement. There may also be political decisions on the priorities of benefits, for instance the interests of individual businesses may be seen as greater than the benefit to the public. Politicians in several governments were emphasising costs rather than benefits.

Regulators needed to ensure that the regulated community understood its obligations and that they were clear and easy to follow. There was also the question of whether regulators were directing resources to where they were needed which could be compliance promotion, inspections, etc. A further question was whether their enforcement actions were a deterrent.

In designing EU law it was important to make clear what was required. There was a tension between prescription and flexibility. Flexibility allowed Member States to adopt least cost choices and to direct resources to deliver implementation whereas prescription was easier to check but may not direct actions to where they were most important on the ground. There was also the question of whether cooperation or coercion was appropriate with the regulated community. Coherence across environmental law could also present implementation challenges.

In terms of solutions, Member States should determine the implementation gap and the reasons for it and decide how to tackle it. Pressure from the Commission was critical (though using common sense) as history showed that Member States would let implementation slip. New and revised EU legislation should focus on what was important while being clear on how implementation could be judged.

The presentations by Liam Cashman and Andrew Farmer are at Annex 6 and Annex 7.

Terry Shears summarised the findings from the questionnaire survey and the desktop analysis of implementation challenges. There were presentations from representatives of each of the IMPEL expert teams giving their views on the challenge. This was followed by a group exercise to identify the top implementation challenges and to suggest how IMPEL might be able to help overcome them.

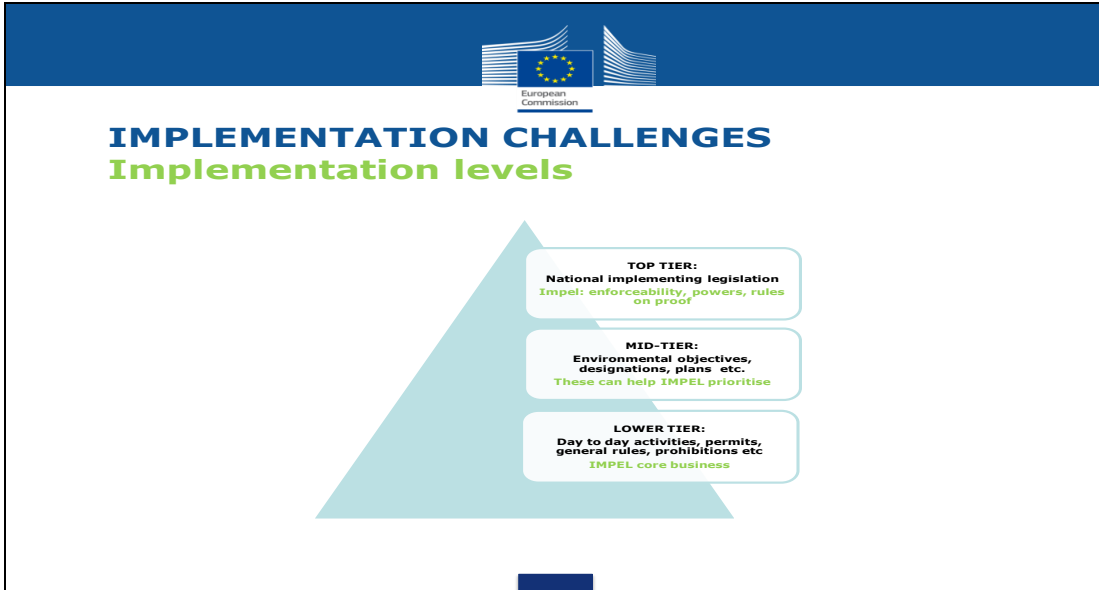
Among the challenges identified were a lack of resources and the economic reality of a harsh financial climate, particularly in some areas. Support at a political level was sometimes lacking and legislation was occasionally unclear and overlapping. Different levels of enforcement could of course have an impact on the level playing field. Some saw silo thinking as an important part of the challenge. Accessibility of data was important as was sharing information between different institutions. There were areas of environmental legislation where practitioners didn't have common tools.

Identifying and sharing good practice were seen as important things for IMPEL to do. The IMPEL Review Initiative was invaluable and more of those should take place and it should be expanded: indeed, there should be more interactive assistance from peer groups generally. One idea to help with this was a 'dating service' based on informal dialogue/identification of problems. IMPEL needed to take a more activist stance in feeding back into a higher, law making level but this would also need IMPEL to maintain and develop its credibility first. National Coordinators should have a role to play in this in engaging and building trust.

Joint inspections would be useful as would the development of tools. It was important for IMPEL to play to its strengths in order to safeguard credibility and keep expectations at an achievable and realistic level.

Annex 6 Presentation European Commission

Workshop on the Implementation Challenge, Bristol, UK, 20-21 November, 2014



European Commission

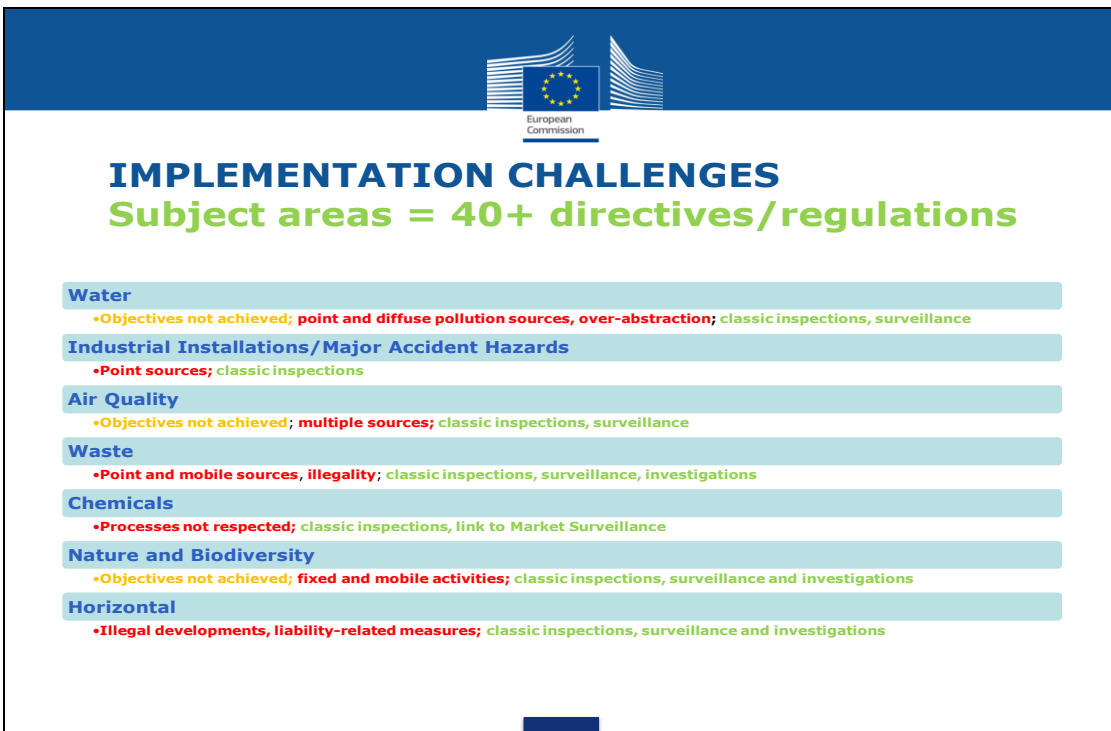
IMPLEMENTATION CHALLENGES

Implementation levels

TOP TIER:
National implementing legislation
Impel: enforceability, powers, rules on proof

MID-TIER:
Environmental objectives, designations, plans etc.
These can help IMPEL prioritise

LOWER TIER:
Day to day activities, permits, general rules, prohibitions etc
IMPEL core business



European Commission

IMPLEMENTATION CHALLENGES

Subject areas = 40+ directives/regulations

Water
•Objectives not achieved; point and diffuse pollution sources, over-abstraction; classic inspections, surveillance

Industrial Installations/Major Accident Hazards
•Point sources; classic inspections

Air Quality
•Objectives not achieved; multiple sources; classic inspections, surveillance

Waste
•Point and mobile sources, illegality; classic inspections, surveillance, investigations

Chemicals
•Processes not respected; classic inspections, link to Market Surveillance

Nature and Biodiversity
•Objectives not achieved; fixed and mobile activities; classic inspections, surveillance and investigations

Horizontal
•Illegal developments, liability-related measures; classic inspections, surveillance and investigations



IMPLEMENTATION CHALLENGES

Causation and responses

Champion, compliant

•All subject-areas; **low-risk**; self-monitoring, compliance promotion, lower intensity of compliance monitoring

Careless and confused

•All subject-areas; **increasing risk**; compliance promotion, classic inspections and surveillance, enforcement

Opportunistic law-breaker

•Water, waste, chemicals, nature and biodiversity; **increasing risk**; compliance promotion, classic inspections, surveillance and investigations, enforcement

Can't comply, won't comply: environmental infrastructure

•Water, waste; **high-risk**; compliance promotion, classic inspections and enforcement

Contemptuous: illegality with social support

•Nature and biodiversity; **high-risk**; compliance promotion, classic inspections, surveillance, investigations and enforcement

Criminal

•Waste, nature and biodiversity; **high-risk**; classic inspections, surveillance, investigations, and enforcement



IMPLEMENTATION CHALLENGES

Organisational: inspections, surveillance and investigations

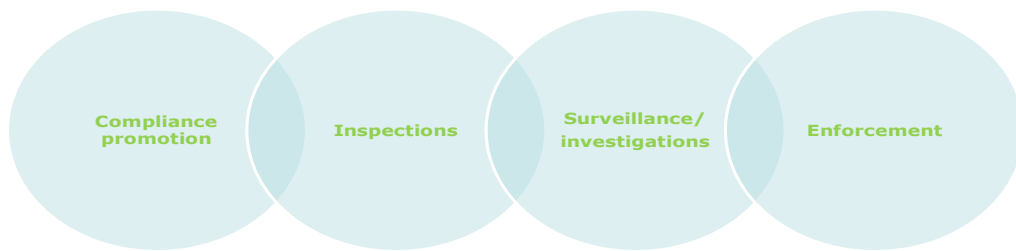
General law enforcement agencies: police, customs	•Strengths: identity, procedures; Weaknesses: resources, lack of interest and specialist skill sets
General-purpose environmental agencies	•Strengths: identity, procedures, specialist skill sets, priorities; Weaknesses: resources, silo tendencies, comfort zones
Specialist environmental agencies	•Strengths: identity, specialist skill sets, priorities; Weaknesses: resources, marginality, silo tendencies, comfort zones
Ministries	•Strengths: closeness to centre, priorities; Weaknesses: closeness to centre, lack of clear identity, conflicts of interest, poor procedures and specialist skills
Regional government	•Strengths: subsidiarity; Weaknesses: resources, lack of clear identity, conflicts of interest, poor procedures and specialist skills
Local government	•Strengths: subsidiarity; Weaknesses: resources, lack of clear identity, conflicts of interest, poor procedures and specialist skills
Verification bodies	•Strengths: specialist skills; Weaknesses: lack of powers
Other	





IMPLEMENTATION CHALLENGES

Organisational: compliance assurance chain



Annex 7 Presentation by Andrew Farmer

Bristol Workshop, 20-21 November, 2014



Institute for
European
Environmental
Policy

Some challenges in the implementation of EU environmental law

Andrew Farmer

November 2014

IMPEL Workshop
Bristol



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Why is implementation a problem?

- **History:** for many years the Commission did not focus on implementation – so it remained poor in some older MS
- **New MS:** were the implementation timetables agreed during accession realistic? Were implications fully realised?
- **EU environmental law** is now fairly comprehensive and contains some relatively complex requirements
- **Current economic crisis:** resource challenges, new priorities?

Difficulties for Commission to check implementation

- **EU environmental law more likely to be implemented with threat of infringement**
- **Easier with easy to check obligations. But more effort to check:**
 - More detailed interpretation of BAT under IED
 - How much inspection to implement Art. 50 WSR
 - Are measures correctly determined in RBMPs
- **Leaves scope for actors in MS to:**
 - Get the interpretation wrong – implementation failure
 - Deliberately avoid full implementation
- **Also information delay – how old is the implementation status the Commission is looking at?**

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Not realising the benefits

- **Decisions not to implement can be due to failure to understand the benefits to be delivered**
- **But may be political decisions on the priorities of benefits – e.g. economic interests of individual businesses more important than benefits to public**
- **Currently politicians in several governments, Commission emphasising costs, not benefits**
- **How can professionals react?**
- **Similarly, do cuts to regulators' budgets make economic sense?**

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Actions by regulators

- **Does regulated community understand its obligations? Clear, easy to follow?**
- **Are regulators directing resources to what is needed – compliance promotion, inspections, etc.?:**
 - Do they know what is needed?
 - Are staff on the ground listened to?
 - Do they stick to what they know, rather than change to what is needed?
- **Are enforcement actions a deterrent?**

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Design of EU law

- **What is important: means or ends?**
 - Recently re-opened on WFD
 - Confusion with level playing field
- **Make sure it is clear what is required**
- **Major tension between prescription and flexibility**
 - Flexibility allows MS to adopt least cost choices, direct resources, etc., to deliver implementation
 - Prescription easier to check, but does it direct actions to where they are most important on the ground?
 - Co-operation with regulated community or coercion?
 - Some MS prefer flexibility, others prescription
- **Coherence across acquis can present implementation challenges**

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Some solutions

- **Member States have to:**
 - Determine the implementation gap.
 - Determine the reasons for the gap.
 - How to address this? (actions, resources)
- **Pressure from Commission is critical – history shows MS will let implementation slip**
 - However, Commission should act with common sense (within the law)
- **Rapid data transfer, real-time checking, inter-operability: e.g. progress on new WFD reporting**
- **New/revised EU law should:**
 - Focus on what is important
 - Be clear as to how implementation can be judged

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