European Union Network for
the Implementation and Enforcement
of Environmental Law

IMPEL REVIEW INITIATIVE (IRI)

"A voluntary scheme for reporting and offering advice to environmental authorities"

Report on the IRI that took place in Malta from 17 to 20 June 2014
at the Malta Environment & Planning Authority (MEPA).

Title report: IRI Malta	**Number report:** 2014/07
Project managers: Simon Bingham (UK) & Pauline Agius Farrugia (Malta)	**Report adopted at IMPEL General Assembly:** Rome, Italy 11/12 December 2014
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Executive summary:

This informal review of the Malta Environment & Planning Authority took place against the backdrop of an ongoing de-merger process of its environment and planning parts of its organisation. The environment will no longer report directly to the Prime Minister's Office but instead to the Ministry of Environment. It also highlights an opportunity for the review to examine some of the practices and procedures that were put in place since MEPA was formed just over 10 years ago, to highlight what has been working well as well as what opportunities there are for implementing improvements to MEPAs operations.

In line with the Recommendation for Minimum Criteria for Environmental Inspections (RMCEI), this informal review of MEPA by a broad cross section of the IMPEL network, focused upon the permitting, inspection and enforcement activities carried out by their authority and any other industrial processes that fall under the RMCEI.

Throughout, the IRI team have identified several examples of 'good practice' and 'opportunities for development', when considering the implementation of the above Directive(s) during the review. Specifically, the review team have highlighted the following as particularly strong examples of this:

Good practices:

MEPA have developed a rigorous regulatory strategy around the control of industry and waste that is appropriate to a very densely populated island. The strategy revolves around a high degree of control being maintained primarily through time limiting permits.

MEPA have very good permitting systems and approaches that enable them to license in a risk based and effective manner. Highlights include a risk based hierarchy (Exemptions, GBRs, Permits), sectoral approaches, integrated permits and a central conditions bank.

Opportunities for Development:

Consider the development of an effective workload planning system to show what can be delivered in year. This will have the dual benefit of showing to both senior management and staff members what can be delivered in the year. It can also be used to identify what will not be delivered which is equally important.

All regulatory agencies around Europe are under financial pressure. One way to help alleviate this is to enact the polluter pays principle to recover costs direct from the operator rather than the general tax payer. IPPC

sites already pay for permitting but consideration could be made to extend this to inspection of these sites and to other regimes such as waste. Any charging scheme should be index linked to ensure the costs match the scale of the resource required to complete the task.

The review team considers that the objectives of the area of EU environmental law within the scope of the review of Malta Environment & Planning Authority are being delivered in Malta. Furthermore the arrangements for environmental inspection and enforcement are broadly in line with the RMCEI.

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 Bruxelles, Belgium.

IMPEL was set up in 1992 as an informal Network of European regulators and authorities concerned with the implementation and enforcement of environmental law. The Network's objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. The core of the IMPEL activities concerns awareness raising, capacity building and exchange of information and experiences on implementation, enforcement and international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.

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

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on both technical and regulatory aspects of EU environmental legislation. Information on the IMPEL Network is also available through its website at www.impel.eu.

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Introduction

The IRI Scheme

The IRI scheme is a voluntary scheme providing for informal reviews of environmental authorities in IMPEL Member countries. It was set up to implement the European Parliament and Council Recommendation (2001/331/EC) providing for minimum criteria for environmental inspections (RMCEI), where it states:

“Member States should assist each other administratively in operating this Recommendation. The establishment by Member States in cooperation with IMPEL of reporting and advice schemes relating to inspectorates and inspection procedures would help to promote best practice across the Community.”

Purpose of the IRI

The aims of the IRI are to:

- provide advice to environmental authorities seeking an external review of their structure, operation or performance by experts from other IMPEL members countries for the purpose of benchmarking and continuous improvement of their organisation
- encourage capacity building in environmental authorities in IMPEL member countries
- encourage the exchange of experience and collaboration between these authorities on common issues and problems
- spread good practice leading to improved quality of the work of environmental authorities and contributing to continuous improvement of quality and consistency of application of environmental law across IMPEL member countries (˝the level playing field˝).

The IRI is an informal review, not an audit process. The IRI is intended to enable the environmental authority and review team to explore how the authority carries out its tasks. It aims at identifying areas of good practice for dissemination together with opportunities to develop existing practice within the authority and authorities in other IMPEL member countries.

Scope of the IRI in Malta

The IRI uses a questionnaire to review the environmental authority against the requirements of the RMCEI. The IMPEL ˝Doing the Right Things˝ Guidance Book for planning of environmental inspections has been used to help structure the questionnaire and the review. The Guidance Book was developed to support Inspectorates in implementing the RMCEI and describes the different steps of the Environmental Inspection Cycle pursuant to the RMCEI.

The scope of the IRI in Malta is focussed on the permitting and inspection work of the Malta Environment & Planning Authority and will focus on the Environment Protection Directorate (EPD). The review will cover a range of directives including the IED and Seveso Directives and where relevant any other industrial processes that fall under the RMCEI.

Structure

A pre-review meeting was held in Malta on 19 February 2014 in which details for the Review were discussed. The meeting comprised the team leader, rapporteur and the hosts.

The review itself took place at the offices of MEPA in Valletta from the 17-20 June 2014. The findings were presented to the Chairman of MEPA, representatives of the Environment Protection Directorate within MEPA, representatives of the Ministry of Sustainable Development, the Environment and Climate Change and an external Strategic Change Manager overseeing the de-merger process of MEPA. The Review was structured according to the revised IRI questionnaire developed by the IRI review project during 2009. The IRI Review team consisted of 6 different IMPEL member countries and the IMPEL Secretariat.

TABLE 1: IRI MALTA REVIEW TEAM

Simon Bingham	Team Leader	Scottish Environmental Protection Agency	UK
Michael Nicholson	Rapporteur	IMPEL	IMPEL
Gunnlaug Einarsdottir	Team member	Environment Agency Iceland	Iceland
Valerie Cameron	Team member	Environmental Health and Pollution Regulation, States of Guernsey	Guernsey
Chrystalla Stylianou	Team member	Department of Environment at Ministry of Agriculture, Natural Resources & Environment	Cyprus
Larry Kavanagh	Team member	Irish Environmental Protection Agency	Ireland
Marinus Jordaan	Team member	DCMR Environmental Agency, Rotterdam region	Netherlands

PICTURE 1: IRI REVIEW TEAM

Part A – Defining the regulatory framework of environmental protection in the IMPEL member country.

Overview

Malta lies 80 km south of Sicily and covers just over 316 km2 (122 sq mi), making it the smallest of the EU's member states. To put it in context, it is approximately 8 times smaller than the next largest EU member state by area, Luxembourg. However, it is the most densely populated country in the EU, about 3 times as much as the Netherlands. Malta is an archipelago in the central Mediterranean but only the three largest islands, Malta (Malta), Gozo (Għawdex) and Comino (Kemmuna), are inhabited.

PICTURE 2: MAP OF MALTA

The Maltese Constitution was adopted in 1964. The Constitution covers topics, including Citizenship, Fundamental Rights and Freedoms of the Individual, The Judiciary, Local Councils and more. Amendments are difficult to make due to the checks and balances put in place though it has been amended twenty-four times, most recently in 2007.

Ministry for Sustainable Development, the Environment and Climate Change

Environment Protection and Environmental Policy within Malta is the responsibility of the Ministry for Sustainable Development, the Environment and Climate Change (MSDEC). The Ministry is also responsible for Climate Change Policy, Waste Management Strategy, National Parks, Afforestation and the Countryside, Rural Development, Agriculture, Horticulture, Fisheries, Aquaculture, Animal Welfare and Veterinary Services.

Policy

MSDEC manages Malta's National Environmental Policy which provides overall strategic guidance. The policy was launched in 2012 and describes its plans up to 2020. The objectives of this policy are:

- To provide direction to both the public and private sector and other players
- To ensure the integration of all policies such that all stakeholders work in a coordinated manner to achieve the national objectives and key priorities, not only in the environmental field but also in areas that impact upon or are impacted by the environment, exploiting synergies and addressing potential conflicts across sectors
- To clearly articulate and communicate national environmental commitments and priorities in a transparent manner.

Relationship of Ministry with Malta Environment & Planning Authority

MEPA, at present does not report directly to MSDEC but instead directly to the Prime Minister's Office. It is anticipated that after the current de-merger process that MEPA will report directly to MSDEC.

Malta Environment & Planning Authority

The Malta Environment and Planning Authority is the national agency responsible for land use planning and environmental regulation in Malta. Established under the mandate of the Environment Protection Act (2001) and the Development Planning Act (1992 but later merged into the Environment and Development Planning Act 2011), discussions are currently under way to reverse the amalgamation. MEPA is responsible for the implementation of around 200 Directives, Decisions and Regulations under the EU Environmental Acquis. In addition, MEPA acts as the national focal point under a number of international environmental conventions and multilateral agreements. It should be noted that MEPA is currently undergoing a de-merger process, which will result in the establishment of an independent Environmental and Resources Authority, which is expected to take over the functions that are the subject of this review.

MEPA employs over 460 personnel from a wide range of backgrounds and is organised into four directorates: Planning, Enforcement, Corporate Services and Environment. The MEPA Board is the decision making body, which recommends policy matters for approval at Ministerial level, and takes decisions on permits based on approved policy. The Chairman's office provides overall supervision for the work of the directorates. The following provides some more detail to their operational functions and responsibilities:

- The Chairman's Office is responsible for providing the framework within which the MEPA Board together with the Commissions and Committees operate. The secretariat is the point of reference for issuing and communicating the Board's and Commissions' decisions and in this context is a primary point of contact for ministries, departments and agencies as well as the general public. The Communications Office and Complaints office are an integral part of the function of this office. The Chief Executive Officer is responsible for the implementation of the objectives of the Authority and for the overall supervision and control of the Directorates. The CEO, together with the other directors, must develop the necessary strategies for the implementation of the objectives of the Authority.
- The Planning Directorate processes applications for development; is responsible for enforcement; policy development and plan making, transport planning and research.
- The Enforcement Directorate is responsible for both Development Control and Environmental Protection and for supporting the Authority in enforcement campaigns including Direct Action, enforcement, surveillance and actions as necessary to ensure compliance with the building development permits and to protect the environment to help achieve a sustainable environmental improvement.
- The Environment Protection Directorate advises Government on environmental standards and policies, draws up plans and provides a licensing regime to safeguard and monitor the environment

and controls the activities having environmental impact.

- The Directorate for Corporate Services is responsible for Human Resources, Information Technology, Mapping and Land-surveying, support services and Finance.

Environment Protection Directorate (EPD)

Within MEPA, the Environment Protection Directorate performs the role of the national environmental agency for Malta. It is responsible for environment protection, the development and implementation of environmental policies, including environmental assessment and environmental permitting, state of the environment reporting, the drawing up of environmental plans, guidelines, incentives and voluntary agreements; environmental awareness raising, provision of information, public participation in environmental decision making, the development of standards and the coordination of European Union and international environmental affairs. Amongst other areas, the EPD is responsible for the regulation of the environmental aspects of industrial activities, including those of the various sectors of SMEs. These activities are regulated through a stratified risk-based permitting regime, as well as through awareness raising, voluntary schemes and other tools. The EPD consists of 84 members of staff, and is organised into 4 units;

- Unit A Environmental Permitting and Industry Unit is responsible for the environmental permitting and compliance auditing of industrial installations including those involved in waste management. The unit manages the areas of integrated permitting and compliance, industry and urban waste water, and coordinates EPD input on the control of major-accident hazards (Seveso). The Unit contributes to the development of EU and national legislation in these fields. It also provides guidance to industry on Best Available Techniques, Emissions limits and the development of better regulation initiatives. 16 staff.
- Unit B The Environmental Assessment Unit responsible for Environmental Impact Assessment (EIA) and Habitats Directive Assessment (Appropriate Assessment) processes; consultee in the Strategic Environmental Assessmentprocess, advising plan proponents and the SEA authorities on environmental issues at the screening and scoping stages of the process, coordinating comments on environmental reports and draft plans or programmes. The unit is also responsible for coordinating and providing environmental input into the development consent procedure and issuance of environmental permits in relation to works that affect trees and rubble walls. 14 staff.
- Unit C The Ecosystems Management Unit working on ecosystems management, nature protection,GMOs and bio-safety EC Habitats Directive and the Natura 2000 Network of Protected Areas, the EC Marine Strategy Framework Directive (MSFD), the National Biodiversity Strategy and Action Plan (NBSAP), terrestrial and marine protected areas, habitat and species protection and management, nature permitting applicationsand processes including CITES and the implementation and follow-up of EU-funded projects related to biodiversity and nature protection. 20 staff.
- Unit D The Waste, Air, Radiation and Noise Unit sets policy on waste management, air quality, radiationand noise. The work of Unit D also includes the administration of trans-frontier shipment of waste, and the management of the air quality monitoring network, and national noise and radiation monitoring. Water is now under Unit D. 20 staff.

Responsibilities of other agencies:
Other agencies also have responsibilities with respect to environmental issues. The main Authorities are:

- Occupational Health & Safety Authority (OHSA) – Takes the lead in coordinating the actions of the COMAH Competent Authority (composed of OHSA, Civil Protection Department and MEPA-EPD) vis-à-vis the COMAH Regulations[1] (Seveso)
- Environmental Health are responsible for issues which may impact both environment and public

[1] The COMAH regulations (COMAH is Control of Major-Accident Hazards) are enacted under the OHSA Act, and define the Competent Authority as the OHSA, EPD (MEPA) and CPD. Competence is shared between said authorities/entities, with OHSA taking the lead in coordinating the administrative actions of the COMAH Competent Authority. MEPA is the enforcing authority for the provisions relating to the environment.

health such as bathing water quality and manufacturing factories related to foodstuffs
- Malta Resources Authority – they have responsibility for the management / regulation of fuels, & natural resources (groundwater, minerals)
- Agriculture – responsibility for the regulation of animal farms and related waste management issues, together with management of nitrates from farms
- Civil Protection Department – emergency responders to pollution incidents
- Transport Malta with respect to management of traffic, air pollution related to traffic, pollution from vessels and marine pollution preparedness.

Legislation

The main pieces of legislation that the MEPA is responsible for enforcing in Malta is listed in annex 2.

Financial resources

Funding of MEPA is directly from Government subvention,and to a limited extent, the permitting fee. Most of environment related activities are funded through Government subvention. Environmental permit fees related to industry come from IPPC facilities and some fees related to permitting of waste export.

The Authority employs over 460 personnel, 84 of which are in the EPD and it has an annual budget of around €10.6 million. MEPA have a relatively high number of staff for the size of the country but also have a significant workload to match. It should be noted that economies of scale are difficult to gain when trying to regulate the whole EU environmental acquis.

Permits and sites - overview

The Environmental Permitting & Industry unit carried out an assessment of industrial data published by the National Statistics Office as part of a Twinning Project in 2007 & 2008 to assess the scale and type of local industry according to environmental risk. The numbers of operators that are required to be permitted for IPPC are approximately 20 to 25, Environmental Permits e.g. waste management activities (500+) and General Binding Rules (over 7500). Over 95% of local industries are micro-enterprises typically employing less than 10 people. Most industrial activities are concentrated in industrial parks, which can be both privately or publicly owned/managed. Some are located in strategic locations e.g. Malta's harbours.

There are 12 operational permitted sites covered by IPPC in Malta (2 power stations, 2 landfills, 6 chemical sites, 1 incinerator & 1 waste oils processing plant). There is 1 permitted site covered by the IED, an ELV & temporary storage of hazardous waste facility. There are 13 pending applications:

- 4 applications for new proposed installations or installations wishing to upgrade their operations to IPPC scale
- 7 existing waste management sites with a permit needed by 7 July 2015 to continue operating
- 1 Farm (proposed)
- 1 Chemical Plant (proposed).

A list of installations is available on the MEPA website. The website also has a link for the public to get the permit application online as well as the annual environment report that the operator is obliged to prepare.

External interaction

- Complaints are received from a variety of sources (emails/phone-ins, etc) and are handled via the complaints procedures administered in conjunction with the enforcement directorate
- Public access to information requests are handled as required by the Aarhus directives, via an information enquiries focal point, that follows the process of data compilation by officers/units, and final delivery of the data.

Part B – Permitting activities

Overview

The general objectives of the EPDs permitting system:

- Implementation of large number of environmental regulations concerning IPPC + IED, VOC Solvents, Waste management, Seveso
- Implementation of Air, Water and Waste Directives: Policies & measures often require environmental permitting
- To address substantial local environmental impacts arising from industrial activities not identified in specific regulations
- To facilitate and simplify industry's compliance with environmental regulations.

In conjunction with these objectives, the EPDs strategy is to implement the following:

- Risk-based approach ensuring that regulatory effort is directed towards greatest need, and is most cost effective
- One combined permit for most regulations under EPD's remit
- Operator is made aware of obligations under legislation and any changes to help facilitate compliance with the permit
- Process enables operators to identify areas of priority environmental concern & issues for risk management
- Permit is renewable and variable – permit process is a dynamic interaction between operator and regulator and is time bound
- Basis for compliance activity
- Defines extent of liability for operators.

Process for issuing, reviewing and revoking of permits

The following is an overview for issuing a permit in Malta:

- Land use planning determines where and how new enterprises will be established
- Development permits determines footprint, location of individual installations, controlling issues like visual impact, traffic, storage, closure
- Environmental Impact Assessment (EIA) processes are used to ensure that development permit decisions are informed
- Environmental Permits regulate ongoing operations at enterprises, closure and aftercare
- Compliance inspections are carried out and legal action is taken where necessary.

The part of the process governed by the issuing of development permits is described below:

- The processing and issue of development permits is the responsibility of the Planning Directorate
- Decisions are taken by MEPA board, delegated to Environment and Planning Commissions, and/or designated staff
- Planning permission has a two tier approach: a development permit or a Development Notification Order (DNO), as defined by law
- Decisions are based on a policy framework that ultimately emanates from the Structure Plan and Local Plans – currently being revised
- Development permits are generally required for industrial activities as per provisions of local plans, through certain activities in defined industrial zones are permissible through DNO.

The Environmental assessment process is as follows:

- Environmental assessment of development permit applications is the responsibility of the Environmental Assessment unit of MEPA, which reviews such applications against the requirements of the Environmental Impact Assessment regulations
- The Environmental Permitting & Industry unit provides feedback regarding environmental issues related to industrial operations via the Development Control-EPD process, as well as guidance regarding required design features
- The consultation process allows for the commencement of the environmental permitting process, which moves in parallel with the development control process where feasible
- The consultation process allows for further compliance checks where the development permit application concerns a site where an environmental permit is issued.

The Environmental permitting process follows three main streams depending on environmental risk:

- IPPC permits as defined by the Industrial Emissions Directive
- Environmental Permits for those facilities requiring operation specific or site specific concerns
- General Binding Rules, which are standardised permits which involves registration by the applicant.

Permit compliance is achieved by carrying out the following:

- Compliance monitoring involves the performance of inspections that may be scheduled or unplanned, and follow a programme that is described further in Part C of the IRI review
- Monitoring commences as part of the permit application assessment process as basic verification of the permit application, and continues throughout the application process
- Compliance inspections are intended to promote a compliance culture, increasing operator awareness and providing feedback to the Authority regarding permit effectiveness
- Lack of correction of non-conformities by the operator are referred for further action.

Lack of compliance may be addressed via one of the following enforcement tools (the choice of tool is relative to the size/nature of the offence and MEPA can jump to a high level of enforcement if required):

- Verbal warnings
- Written warnings
- Non-renewal of permit
- Partial or full suspension of permit
- Out of court settlements in lieu of prosecution
- Referral for legal action.

The review team noted that MEPA wishes to place its emphasis on compliance rather than prosecution. Furthermore, that prosecution is often a sign that the ability to influence and enact positive environmental change has failed. The review team viewed this approach as a constructive and worthy approach that highlighted MEPA's determination to 'get things done' on the ground rather than go through lengthy and potentially unpredictable legal channels. MEPA's view appeared to be that taking operators to court was a last resort. This contrasted however with the Dutch example from the review team where suspending or withdrawing a licence to all but stop a company's activities would be seen as a last resort.

If the prospect of legal action was suggested, MEPA informed the review team that most operators 'back down' once faced with court proceedings, and opt to comply and/or remediate the situation. This is indicated by the limited number of cases sent to court (2 in the last three years), both of which are awaiting an outcome. MEPA said that court rulings associated with pre-2008 environmental inspectorate did not give encouraging results . On a more tactical level, Larry said that working out the financial cost of the harm/damage done is an exercise that could be carried out to help the courts understand the impact of non-compliance.

The use of out of court settlements, where fines have been greater than the legal penalties that have been handed down so far, has allowed a greater number of resolution of non-compliances. There is, at present,

no court dedicated to environmental issues. The lack of cases against environmental laws suggest that they are largely untested and that the pending cases are viewed as test cases.

The use of 'Out of Court Settlements'by MEPA has been a preferred option rather than to go for full legal action. Income derived from these go to an Environmental Fund that is used for environmental projects. There have been 3 appeals against decisions made by MEPA. In 2 of the 3 cases, the Court of Appeals referred the operator back to MEPA for further discussion and correction. One of the cases was dropped immediately. MEPA operates a '3 strikes and you're out' policy whereby the MEPA Board increases the level of the out of court settlement for each operator if they are seen to be repeat offenders.

The review team noted that MEPA does not publish their compliance policy and nor do they publish the issuing of it's out of court settlements. In Scotland for example, the use of negative publicity by the Scottish Environment Protection Agency (SEPA) has helped to inform the public (via online publication) of the worst offenders in their community which in turn puts additional pressure on them to comply with their obligations. Not only can this have a reputational risk for the company but it can also be used as a market place tool. Anyone disposing of waste in Scotland has duty of care to dispose of it to a responsible operator, the published list can be used to highlight which companies are responsible and therefore who to give the business to. SEPA is taking the use of negative publicity to a further level through the recently acquired power to issue 'publicity orders'. A publicity order requires an operator to pay for an article in the media that explains why they have non-compliances.

Case Study:
Use of ''publicity orders in the Netherland''. A new development in the Netherlands is more active publication on the internet of inspection results and administrative sanctions. The reason is openness to the public on the efforts from administrative bodies to reach compliance. In effect it can also have an impact on the publicity of companies. During this process we notice companies put more effort to comply during the inspections. In more complicated inspections (for instance Seveso) these can take several days. To improve the active attitude of companies it is under consideration to give companies a chance to react on the inspection reports on the internet next to the report. By doing so they can decrease the impact on their reputation by reporting on the actions they have done shortly after the inspection to get in compliance again. It should be noted there is a risk companies use this opportunity to criticize the inspections of the administrative bodies (such as too few skilled inspectors, only minor breaches etc).

Since some years the DCMR agency also publishes the major cases at hand. Typically there are about three case descriptions. On these pages there is a description of the problem and what actions have been taken to improve the situation including formal actions from the company.

The review team suggested that one further option for MEPA to explore was the use of fines for small / micro installations on daily, fixed or a variable rates. MEPA said that the implementation of fines are a tool that has been proposed as part of the new agency to be formed after the de-merger but it is uncertain at this stage whether this will be granted.

The review team identified another possible tool to be considered by MEPA: an 'Imminent threat order'.

Case Study:
Irish environmental legislation provides under civil code as 'injunctive relief' IF and only IF the threat is both immanent and the Agency has just become aware of it, and you need a court's backing to force a person or persons or operator or company to take urgent action to prevent threat of pollution or damage and can't wait for a full hearing of both sides of the argument. The legal argument can take place later on after immanent threat is dealt with. Scotland has something similar called an interim interdict; a breach of which is a contempt of court and can lead to heavy penalties such as immediate imprisonment.

This tool is also available in Dutch administrative law. An administrative coercion can be taken to take action if an immediate threat forces the agency to take action. The same can be done in criminal law. Environmental inspectors can ask the prosecutor for permission to take action (mostly shutting down activities but also hiring contractors with the cost of repair given to the company).

In all three instances given above it should be noted that the use of this measure is quite.

The permit periods are not set down in law and thus giving a high degree of leeway to influence compliance; poor compliance leading to a requirement to get a new permit. Having said this though, permit validity is usually for 4 years for IPPC sites but maybe as low as 6 months. MEPA indicated that the renewal process is helpful in ensuring compliance. They also said that revoking permits was difficult but withholding renewal can be as effective in ensuring compliance. The review team noted that in Iceland, the length of permit helps to drive business confidence and certainty and thus encourage new investment. They, for example, have 16 year permits because business have informed them that they would not have invested had it been only for 4 years (which is what it used to be). In Italy, the same principle of encouraging investment exists and it had led authorities there to lengthen permit validity to 10 years and even more when the site has EMAS.

The review team noted that in Malta if a permit has lapsed but that the renewal process has begun then the old permit conditions are still active/valid. MEPA informed the review team that a key challenge in the permitting process was the poor quality of application submissions and that often data is lacking and a significant amount of hand holding is necessary in order to walk applicants through the application process. The review team noted that MEPA have prepared a list of 'unofficial'consultants that can assist applicants in the application process.

The application process in Malta usually takes 5-6 months. There is no time limit for the processing of permits. MEPA informed the review team that without guarantees on adequate staff resourcing from their Ministry, there would be no time limits on permit processing.

Charging

Maltese law sets out the fee level for different industrial sectors for permits:

- New application: Schedule 5 (payable upfront)
- Annual fee: 10% of new application (reduced to 5% in case applicant has ISO14001/EMAS)
- Transfer, variation: 10%
- Renewal: 50%
- Surrender 25%
- *The cost of inspections (site visits) are also mandated here at €200 each.*

MEPA said that the fees of IPPC permits generally cover the cost of the permit process. They can ask applicants to cover the cost of consultants if required to obtain additional information for the permit process. MEPA said that the cost of permits range from € 1,000 to € 35,000 and this would include their annual cost of inspection. MEPA said that they can request a financial guarantee to cover payment of additional studies/assessments that may be needed. There is also an additional financial guarantee that is held by MEPA against possible future non compliances though this is mainly required from larger, more risky sites and not lower risk sites. MEPA gave the example of a landfill site which would typically require a guarantee of € 1.2 million.The review team noted that the fees are not index linked to prevent against the loss of value over time (inflation).

MEPA said that the cost of carrying out inspection is also covered in the charges for a permit. The fees for the following year are increased if there was, for example, follow up / enforcement action during the previous year.

Involvement of the public

Access to information:

- Public consultation:
  - 30 days: New permit, substantial change, derogation from BAT-AELs
  - 15 days: Other cases where MEPA considers consultation necessary (e.g. renewal, minor change, if necessary)
- MEPA to make available on the internet:
  - Decision
  - Reasons on which decision is based
  - Reasons for derogation from BAT-AELs
  - Measures taken by operator upon definitive cessation of activities

Links with the planning permitting process

The Maltese Environment and Planning Authority has essentially two halves to it: its planning side and its environment side. All industrial activities and / or sites require some form of development consent in Malta, either a Full Planning Application or a fast track application (for a DNO - development notification order or Change of use). It aims to include environmentally sound practices into the design and planning process. The Full Planning Application or a fast track application is dependent on where the site is e.g. if the site is in a development zone like an industrial park then you can get either a full planning application or a DNO. A DNO is issued if you are in an existing industrial zone and a full application is required if outside. The process launches pre-application environmental permit stage with the operator.

In order to ensures that it retains its knowledge and ensure its staff is applying best practice, MEPA informed the review team that it always uses BREFs for an indication of best practiceas well as through discussions with other Maltese legal entities e.g. animal welfare and veterinary authority (by learning from one another). They also said that guidance documents are issued to help reduce the amount of 'hand holding' the planning department does with applicants but that in some circumstances, guidance documents are not effective.

Case Study:
The use of engagement & partnership working with stakeholders such as other public bodies, trade associations or industry can lead to higher degrees of compliance with permit requirements or legislation as a whole.

In Guernsey they have successfully used sector based seminars and industry newsletters as a way of informing applicants on what they need to do with applications and how to ensure that the information they give is accurate and targeted appropriately to the sector.

In Cyprus, the agriculture department had made direct contact with the relevant Industry Associations to get the message across about requirements. In Scotland, SEPA worked directly with the National Farmers Union to develop a Code of Practice that described both statutory requirements and best practice to help farmers improve compliance rates. SEPA also joined with other public bodies involved with the agricultural sector to develop Scotland's Environment And Rural Services (SEARS) a partnership way of working aimed at reducing the regulatory burden on the sector. Through this partnership SEPA were able to reduce the number of inspections of sheep dip operations by passing responsibility to another agency that already carried out more farm visits than SEPA. Non-compliances were passed back to SEPA for enforcement purposes. Due to a higher rate of inspection more non-compliances were identified, these were pursued by SEPA which ultimately lead to a higher on-going level of compliance and environmental protection.

In the Netherlands, they issue less permits but use more standard rules (GBRs) as a way of reducing the administrative burden on companies and in effect it shifts the compliance and information burden from permitting staff to inspectors. The majority of companies (95%) identify their activities on internet and by

doing so know what the specific rules are for their activities. In practice this needs some hand holding by inspectors for smaller companies.

There are a lot of contacts on different expert groups between industry groups and administrative bodies. Although decreasing, the Netherlands is a country with is a lot of negotiation going on (''polder model'') between parties. For instance, the standard rules for IED cat4 (chemical industry) have been proposed to the Dutch industry group "vnci" to get to know the acceptance of these standard rules.

With all methods of engagement between a regulator and industry there is always a risk of being compromised or captured in terms of what you are trying to achieve and this should always be mitigated against. It should not be seen in terms of a tradeoff more in terms of facilitation to meet an end goal.

Going forward, the review team concluded that ensuring the strong links between the new EPD and the Planning authority after the de-merger was of critical importance. To do this, the authorities involved could consider formalising the relationship by making for example the EPD a Statutory consultee or by developing a Memorandum of Understanding between the authorities.

IPPC permitting process

The following is a description of the IPPC permitting process in Malta:

- Initial meeting with applicant to explain IPPC permit process and application forms.
- Payment of application fee
- Submission of 1 hard copy and 1 soft copy to MEPA and to the external consultees (e.g. Maltese Resources Authority, Civil Protection Department)
- Review of application by MEPA and consultees
- Request for further information or consolidated (updated) version.
- Initiation of public consultation (usually 30 days) (website, MEPA front office and local council)
- Receipt of feedback from public
- Consultation regarding permit with operator and consultees
- Publication of response to Public consultation and publication of the draft permit –these are uploaded to MEPA website and are there for 2 weeks as a minimum
- Approval by MEPA Board (this is a public hearing. Some members of the public prefer to mention their views at this stage). The applicant presents their case, MEPA then presents its case/views on the application and then the public can stand up and make their views known.

Environmental permits

MEPA uses an environmental permitting system to regulate Malta's SMEs and ensure that the large number of Air, Water and Waste Directives can be implemented properly. They prepare a standard set of environmental conditions that can be adjusted dependent on specific local circumstances but by and large are kept standardised. They are sector-specific with conditions that have been extracted from EU directives and Legal Notices.

After carrying out some EU Twinning Light projects (2007 & 2008) using National Statistics Office information, MEPA identified approximately 500 activities requiring an environmental permit though this has subsequently been revised upwards to nearer 700.

MEPA informed the review team that since 2011, a staff of 20 permitters has been reduced to 10. The full permitting regime to be implemented is therefore dependent on resource availability. Table 2 below highlights the activities that fall under the environmental permitting regime. Not all activities in Malta have been permitted yet and this table helps MEPA to prioritise which permits are most important to be developed or need to be upgraded first as and when staff resource allows them to do so. There is a priority

to focus on renewing the existing permits rather than actively expanding the number of permits particularly in the low risk areas. Most of the higher risk sites have been permitted.

The review team agreed that high risk sites should be permitted before lower risk non-problem sites.

TABLE 2: MEPA PRIORITIES FOR PERMITTING IN MALTA

Priority 1 (highest risk): • COMAH (Seveso) establishments • Fuel terminals • Container terminals • Shipyards • Batching and asphalt plants	**Priority 1 (legal obligations):** • Waste management activities, e.g. scrapyards, inert landfills, waste transfer stations, waste oil producers, abattoirs • Quarries • Petrol stations • VOC solvents activities, e.g. printing, surface coating, dry cleaners • Activities with a discharge to sea • Sewage treatment (size threshold)
Priority 2 (medium risk): • Manufacturing plants with >250 employees • Chemical & pharmaceutical plants • Marinas, airports • Hospitals • Fish farms	**Priority 4 (lowest risk):** • Manufacturing, e.g. wood, machinery, plastic, rubber, electronic products • Food & beverage manufacturing • Seaports • Hotels with more than 400 bed spaces

All permits have a technically competent responsible person within MEPA.

The environmental permitting process is as follows:

- Application form (& supporting docs) submitted – form available online (completeness check). Version controlled.
- First review of application carried out
- On-site visit & meeting
- Queries re application
- Response to queries
- Application considered 'duly made' once sufficient information is supplied to MEPA (Environmental Permit number given)
- EPD recommendation discussed with operator and interested stakeholders
- Decision
- Appeals procedure
- Compliance inspections and reporting.

MEPA have the ability to influence permit conditions. They consider the following operational aspects when making these permit conditions:

Contingency
- Spillages (fuels, raw materials, solvents, solid wastes, effluent)
- Failure of abatement equipment

Emissions to Air
- Dust, solvents from process
- Boilers & generators
- Diffuse emissions (e.g. quarries, batching plants)

Storage
- Raw materials, chemicals, fuels, waste (possibly hazardous)

INSTALLATION

Discharges of Effluent
- Process wastes, washings
- Grease
- Water purification: brine
- Discharges to sewer/sea/groundwater?

Waste
- Hazardous materials (e.g. spent solvents, reject products, microbiological, lab waste, waste oils)
- Non-hazardous waste
- Waste transfers
- Waste destination

Noise & vibration
- Crushing/blasting operations (e.g. quarries)
- Air handling systems, alarms

Storage
- Proper storage & containment (Waste Framework Directive)

Air
- Abatement systems (e.g. filters, scrubbers)
- Height of stacks
- Substitution of certain VOC solvents: LN 225/01
- Maintenance of boilers & generators, correct fuels: LN 159/02
- Monitoring from boilers & scrubbers

Contingency
- Emergency plan
- Training of staff
- Notification to MEPA

INSTALLATION

Effluent
- Treatment
- Recovery/minimisation encouraged
- Discharges to sewer need sewer discharge permit: LN 139/02

Waste
- Appropriate disposal/recovery
- Consignment note procedure (LN 337/01 – LN 184/11)
- TFS permit for export
- Registered waste carriers: LN 106/07
- Record keeping

Noise & vibration
- Attenuation (if necessary)
- Testing of alarms at reasonable hours

The review team noted that MEPA do not require permit applicants to show an awareness of their local potential impacts e.g. upon a nearby nature reserve or housing in a community. MEPA do carry out checks on local pressures and potential impacts. The review team pointed to good practice in Cyprus and elsewhere where the burden of investigating local impacts is placed on the applicant. This also helps to ensure that the applicant is aware, or becomes aware, of their potential impact on neighbours. The impacts identified or missed by the applicant are validated by the regulator.

The Environmental Permit also includes requirements for:

- The submission of an Annual Environmental Report (AER) which documents things such as Waste transfers, Monitoring records, Fuel use.
- The possibility for a phased environmental improvement programme. Agreement on this is made

with the operator over a time period for when actions will be taken.

- Environmental monitoring.
- Permit validity which is usually for up to 4 years
- Site visits.

Case Study:
The approach of Annual Environmental Reporting (AER) in the Netherlands is national. All companies must report in one online system. Regional authorities have the duty to check if the information is complete and valid. This includes site visits to look at the system s companies use to produce this information. Sometimes the emission values are checked by performing measurements on site. For some sectors (for instance waste incineration) guidelines and calculating schemes are developed to check if certain emissions are possible. There is another check nationally by the RIVM institute. If there are issues the regional agencies force companies to explain and sometimes change the information. Information is only accepted if the regional agencies agree. This data is made available to public and administrative bodies via the internet site. On a company of sector level all emissions including the development over the years can be seen. Professional users have a more extended version, for instance to get excel outputs for further analysing. Link with English explanation: http://www.emissieregistratie.nl/ERPUBLIEK/bumper.en.aspx
The DCMR agency uses this information to identify the companies with the most important impact to air, waste production and energy use.

The review team noted that MEPA has compiled a database of companies who provide environmental monitoring services for operators to choose from. This list however is not an 'approved list' and MEPA does not assume that all names of companies on this list are competent and capable of carrying out the required work to the required standard. The list can be found at: www.mepa.org.mt/environmentalpermitting-monitoring.The review team suggested that MEPA could consider commissioning consultants who they know are competent to carry out environmental monitoring but that the operators pay. On the other hand, the team also acknowledged though that MEPA might find this difficult due to staff resource limitations. Finally, the review team noted that MEPA does not have any laboratories for auditing purposes.

Case Study:
In the Netherlands the DCMR agency has outsourced the actual measuring and laboratory work. There are experts within the DCMR that tender and check the results and check the contractors during the measurements. A comparison study at different contractors doing the same measurement for air has shown that there are quite some quality differences between contractors and measuring staff. So it is important to know this before putting contractors on a list.

MEPA is developing a Shared Environmental Information System (SEIS) though it is not detailed on data capture side. MEPA inputs the data. The review team thought that by collecting and inputting other environmental data from other agencies/sources that the operator's data that is input into the system by MEPA could more easily be put into context. This would help identify if the licence controls are effective or not.

To date, MEPA have issued 114 permits, including waste management facilities, hotels, laundry and dry cleaning facilities, printing presses and quarries. 121 installations have applications for environmental permits that are pending.

TABLE 3: NUMBERS OF PERMITS ISSUED / PENDING IN MALTA (JUNE 2014)

Type of activity	Issued permits	Pending permits

Pharmaceutical manufacturing / tabletting	5	1
Waste management	39	7
Chemicals (manufacturing and storage)	3	2
Batching plants / tarmac plants	2	3
General manufacturing	12	6
Hotels	4	7
Scrap yards	3	0
Sewage treatment plants	3	1
Sea terminals / marina	2	6
Fuel terminals	1	8
Container yards	2	1
Shipyards / boatyards	2	4
Printing	1	0
Vehicle / aircraft repair	1	5
Discharges to sea	1	3
Laundry / dry cleaning	9	5
Petrol stations	1	11
Quarries	23	45
Slaughterhouse	0	1
Laboratory complex	0	1
Mushroom farm	0	1
Hospitals	0	2
National infrastructure	0	1
Total	**114**	**121**

Based on table 3 above and the EU Twinning Light projects (2007 & 2008) using National Statistics Office information (which identified the total number of possible installations to be permitted as 500), the current state of play for environmental permitting in Malta is approximately:

- 23% of all relevant installations have been permitted
- 24% are being processed / pending decision
- 53% not permitted

The review team also remembered that 500~ installations indentified as possible sites for permits, was an underestimation and that it was more likelyto be nearer 700. MEPA reminded the team that they can force an operator to apply for a permit if there is a serious non-compliance found, for example, via a complaint.

MEPA use a bank guarantee system as a firm financial guarantee for sites such as landfills. If used it has a major impact on business so it is a strong enforcement tool that has to be used carefully. The company can get into real problems because of impact on investments and credibility. Flipside is that company does not like this because of cash flow limitation.

General Binding Rules

MEPA employ General Binding Rules (GBRs) for a number of sectors and processes as an additional tool to ensure compliance with legislation. Currently, they have 22 GBRs for various sectors (111 facility based GBRs had been issued):

- GBR 1 - Hotels and restaurants
- GBR 2 - Construction
- GBR 3 - Engineering and metal products
- GBR 4 - Food Processing
- GBR 5 - Electronics and specialised equipment
- GBR 6 - Furniture and wood products

- GBR 7 - Rubber, plastics, glass and ceramics
- GBR 8 - Printing services
- GBR 9 - Motor vehicle and boat repair services
- GBR 10 - Clothing manufacturing
- GBR 11 - Chemicals, fuels and gases
- GBR 12 - Waste carriers as per LN 106 of 2007
- GBR 13 - Waste brokers as per LN 106 of 2007
- GBR 14 - Farms, stables and animal holding units as per LN 106 of 2007
- GBR 15 - Medical, dental and veterinary clinics as per LN 106 of 2007
- GBR 16 - Miscellaneous groups
- GBR 17 – Underwater Cleaning for Marine Vessels
- GBR 18 – Mobile plant
- GBR 19 – Fuel stations
- GBR 20 - Laboratories
- GBR 21- Industrial Complexes
- GBR 22 - Cargo Handling and Transport.

(*Some of these GBRs are enshrined in Maltese law e.g. the ones with 'LN…')

The review team noted that the 22 sectors chosen were varied and had no detectable pattern. MEPA however had chosen these because they were either numerous and small scale or there were specific practicalities in managing and regulating them. For example, farms, where there can be simple rules put in place which avoided costly and complex regulatory activity e.g. through environmental permitting. On the whole, MEPA had identified four main drivers for their GBRs and hence the main conditions relate to:

- waste management
- emissions to atmosphere
- effluent discharges
- storage.

The review team noted that MEPA had decided to reduce the validity period for some GBRs and increase it in others. For example, for waste carriers, MEPA decided that an annual process was needed to reduce the likelihood of 'freeloaders'. MEPA highlighted to the review team the process for registering waste carriers.

Guidance notes have been issued for the following sectors to help provide a better understanding of the environmental conditions set out in the GBR's:

- Hotels and restaurants
- Food Processing
- Motor vehicle and boat repair services
- Chemicals, fuels and gases
- Waste carriers as per LN 106 of 2007
- Waste brokers as per LN 106 of 2007
- Farms, stables and animal holding units as per LN 106 of 2007
- General Guidance Note applicable to all other sectors
- Underwater Cleaning for Marine Vessels
- Land Remediation.

The review team were impressed with MEPA's use of GBRs as an instrument to ensure compliance with legislation. However they also noted that though there were 22 GBRs currently in place, the focus / MEPA's resource effort was firmly on farms, waste carriers and underwater cleaning as these were considered to be high priority in Malta.

MEPA indicated that they had carried out some limited amounts of sector engagement e.g. talking to the farming cooperative. In addition to the guidance notes that the review team felt were important for the public and industry, the team identified other possible strategies to explore such as the development of leaflets, YouTube videos. The review team thought that some of the burden of permitting low risk sites could be reduced by having a simple system where by operators sign-up to say they will comply with the GBR. This could still be time bound if required.

Case Study:
In the Netherlands they have a national office that prepares basic information on legislation and new developments. The link to the English site is http://rwsenvironment.eu/. Another guideline has been developed for companies where they can identify their own requirements on a website themselves.

Northern Ireland and Scotland have a joint portal http://www.netregs.org.uk/ where guidance for lower risk activities or small and medium sized enterprises is given. This shows both good practices and statutory requirements.

Part C – Performing inspection tasks (Environmental Inspection Cycle)

Planning of inspections

1a. Describing the context

Overview

After MEPA was formed in 2001, the inspections that were carried out were related to complaints (e.g. from fly tipping to soot from power stations). However, with the introduction of waste management permits came compliance inspections and with the development of a permitting unit in 2007 with compliance and enforcement capabilities in 2008, the role of inspections increased. Though still ad hoc, (e.g. based on complaints or through random periodic checks of permits) a more formalised system was introduced in 2010, based on risk and past compliance levels but still partially based on expert judgment. In 2013, a new risk assessment system has been introduced in MEPA.

1b. Setting priorities

Overview

MEPA introduced a new risk assessment tool in 2013 to help reduce ambiguity in the ranking / prioritisation of sites for planning of inspections. The tool has two functions: to determine risk and hence inspection frequency; and to help determine suitability of Technically Competent Person (TCP) of sites. Data is based on information gathered during the environmental permitting process, through Annual Environmental Reporting (AERs) and through past compliance inspections. The tool distinguishes between environmental complexity and the environmental risk of the site.

The risk assessment tool considers various parameters such as direct environmental impacts (e.g. emissions, discharges, waste), location factors, compliance history, and good environmental practices (e.g. BAT or EMS). Some parameters have additional weighting attached to their scoring (e.g. sensitivity of receptors). The tool delivers a frequency for inspection for each category rating: 'High' – Minimum once a year, 'Medium' – Minimum once every 2 years and 'Low' – Minimum once every 4 years.

The information for a newly permitted facility will be input by the permitting case officer. MEPA updates the system every six months. The tool allows officers to add notes explaining the reason behind their scoring. This also facilitates and helps MEPA when they come to updating the system and details for each of the facilities. MEPA informed the review team that facilities of national importance also tend to be given a high priority rating (e.g. national landfill, main power station, etc).

The IRI team noted that MEPA had carried out a preliminary evaluation of the risk assessment tool's strengths and limitations.

Strengths:

- Automatic calculation of risk factor for site
- Reduces some of the ambiguity in scoring
- Holistic (factors in both positive and negative).

Limitations:

- Tool needs further optimisation to render it more relevant to local context
- Some ambiguity remains in scoring (e.g. scoring compliance history)
- A facility risk assessment cannot be 'complete' until the first compliance inspection takes place.

The review team were impressed that MEPA had come a long way in such a short time to implement a good risk assessment system especially considering it had no precedent to work on. However the review team expressed its concern that the current risk system is possibly going to be resource and input intensive in the coming years, particularly as the number of sites and information increases over time. The review team suggested that MEPA explore automated systems or only seeks to update the information as new information becomes apparent rather than every 6 months.

The review team suggested that MEPA could look at the good practices currently taking place in the countries of the IRI team as indicated in the case study below

Case Study:
In the Netherlands there is a national system for calculating the necessary inspection input (inspection hours) at Seveso companies. Different inherent risk factors (age of installations, amount of certain installations types etc) and behaviour aspects (This factor is an assessment of inspectors and is an indicator if there is a useful and effective internal safety management system and the company actually uses this) are put in an automated model. From this model the hours needed for every company are calculated and put into the planning of inspections. This model is up to date because it uses information from a national reporting system updated by inspectors. Since the inherent factors do not change that often, these are updated less frequently.

In the DCMR agency there is a further development to calculate risk from all 27.000 companies in the Rijnmond area. Inherent risk factors and behaviour factors are put in a model from different information sources. This is still work that has to be done by hand but the most important factor that shifts most in time, the behaviour factor, can be used automatically.

In Scotland, they utilise a system of 'over-rides'. In their risk assessment system, where there is an assumption of failure or where there are non-compliances based on past history, the Competent Authority can ensure extra intervention in the following year. SEPA have been able to do this by linking the risk assessment process to a formalised compliance scheme to help reduce ambiguity in scoring and to ensure resource is directed to the most important areas e.g. Firstly non-compliant high risk sites. The combined system is known as the Dynamic Regulatory Effort Assessment Model (DREAM)

In Ireland, they have chosen to be proactive with their engagement strategy and have asked their licensees to fill in the matrix part first, in other words, to encourage licensees to understand their risk based on parameters and hence why they will be inspected a certain number of times as well as the fee that the licensee pays. This also has the added advantage of encouraging dialogue with the regulated community by increasing 'buy-in' and 'demystifying' the regulatory process.

The review team reminded MEPA that the frequency of inspections is also not the whole story and not necessarily the most important aspect to get right. For example, historically in Norway, the length and quality of an inspection is considered so that they may only carry out an inspection as a minimum once every two years but each inspection can last for multiple weeks.

Inspection planning system

MEPA gave the review team some information about their inspection planning system:

- The monthly planned inspection schedule is based on the risk assessment tool
- MEPA bases its staff resource time (workforce planning) on 210 days per year per person
- Monthly time resource, time spent 'out in the field', are calculated however related time resources (e.g. pre-inspection preparation, report writing, database updates) are not. Time for non-routine and follow-up site visits are not pre-calculated
- An average routine inspection at a medium scale installation takes approximately two hours
- Inspection plans are based on several factors such as sectoral problems or general issues flagged as

problematic based on previous year's inspections
- The plan is reviewed and updated periodically in order to provide the best compliance monitoring coverage possible with the resources available
- Inspection plans are made available on the MEPA website
- Inspection plans and procedures follow a risk based approach
- MEPA's 2014 focus is on compliance related to implementation of IED sites (and those that are borderline of thresholds), Waste Management sector (with focus on hazardous waste), and monitoring of high risk installations.

Planned and unplanned inspections

In 2012, MEPA carried out a total of 250 inspections (routine & non-routine) (Total Inspection Hours 667.5hrs) whereas in 2013 246 inspections were carried out (Total Hours Inspections 728hrs). Over the two years the split between routine and non-routine was roughly 50:50. Non-routine included pre-permit, monitoring of obnoxious industry, monitoring of complaints with several follow-ups. The review team suggested to MEPA that pre-permit work could be considered as part of routine planning and that non-routine can also count for those without a permit.

The review team noted that most regulators have a ratio somewhere between 70:30 and 60:40 routine to non-routine inspections.

1c. Defining objectives and strategies

Overview

MEPA develops annual targets and objectives which are based on sectoral gaps (e.g. 'problems with scrap yards across Malta') or significant issues (e.g. waste reporting; industrial operations in the vicinity of residential areas) which were raised in the previous year of inspections. Strategies on how to reach objectives and targets are then developed (e.g. outlining a strategy based on the objective of increasing compliance level of emission limit values into the marine environment). This is then incorporated into the inspection plan for that year.

Inspection strategies

Inspection strategies are based on sectors or issues that have been identified as a priority. Sectors are tackled holistically from a permitting, inspection and communication perspective as well. MEPA have found that this approach has helped move various sectors towards better compliance as a whole. These strategies are often concluded within the same year as they commence, but can continue on as required until the objective is met and the priority can be reduced. It was noted that EPD undertake a high number of unplanned/non-routine inspections. It is thought that some of these should be recorded as planned or routine inspections.

MEPA gave several examples of their inspection strategies in practice from recent years including on waste carriers in 2008, scrap yards in 2009, Quarries in 2010, IPPC in 2011, Environmental Permits in 2012 and the Industrial Emissions Directive in 2013.

The example of MEPA's scrap yard inspection strategy in 2009 and the drive on Environmental Permitting in 2012 are picked out below:

- Scrapyards in 2009
    - Some scrapyards operating under police licenses but had no development or environment permits
    - Inspections carried out to see extent to which sites needed upgrading
    - Discussions with operators held to begin necessary application processes for upgrades
    - Permits with short life-spans (6 months) issued to get ball rolling, on condition of

commencement of development permit applications – End-of-Life Vehicles were excluded from permits
    - At present, most scrapyards have upgraded or are in the process of doing so; and some have now been allowed to start accepting ELVs once again for proper de-pollution

MEPA asked the review team for information regarding to ELV sites and whether they were being classed as Industrial Emissions Directive (IED) sites. Information is given in the case studies below.

Case Study:
ELV are not considered to be IED companies in the Netherlands. They will be inspected though and as a rule, every company that has more than 5 ELV can be considered an ELV treatment plant. There is a clear definition of what an ELV is. These companies must have the minimal requirements for such a company. and they have standard rules. This is a clear incentive for car repair workshops to dispose of their ELV's before they reach the threshold of 5 so there is no pilling up of ELV in their yards.

For ELVs there is a national (Dutch) organisation (ARN) that collects money (deposit) from the sales of new cars. This money is used to control the de-pollution of ELVs. The ELV companies get guaranteed sums of money for certain waste streams. This organisation uses these funds to further organise the environmentally and economically sound removal of these waste streams. They state that the reuse percentage is about 95% at the moment. See their English website for more information: http://www.arn.nl/en/

No ELV sites carrying out purely depollution are IED permits in Scotland. Three sites with shredders above the IED threshold are however IED sites and ELV processes within them will be captured as associated activities.

- Environmental Permits (EPs) in 2012
    - Increase in consultations by Planning with EPD and policy direction leading to a push on issuing environmental permits
    - Awareness building through information sessions with industry groups
    - Lead to substantial increase in applications and pre-permit inspections
    - New applications received that year: 78

To supplement the inspection strategy, MEPA employs a general communication strategy by communicating the results of inspections to operators, providing feedback to complainants, consulting with other Government entities and the public about specific nuisance activities and issuing occasional press releases related to permitting and compliance related actions.

1d. Planning and review

MEPA reviews its inspection plans and schedules to reflect the relevant corporate strategies or direction given as well as balancing this with other workload. There is a six monthly review of risk levels made and schedules are adjusted accordingly.

Execution framework

Protocols – Guidance

MEPA has General Compliance Procedure documents available outlining the main steps of the inspection process. These are in place to help ensure consistency during inspections and they are for all inspecting officers to follow. There are procedural documents on: Routine & Non-routine inspections, (including

follow-up), the Complaints Procedure and the Actions Procedures. Each procedure will have relevant standard documents with a databases linked to it.

The IT department within MEPA has ISO9001 certification but the authority as a whole does not have a certified EMS.

Information management and exchange

Information related to inspections is maintained in databases specific for the individual dataset (e.g. monthly inspection schedule, complaints register, photo database, file databases & individual operator compliance folders, risk matrices etc). There are physical compliance files for each permitted facility as well. There is an internal shared folder to share information between Directorates within MEPA on specific cases which may have action being taken in parallel.

Equipment

- Transport – 1x 4-wheel drive pick-up van (booked internally); availability of other pool cars through bookings
- Computers – Office based PCs
- Communications - One mobile phone shared between unit (booking system)
- Sampling equipment - Hand-held Monitors for Total PM, VOCs and multi-gas monitor
- Other including two Cameras (SLR Bridge), Seals, Personal Protective Equipment (safety shoes, high visibility vests, hardhats, steel-toed wellington boots, raincoats/trousers).

Qualifications

A recognised degree in social, natural or applied science or law is required to join MEPA. When recruiting, MEPA has a set procedure for recruitment involving first an internal call for applicants and then an external call.

Ethics

MEPA utilises some guidance on ethics which stipulate a number of things such as: that employees shall dedicate their normal working time to the service of the Authority and that they should not engage in activities which are a conflict of interest. In terms of confidential matters, no confidential information is to be divulged at any time during their employment to any person or organisation outside of MEPA. Employees who infringe the Code of Ethics are liable to immediate disciplinary action. No gifts can be accepted.

Training

MEPA's training procedures include 'On the job' training, mentoring and a review of their knowledge of inspection procedures.

MEPA also carries out an assessment of training needs each year. Employees can attend up to three courses per year assuming that it is in line with training needs. MEPA employs an external training provider. Courses include for example customer care, report writing, IT courses, minute taking etc.

There are some limited secondment and training opportunities abroad for MEPA staff such as those that arise through EU funded projects and training that has taken place specifically on inspections and environmental permitting in the UK, Ireland, France and Bulgaria. MEPA were part of an EU funded capacity building program to train staff. It was noted that this project has ended.

Awareness of technical, policy, and regulatory development is disseminated within each inspecting unit through e-mail, unit meetings and other wider briefing sessions organised through the Authority's support services.

When asked, the review team noted that MEPA did not know how many IMPEL events had been participated in.

The review team noted that MEPA could possibly be in need of a more structured competency framework to understand where training needs were in specific key positions. As the amount of legislation increases and as its complexity requires well trained staff in order to fully implement and enforce it, it is important to know where the skill gaps are and how they will be filled. The review team pointed to some good practice from the UK regarding the 'UK Regulators Development Needs Assessment tools'. This was primarily designed for local authority EHO staff but the generic 'regulatory core' may be of some interest – link below. Good examples of competency framework maps can be found in many IMPEL member countries such as the Dutch national quality standards for environmental inspectors including a specific one for Seveso inspectors.

http://www.rdna-tool.bis.gov.uk/toolsections.aspx (a login and password can be arranged if necessary).

Guidance

- Participation in IMPEL projects/forums are utilised as external sources of advice for inspecting officers
- MEPA occasionally employs independent auditors/consultants to provide technical support on specific sectors where local expertise is limited
- Research on methods used in other countries is often utilised by MEPA
- Use of guidance documents (both in-house and EU based) is 'mined' from other countries websites.

Execution and reporting

Carrying out inspections

Inspection schedules:

- Inspection schedules are formulated bi-annually and updated month-to-month based on the risk assessment tool
- These include the pre-planned routine inspections and are updated with the non-routine as they come up (e.g. complaints, incidents, permit variation requests)
- Other non-site based inspections (i.e. document review such as annual reporting) are not included in the inspection schedule.

Routine inspections:

- Inspectors review the permit, the last inspection report and any relevant documentation prior to an inspection
- Broad checklists are used with categories to review; these can be adjusted to reflect the facility to be inspected (i.e. categories added/removed)
- There are two inspectors per site visit; one may have more experience of the facility than the other (e.g. the permit writer). They also work in pairs to inspect and they rotate inspections of certain installations
- Routine inspections are unannounced, with the exception of audits
- Inspection reports are drawn up based on findings; standard templates are used
- The report is sent to the operator, usually with instructions for remediation of non-compliances
- Depending on the severity of a non-compliance, this may be followed up either by another site visit or through other media (e.g. e-mails, letters)
- Inspection reports are saved digitally and in hard copy.

Non routine inspections:

- These are triggered mainly by complaints, incidents, follow ups to previous inspections or requests for permit variations
- Where possible (i.e. except in emergency situations) inspectors still review permits, past reports and other relevant documents prior to site visit, but checklists not normally used
- Format of inspection report for follow-up inspections or variation request visits would be the same as for routine inspections
- Format of inspection report for complaints or incidents also use template but of a different format to allow for more detailed descriptions.

Audits for IPPC:

- Carried out over a period of 2-3 days depending on site complexity. Audits are announced
- Thorough review of all operations on site, waste management areas, containment areas etc.
- Review environmental management systems
- Review records on complaints, waste transfers, etc
- Review compliance to permit conditions
- Assess non-compliances and identify necessary corrective action
- Tenders are issued requesting consultants to carry out audits at certain sites.
- Audits carried out approximately once every 4 years.

The review team suggested that MEPA consider inviting other European regulators to assist them on the technical side of inspections if they lack specific expertise. This could be a more cost effective solution to regulating a complex industrial process than having to carrying out a resource intensive tender process which MEPA said that usually takes them between 6 months to a year. Furthermore, the review team said that if MEPA does use consultants, a way of reducing bureaucracy could be to set up a Framework

agreement. The European Framework agreement on tenders enables an organisation to create a list of creditable consultants to be used over a 3-5 year period thus avoidingthe tender process each and every time they need to be used.

There review team reminded MEPA that there is a requirement for all new IED sites to have an environmental management system though not necessarily a certified one.

Inspection results:

- Where significant to major non-compliances are identified during inspections, these are reported to a manager for authorisation prior to further action being taken by an inspector
- All inspection reports reviewed by officer in charge of compliance inspection co-ordination
- Every 6 months, these reports will be used to update the risk assessment of the installation
- In case of complaints, feedback provided to complainant via established customer care channels.

Other inspections:

- Inspections are carried out during the processing of an environmental permit application, known as pre-permit inspections
- The pre-permit inspection usually takes place at the stage where most or all information required for the permit drafting has been gathered but prior to finalisation of permit
- These are by appointment and include a thorough walk-through of the installation and its grounds, to get a clear picture of the operations and potential problems
- The findings will be reflected in the drafting of the permit and may result in the inclusion of an improvement programme in the final permit.

Records related to inspections:

- All inspection reports are saved digitally and in a physical compliance file for that particular installation
- Photos also kept digitally according to installation and organised by date and purpose of inspection
- Access to documents and photos are restricted to the unit carrying out the permitting and compliance inspection function to ensure no unauthorised use and to maintain any commercial confidentiality.

Compliance and enforcement:

- Compliance monitoring of permitted installations and enforcement actions are carried out by two separate Directorates within MEPA
- In most cases, breaches of permit conditions are rectified through the compliance unit through various means (e.g. instructions with deadlines, out of court settlements, withholding issue of authorisations such as export shipments or renewal of permits)
- Where breaches are severe, these may be passed on to the Enforcement Directorate for further action
- In cases of complaints at industrial installations which are not yet covered by an environmental permit, enforcement officers may request the assistance of the Industrial Permitting & Compliance team for technical expertise
- Other joint inspections between Enforcement Directorate and the Compliance team also occur where a report is made concerning other factors beyond environmental permitting issues (e.g. breaches of development legislation at a permitted installation).

Other joint inspections

- Some joint inspections take place between MEPA and: Malta Resources Authority (MRA), Transport Malta (TM), Occupational Health & Safety Authority (OHSA), Civil Protection Dept. (CPD), Environmental Health Dept., Department of Agriculture)
- Joint inspections take place more frequently in the case of SEVESO related inspections (OHSA, CPD, MEPA)

- Other examples:
    - incidents where a major hazard has been identified (CPD)
    - waste carrier inspections (TM)
    - issues related to pollution in limestone quarries (MRA) etc
    - Cases where a serious threat to worker safety has been identified at a permitted installation (OHSA)
    - Complaints which may have overlapping threats to both environment and public health (Environmental Health Department).

SEVESO

Control of Major Accidents and Hazards (COMAH) regulations are enacted under the Occupational Health &Safety Act and define the Competent Authority as the Occupational Health & Safety Authority (OSHA), the EPD (MEPA) the CPD. OHSA takes primary responsibility in matters concerning health and safety, and coordinates the Competent Authorities administrative actions. MEPA (EPD) takes primary responsibility for matters concerning environment protection and the CPD takes primary responsibility for matters concerning emergency planning.

In Malta there are 12 operational sites that fall under the scope of SEVESO due to their fuel storage capabilities (power stations, fuel terminals), 9 of which are classed as Upper Tier (3 as a result of Seveso III Heavy Fuel Oil provision), and 3 which are classed as Lower Tier.

Compliance tasks:

- Annual joint inspections for all sites
- Review of documents (Safety Report, MAPPs, Emergency Plans, documents requested through inspections)
- Participation in external emergency exercises (EPD observers)
- Follow-up on any incidents which have environmental dimension.

MEPA's focus is on aspects of environmental risk, e.g. secondary containment of fuels, chemicals & wastes, procedures to manage discharges, spills, etc.

Performance monitoring

The review team noted that there was limited performance monitoring being undertaken with few if any performance indicators being used. Failure to use indicators makes it difficult for MEPA to celebrate success stories or show how it is being effective. It is also difficult to gain additional resources without being able to demonstrate performance over time.

MEPA said that this is done to a certain extent through the annual report but it would need more dedicated PR/outreach to highlight success. The review team thought that much of the information already collected could be used to generate useful performance indicators. This could also have the benefit of helping with the development of a workload plan and by clearly signalling to senior management what can be achieved with the level of resource available.

Being able to demonstrate success and what has been achieved would also highlight to the public what has been done to help with an often poor public image.

Part D – Site visit

During the IRI no site visits were carried out.

Summary of findings

Good Practices

- MEPA has a Board of 15-16 members that includes MEPA directors, members of other agencies, private companies and political appointees. It primarily takes planning decisions but is also responsible for making independent decisions on permits. This only happens for higher risk complex permits. For low level, less risky permits sign off is delegated to Director level
- MEPA Board meetings are open to the public. Public participation appears to be quite high
- The Environmental Permitting and Industry Unit of MEPA have an evidence based strategy that is based on National Statistics Office data. This was developed as part of a Twinning project.
- MEPA carryout a high degree of 'hand holding' of applicants to help get better quality permits
- The Environmental Permitting and Industry Unit of MEPA have developed an interesting regulatory strategy around the issuing and control of permits. The strategy is to time limit permits with the threat of non-renewal an enforcement tool. The negative aspect is that a large proportion of resource goes into permitting but the benefits of reducing non-compliance. This positive aspect is key as the island is extremely densely populated with limited natural resources. The emphasis is on compliance rather than prosecution or more simply put prevention rather than remediation
- MEPA is a relatively small organisation which brings with it both benefits and dis-benefits. Knowing staff in other parts of the organisation is an asset for MEPA e.g. the planning and environment departments. Post demerger attempts should be made to foster these relationships. Being relatively small means that many more staff have a broader, more holistic view on issues affecting the island
- MEPA have developed single integrated permits to convey the requirements of multiple sets of regulations to the operator
- MEPA avoid regulatory capture and blindness by doubling up on inspections. They also rotate inspectors which has the added benefit of helping to educate inspectors
- MEPA have a centralised complaints handling help desk
- MEPA has the ability to use Out of court settlements in lieu of enforcement. The operator has to agree and remedy non-compliance. A fee is levied that goes into an Environmental Fund
- MEPA have a dedicated Enforcement team specialised in taking high level enforcement
- Where sites have EMAS or ISO fee levels are reduced and validity of permit time scales are increased. This is a good incentive to get an Environmental Management System
- A joint risk assessment of businesses is carried jointly with the National Statistics Office
- MEPA are able to flexibly use their enforcement tools (using the most appropriate to the situation) but have also developed strategies around the deployment of certain enforcement tools in specific situations to help drive improvements in compliance
- MEPA have relatively few challenges to permits or permit conditions
- MEPA have developed a screening process prior to planning the granting of planning permission This identifies if sites will require permits and helps get likely permit requirements identified prior to construction
- MEPA value the inter relationship between the environment and planning sections of the agency that they have employed a person as interface between the two departments
- Development permits are not issued by the planning department of MEPA until the applicant has applied to EPD for a relevant environmental permit and importantly the application is at a standard satisfactory enough to make a determination
- MEPA have invested heavily in the use of IT solutions such as GIS and the website:
    - Guidance docs to help applicants through permitting process are online
    - Application forms available online
- Financial guarantee (bank guarantee) looks like a useful policy to guarantee against sites leaving a

public liability
- Water Services Authority sets emission limits to sewer on the permit
- Permit Information is placed on the website when not commercially confidential or deemed national security
- The charging scheme and charges are enshrined in law making it clear to operators what they will have to pay
- EPD work on a primacy of dialogue and networking over formal institutional relationships with other agencies
- Whilst the regulatory strategy is labour intensive upfront, payoff is a high level of operator awareness of licence and compliance issues from the word go
- The use of GIS datasets in licence application assessment is very helpful
- The use of statutory consultees
- The use of licence renewal as the primary enforcement tool e.g. Using IED licence regular renewals to drive compliance/enforcement/implementation improvements
- Ability to impose external consultancy costs on applicants as part of licence application process.
- Using of objections in planning process as part of IED licence compliance toolkit
- Out of court settlements in lieu of prosecution in effect are administrative fines for licence non compliances
- MEPA operate a 'three strikes' enforcement policy before taking legal action i.e. proportionate.

Environmental permitting (EP)

- Malta has extended permitting requirements beyond Directive requirements. Given the population density it is thought that this is a useful strategy to protect human health. MEPA has the ability to decide who requires a permit/authorisation
- MEPA have developed a smart licensing strategy that prioritises sites with complaints, those that are non-compliant and those who voluntarily wish to be have a permit
- The Maltese licensing system has a risk based approach with tiers of authorisation e.g. Exemptions, GBR, Environmental permit, IPPC/IED permit based on thresholds
- Every licence has a technically component person linked to it which is a useful approach that helps ensure licence requirements are understood
- The top two tiers of permit are integrated which is useful for the operator and inspector alike
- MEPA have developed a standard set of environmental conditions and a conditions bank That helps standardise licence consistency
- A quality control process is applied within the permitting process to ensure each renewed permit is given a version number. These permits are tracked through the permitting process
- The review team thought the application forms were very comprehensive and well thought out in terms of what was asked for. This led to comprehensive permits being issued. A standard format has been developed for operators to submit their annual environmental reports using excel sheets. The reports may cover different aspects such as fuel use and monitoring records
- MEPA have developed a shared environmental information system
- EPD actively promulgates good news/practice stories between operators (e.g. manufacturing of solvents) by passing information onto new applicants
- All inspections are carried out by two inspectors helping prevent regulatory capture / blindness and facilitating evidence gathering and enforcement
- EPD use both announced and unannounced inspections and have formulated a strategy for when they use these approaches
- Resources are matched to the site inspected in terms of experience / knowledge for the job to eliminate gaps and also to promote learning
- As the majority of permits are integrated a team approach is applied to develop permit conditions. This helps ensure there are no gaps and that the conditions are appropriate
- Draft permits are discussed with the operator / applicants. This gives them the ability to identify misunderstandings within the licensing process and helps ensure they are aware of the permit

requirements and what they are required to do to meet them
- Permitting strategy is thought appropriate to the small size of country. The strategy was designed consciously taking on board local circumstances.

General Binding Rules

- There is a clear list of GBRs, some of which are in law
- Guidance notes have been developed to give a better understanding of environmental requirements
- GBRs have also been designed to take an integrated approach
- A very thorough system to register waste carriers has been designed
- Some GBR registrations have notification requirements attached to the GBR which make it clear to the operator what they have to do
- There has been some work with industry sectors to help the sector comply with GBR requirements.
- Different application forms have been developed for different sector specific needs
- A 'Team Malta' approach is applied between public agencies to ensure different requirements are met. An example would be the consultation with the agriculture department before agriculture GBRs are issued
- Waste carriers are registered at vehicle level. The good practice is that each registered vehicle is issued with a laminated tag which must be produced when required
- Joint inspection campaigns with other authorities are carried out e.g. road and police. The police are able to pull in all vehicles that may be carrying waste so that MEPA can check they are licensed/carrying appropriate waste.

Context of Inspections

- EPD have developed a new risk assessment tool that is used to identify inspection frequency and to prioritise which sites should be inspected the most. The system has been designed to automatically calculate the overall risk factor. The output has been used to produce an inspection plan
- EPD have the ability to buy in external consultants to help deliver expertise where they don't have the knowledge in house
- The risk assessment tool can also be used to assess the suitability of the technically competent person.

Priorities, objectives, review and planning

- EPD carryout both thematic and issue based inspections which are both useful strategies to employ. They are not 'slave' to any one tool in the enforcement toolbox and have confidence to mix and match depending on the situation at hand
- MEPA have developed an enforcement strategy which uses a rolling year approach to the planning of inspections
- MEPA have developed a comprehensive communication strategy utilising various multimedia communication streams
- EPD carryout a systematic survey of different sectors to identify what advice should be given when new legislation comes in e.g. IED sites to explain what the requirements would be
- MEPA have a formalised system to feedback to complainants with information relating to their complaint. Good reference information to the public for what agency is dealing with what issue
- MEPA work with different agencies to carryout joint inspections
- Joint surprise inspections carried out on the road together with transport agency targeting waste carriers. Joint inspections on waste with customs, TFS team & permitting compliance team
- Periodic review of risk levels are carried out every 6 months to ensure they are current
- EPD have a very good performance level when it comes to writing up inspections and reporting back to an operator. Reports from an inspection will usually be reported to the company within a few days.

Execution framework and execution & reporting

- MEPA have procedures in place for some areas of work such as on environmental compliance.
- MEPA have a system of internal shared folders that can be used between departments
- MEPA have ethical requirements based in contracts. Corruption can lead to jail sentences
- 3 party approach / tripartite engagement strategy (MEPA, community & operator) is a good one.
- Where a site has problems its management are called in to the MEPA office
- A system has been developed to track the movement of hazardous waste. A system of consignment notes are used for this purpose. What types of waste each waste disposal site can take is published online along with a copy of the permits
- EPD but a strong emphasis on EMS and certification at high risk or complex sites. This helps the operator identify the highest risk on their own sites and carryout mitigation to prevent harm. It also drives them towards continuous improvement
- MEPA have developed a training plan to combat the skill weaknesses which is matched against a skills map.

Opportunities for Development

- The regulatory vision is reliant on a few key individuals who have a specific way of approaching the issue of compliance. The ethos is one of a conscious choice to work on influencing rather than an adversarial approach. This is a commendable approach however if those relationships breakdown or there is a loss of key individuals who have built those relationships then this approach could be weakened. Also consider the impact of this way of working on staff workload as it may be unsustainable in the long term
- Re-structuring is an opportunity to get what they need. Consider strengthening the integration by bringing in water that is currently fragmented in more than one authority
- When new legislation comes on line it is communicated by MEPA to the operators
- Consider the development of proactive, positive communications on the benefits of MEPA to the island & the positive promotion of MEPA so that the population can share a pride in their work. This may be easier after separation from planning
- Where expertise is bought into Malta consider getting the operator to pay
- Understand the difference between advice and specific advice. The latter can become a threat if it is wrong or things do not turn out well
- Consider the publishing of results of enforcement of fines and out of court settlements. Financial incentives for good applications could be made - make an additional charge every time you are required to get more information
- Consider investing in more GBRs for industries (less permits) as these come with a more lower administrative burden
- Currently there is no statutory time scale for permitting. The norm is to take 5/6 months for a variation to a permit. Consider setting a time frame for permit applications
- Currently only IPPC/IED permits are charged for. Consider charging for environmental permits
- The fees do not currently cover the entire regulatory life cycle and are not index linked. Consider the development of an index linked charging scheme to include the full life cycle. The variation and surrender fees are too low to cover the cost of the activity of EPD. Consider increasing these
- Consider fines for low risk, low level activities
- Consider the use of Publicity orders
- Develop greater transparency around the promotion of consultancy. The validity of permits is short which may make invest in new technology including abatement difficult. Consider ways to increase duration of validity of permits
- Create and maintain a corporate risk register for issue management at high level
- The amount of data and timing of requirement for planning evaluation is quite onerous given that it doesn't lead to a reduced permitting time. Consider how the process could be streamlined

- The pre-planning screening phase for an IED site is approximately 3-6 months. Consider how this could be reduced as it is a considerable period of time even before planning and permitting making the entire process very lengthy
- Ensure the new structure does not damage the relationship between planning and permitting. Consider formalising the relationship via Memorandum of Understanding
- Reduce the number of hard copy applications. Consider the development of an online paperless application form or submission of electronic data including maps and data
- Currently deciding who needs a permit is carried out by EPD, consider enshrining this in law.

Environmental permitting (EP)

- Be aware of the impact of the freeloader effect where un-permitted sites may have a market advantage on those permitted: currently there is an imbalance between those that are permitted and those that are pending
- Currently the permitting process asks for EMS information. There is the possibility that MEPA could go further by asking for certification body and number so that non-compliances could be fed back to the certification body
- The team thought that it would be useful for the operator to capture environmental impacts in the application form e.g. nature; potential receptors etc. This would help get the operator to understand the sensitivity of their site within the local area. Consider online data return system for AERs that could potentially also be automated to highlight non-compliance. This would greatly increase monitoring possibilities. It was noted that it is time consuming when waste streams have to be monitored using the present system with separate info on paper flows
- Consider placing the permit validity (4 to 5 years) as a permit condition or consider placing this down in the law. It is thought that currently this regulatory approach may be vulnerable to challenge in the courts
- Currently MEPA do not have a laboratory or a 3rd party auditing function. Consider how you could gain this auditing function or how robustness could be added to the operator sampling such as sampling (paid for by the operator) only by a MEPA appointed laboratory
- The structural changes at MEPA allow for a re-shaping of policy on the environmental permitting system. It is a good opportunity to look at thresholds and the legal framework to back up GBRs
- Best practice / BATs learnt from one site that the permit of all others in the sector would be required to implement that change
- Currently fees (that do not cover cost) are levied for some work whilst the majority of EPD work is funded through general taxation. Consider how best to enact the polluter pays principle by charging fees that cover the cost of work against EPD routine work
- Consider expanding the checking of EMS to also include if it is effective.

General Binding Rules

- It is thought that greater control of the regulatory process could be achieved through more detailed workforce planning. State what you propose to do and what you are unable/will not be doing
- Some guidance notes have been drafted to help certain sectors in terms of permitting requirements and pollution prevention. Seek to complete the task through the creation of guidance notes for outstanding sectors and by updating those completed on a rolling review process
- Consider the development of a 'Team Malta' approach by sharing work around other perhaps more appropriate industries. For instance consider getting an agricultural agency to inspect those farms that are registered allowing you to concentrate on any required enforcement activity. This has worked well in other countries (e.g. Scotland) and may actually lead to more enforcement action as the other agency is more focussed on the appropriate sector
- Consider using single farm payments to drive environmental compliance and implementation.
- Waste carrier registrations - be aware of impact on regulated community For instance a 1 year renewal period may be very onerous on the community and the regulator. Consider 3-5 year / company licence. Consider waste classification in application form and also charging for

application process
- In general there is some concern over the long term sustainability of the regulatory system as it is very onerous on operator and particularly the EPD. Watch for impacts on staff well being
- Consider reducing the amount of the data required for registration instead consider data by exception i.e. what has changed
- Consider using GBRs for more sectors to reduce the number of permits
- The level of control of the permitted community is high for obvious reasons. Be aware of being over prescriptive or gold plating requirements as they may lead to a negative impact on compliance levels.

Context of Inspections

- Consider developing an over-ride into the risk assessment tool for instance where non compliances are identified (e.g. SEPA)
- Consider exchanging information with other agencies to help populate the risk assessment system so that it more accurately calculates potential risk
- Consider how to differentiate in a more detailed risk analysis for high impact companies and a less detailed (that costs less effort) and more sector based risk analyses for the low risk companies
- Consider the development of a more enhanced IS solution that could be used to reduce manual input of data
- It is recommended that you could carry out during development of any future IS solution business analysis on how the proposal fits with all current or future planned ICT tools so that they may 'talk' to each other
- Do get the most out of the data collected put a premium on data warehousing and retrieval to allow effective use of information
- Calculate time and cost of pre planning of inspections. Inspection time reflects whole time spent e.g. management time etc. Connect the inspection frequency to workforce and work load planning.
- Consider how EPD could have enforcement capability with capability to close down non-compliance more efficiently
- Pre permitting procedure inspections should be counted as routine planned inspections as part of the permitting process and not non routine. Inspection plan should be on website as soon as possible
- Consider letting industry fill in the risk assessment tool or seeing the output of the tool so that they could be aware/help drive down their own risk. Communicate the audit /review of the risk assessment tool with the industries that are regulated
- Streamline the data input into the risk assessment tool and harmonise the information to that of the AER information
- Consider to use risk analysis only for top priority companies if system maintenance becomes too burdensome
- Consider how to roll-out the use of ICT tools for enforcement for both health & safety reasons and to make the inspectors more efficient and effective (e.g. mobile phones, GIS, videos, cameras, laptops)
- Regularly review the investment in PPE equipment vital for H&S purposes and replace older equipment as it ages.

Priorities, objectives, review and planning

- It is thought that the scope of developing permits for 'all' industry could be reviewed. There are two main approaches - either take an active choice to get all the permits on the books as soon as possible (even if they are generic initially) and then inspect or decide not to worry about permitting them and only react if there is environmental harm or there is a complaint. This needs to be a corporate, active decision to take
- Develop communications with the public as currently their appears to be few 'good news stories' of MEPA given to the public

- Consider only using one inspector at low risk companies to reduce cost so that effort can be deployed elsewhere to reduce backloads
- Consider the direct cooperation with the police in more risky inspections
- Consider increasing transport possibilities for inspectors to get to the sites to increase efficiency and improve response time in case of complaints or incidents
- Joint inspections are a plus but can be time and effort consuming. Consider evaluation of the different joint inspections on benefit to MEPA. If benefit is low, consider using information agreements between agency with clear communication of points of interest/potential concern (both ways) instead of going together.

Execution framework and execution & reporting

- Hazardous waste producers are all permitted – this is thought to be unusual. Consider reviewing the practice as is this practice with this intensity (yearly) really necessary
- Consider the development of more regulatory tools for GBRs e.g. suspend/revoke
- Consider to put the two major types (hard and soft stone) of quarries in a GBR instead of permit
- Consider to use the three party approach (MEPA, operator & community) also for quarries near populated areas. E.g. monthly blasting could be agreed on between population and the company.

Conclusions

Overall, the review team felt that the Environmental Permitting Department (EPD) within MEPA are a competent, high value team with motivated staff that have gone a long way since Accession 10 years ago. However the organisation faces an uncertain future, with a largely unsustainable workload requiring significant support so that they do not lose ground, diminished capability or suffer reputational loss. Despite this, there are also some efficiencies that can be made by using tools and implementing best practices that are being used elsewhere in Europe to help tackle some of this challenge.

The review team expressed a concern over the long term sustainability of the strategy that the EPD and MEPA currently use. There seemed to be a need for more work load planning, in other words, understanding what you are able to do with the resource you have and what you cannot do and then announce this. With such a large body of legislation in the environment field, particularly as some of it is quite complex; and as the number of industries, sites and activities that fall under the radar of MEPA increases; the need for resources will need to reflect this particularly when it comes to requiring specialist regulatory skills. The review team felt that the downward trajectory of staff numbers (a loss of 50%) since 2012 was potentially hampering efforts unless there is a clear, active decision made on what can and cannot be done.

MEPA's regulatory strategy appeared to be effective, based on high degree of control (good use of a screening tool and license validity) with good levels of communication with the operator as demonstrated in the case of Malta Freeport. MEPA's 'hand holding' of operators through the process of environmental regulation has its advantages such as 'getting things right first time' but it is also a highly resource intensive strategy and shifts more of the burden onto the regulator rather than the regulated.

With the pending de-merger of the planning and environmental protection parts of MEPA, the review team witnessed the good relationship that the two halves of the business enjoys. This should be maintained. The review team suggested some form of Memorandum of Understanding or Service Level Agreement to ensure that intelligence is continued to be shared and good relations maintained.

In Malta, the review team found a heavy reliance on their permitting system as a means of control. MEPA's system that had been built to date had many strong attributes such as a risk based hierarchy e.g. exemptions, General Binding Rules and Permits, a standard bank of conditions for permits [to reduce time, effort and bureaucracy], comprehensive and integrated permits, as well as a sectoral approach. The review team noted that significant efforts had been made in Malta to identify who the permitted community ought to be and that over 700 sites were liable for some form of intervention. However, the team noted that the majority had not been permitted yet and that this risked creating an uneven playing field for business. It is thought that the priority should be to get all higher/medium risk permits issued before the renewal of potentially lower risk permits. One efficiency that could be made would be to place the waste carrier registration system online and develop company registrations rather than develop it on an individual [car, truck etc] basis.

On inspections, the review team felt that the EPD had developed an impressive risk assessment system (without the benefit of a precedent in Malta), had developed good processes e.g. documentation and plan, had built strong safeguards to protect against issue blindness (the EPD rotated inspectors frequently and visited sites in pairs), had a commendable target of writing up inspection reports within 48 hours and were confident in their use of external assistance to help them in the task of regulation when they lacked specific technical expertise.

However, the review team noted that MEPA does not carry out inspections out of office hours. Experience from elsewhere in Europe has shown that by carrying out even a limited number of inspections at night or at weekends for example can help to improve compliance levels dramatically as the regulated community

start to see the regulator as not just a '9am to 5pm' organisation. The review team understood the need to carry out inspections using company vehicle from a personal safety perspective. The current availability of vehicles is low making inspections difficult to carry out. It is recommended that MEPA seeks to expand transport opportunities either by increasing its fleet or sharing services with other public bodies.

Though the review team were impressed with the EPD's risk assessment system, they noted that further improvement could be made by developing an automated IT system. This is particularly important as more and more permits and are entered into the system. At the moment, information is manually inputted and managed in the system. This could be too burdensome if the whole number of potential sites become permitted (e.g. 700+). There are a number of excellent examples from around Europe that could be learnt from, developed or imported by MEPA through networks such as IMPEL. This kind of efficiency would free up staff resource for other productive activities.

On enforcement, the review team thought there was an excellent range of tools available for MEPA to use and they were particularly impressed with the use of the 'Out of court settlement' tool. On the other hand, the review team felt that MEPA could go further by looking at introducing fines (fixed, daily, variable for example), publicity orders (obligating non compliant operators to make structured, formal apologies in the local media, and pay the costs of doing so) and publicising a 'non compliant sites' list in the media thereby putting pressure on operators via their local communities.

The review team felt that despite there being a charging scheme for IPPC sites, there was an opportunity to extend this beyond IPPC into other activities and index link fees over time. Going further, the review team thought that there should be active consideration towards getting to a state of full cost recovery for its activities e.g. on inspections. This would help MEPA to adequately resource its responsibilities and help to prioritise its activities.

MEPA's website appears to be well stocked and well used with good information for the regulated community in Malta. However there are efficiencies that can be made around things like inspection reporting. The team noted that with handheld devices or laptops, inspectors could complete inspection reporting much more quickly than they do at the moment (where they write it out in paper copy and then write it out again but in a Word processed form back in the office). A small upfront investment in an electronic device could save a considerable amount of staff hours that can be reinvested in other productive capacities. Similarly, the development of online data submission e.g. company AERs, could save MEPA staff time in multiple of factors and hence save a great deal of money.

The Review team's broad conclusions are that the objectives of the area of EU environmental law within the scope of the review of MEPA are being delivered in Malta, and that arrangements for environmental permitting, inspection and enforcement are broadly in line with the RMCEI.

Lessons learnt from IRI process

Lessons learnt from this IRI review are:

- There was a discussion among review team members about examples of good practice and opportunities for development at the conclusion of each day
- Active contributions from all team members with examples of how they do things in their own countries enable a sharing of ideas
- It would be useful if most presentations were available in advance of the review so that they could be examined before the start of the IRI. Possessing copies of documents and presentations in advance helps the review team to prepare and consider questions before arriving in the host country. It also greatly assists the rapporteur to prepare and become familiar with material to be discussed that will likely appear in the end report
- The team was well built, using experience from the IMPEL network in a targeted way e.g. representatives from other islands around the EU as well as those with heavy experience of industrial issues
- The combination of more and less experienced IRI team members helped to maintain continuity of the IRI process
- The scope of this IRI was perhaps too large, and could have been narrowed to fewer topics
- In future, a teleconference with the review team a week in advance of the IRI itself, to go through the basics of a review and in particular the program of this review may have helped to improve the process. Similarly, a follow up teleconference a week after the IRI would help to collect everyone's more considered thoughts.

Annex 1

Terms of Reference for IMPEL project

No	Name of project
2013	IMPEL Review Initiative of the Malta Environment and Planning Authority

1. Scope

1.1. Background	The IRI scheme is a voluntary scheme providing for informal reviews of environmental authorities in IMPEL Member countries. It was set up to implement the European Parliament and Council Recommendation (2001/331/EC) providing for minimum criteria for environmental inspections (RMCEI), where it states: "Member States should assist each other administratively in operating this Recommendation. The establishment by Member States in cooperation with IMPEL of reporting and advice schemes relating to inspectorates and inspection procedures would help to promote best practice across the Community." The potential benefits of the IRI include: -providing advice to environmental authorities seeking an external review of their structure, operation or performance by experts from other IMPEL member countries -encouraging capacity building in environmental authorities in IMPEL member countries -encouraging the exchange of experience and collaboration between these authorities on common issues and problems -environmental authorities and contributing to continuous improvement of quality and consistency of application of -environmental law across the EU ("the level playing-field"). The IRI scheme has recently been revised to make it easier to follow and more appealing to member countries. The questionnaire was updated and the inspection part aligned to the Doing the right things project. The new scheme was first used in Portugal in October 2009.
1.2. Directive / Regulation / Decision	The European Parliament and Council Recommendation on Providing Minimum Criteria for Environmental Inspections in Member States (2001/331/EC)
1.3. Article and description	Recommendation 2001/331/EC – Scope and definition. Article 4: "In order to promote best practice across the Community, Member States may, in cooperation with IMPEL, consider the establishment of a scheme, under which Member States report and offer advice on inspectorates and inspection procedures in Member States, paying due regard to the different systems and contexts in which they operate, and report to the Member States concerned on their findings."
1.4 Link to the 7th	

EAP	
1.5.Link to MASP	The IRI satisfies 3 out of the 4 main goals and priorities of IMPEL's MASP 2013-15: "1. Promoting more coherent design and implementation of environmental law"; "2. Building the capacity of IMPEL members," and, "3. Collaborating with partners and stakeholders". "In the coming three years, IMPEL's projects will focus on the following areas: assisting members to implement new legislation, building capacities in member organisations including through the IMPEL review initiatives, trans-frontier shipment of waste, 'problem' areas of implementation identified by IMPEL and the European Commission."
1.6 Benefits	To undertake an IRI of the Malta Environment and Planning Authority as described under point 2.5 The benefits of the project are: ⍰ MEPA will benefit from an expert review of its systems and procedures with particular focus on conformity with the RMCEI, ⍰ the participants in the review team will broaden and deepen their knowledge and understanding of environmental inspection procedures ⍰ other Member States will benefit through the dissemination of the findings of the review through the IMPEL network. MEPA will, in particular, benefit from an expert review of the risk based planning of future permitted IED installations which is currently being developed in Malta, taking into account the criteria in the RMCEI and the IMPEL Guidance book on inspection planning "Doing the right things".
1.7 Definition	The IRI will focus on IPPC and industrial environmental permits. The IRI will be undertaken by a review team consisting of 8 IMPEL members who will carry out the review mentioned above and identify good practice and opportunities for development. This would be beneficial for Malta as: 1) it would enable MEPA to test the EU Recommendation on minimum criteria for environmental inspections. 2) MEPA would obtain suggestions in relation to good practices, capacity building and improvements in our current inspection procedures. This particular IRI will include the following aspects: ⍰ give an overview of the main national environmental policies applicable to the authority, ⍰ legal and constitutional setting of the authority, ⍰ structure and managerial organisation, including funding, staffing and lines of authority and responsibility for regulatory and policy functions, ⍰ procedures for assessment of training needs and provisions for training and maintaining current awareness, ⍰ qualifications, skills and experience of inspection staff, ⍰ overview of the environmental permitting regime, including permitting

	procedures, resources, and permit structure, amongst others, - workload related to IPPC sites & other industries in terms of permitting and compliance requirements, - setting the priorities for IPPC and other installations: the evaluation aspects, the risk assessment and classifications of risk, - procedures, criteria and guidance for the development and revision of inspection plans and inspection schedules, - procedures for carrying out of routine and non-routine inspections, including follow-up and reporting, - procedures related to penalties in cases of non-compliance with permits or illegal activities, - performance monitoring: evaluation of the output and where feasible environmental outcome of inspection activities. The arrangements for internal assessment of the quality of inspection performance and for improvement if appropriate, - relationships between public environmental authorities in charge of controls and self-check / self-monitoring systems, - systems used to collect and store data on the Inspectorate's activities and the use of these data.
1.8	In addition to the benefits listed in Section 1.6, tangible products will include: - A written report of the review for MEPA, - Relevant extracts from the review report, as agreed with MEPA, for dissemination to IMPEL members and the European Commission, Training and Educational material on "lessons learnt" and on examples of good practice for incorporation into training schemes of IMPEL member country inspectorates.

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2. Structure of the project

2.1. Participants	The review team will consist of a review team leader, rapporteur(s) and approximately five experts from different IMPEL member countries. The nomination of the team members will be decided upon in agreement with MEPA and an IRI Ambassador.
2.2. Project team	See 2.1.
2.3. Manager Executor	The Project manager will be Pauline Farrugia
2.4. Reporting arrangements	The results of the Review will be reported by the team leader and a report will be submitted to the IMPEL General Assembly for approval.
2.5 Dissemination of results/main target groups	Target audience: - IMPEL members, - MEPA. Dissemination of the result of the project: IMPEL: The report will contain review background, participants and expenditure and recommendations on its dissemination and follow up. For dissemination the communication strategy of IMPEL will be used as well.

	Malta: The Report will be available on the website of the Malta Environment and Planning Authority. The review host will also ensure that a copy of the final report, including a synopsis/executive summary summarising the key points will be sent to relevant key stakeholders e.g. the Minister for Environment, Heads of Departments and General Director of MEPA. The review host will also request, in advance, that the General Director and other relevant key stakeholders attend the final day presentation of results by the team leader and have an opportunity to meet with the team leader during the pre-review meeting.

3. Resources required

3.1 Project costs and budget plan	The project will involve the following steps: □ Pre-meeting of the review team leader & rapporteur with the host authority to finalise the scope and timing of the review, □ Preparation of information on the Malta Environment and Planning Authority and its activities by the Maltese contact persons (after a previous contact with the Review Team Leader in order to establish the relevant and needed information) and circulation to Review Team members. □ Review over a period of 3 days comprising □ 2.5 days for review and assessment □ 0.5 days for comparison and collation of team views □ 0.5 days for feedback, discussion and finalisation of report. All meetings and the final report will be conducted in English. No interpretation is required. Preparatory meeting: Covered by IMPEL: travel for team leader and rapporteur 2x360= €720 - accommodation for team leader and rapporteur (2 evenings) – 90x2x2 =€360 - total = €1080 Project: Covered by IMPEL: - travel for 7 participants -7x360 = €2520 - accommodation for participants x 4 evenings – 90x7x4 =€2520 - - total = €6040 We estimate that the total costs for the IRI review would be €7120. Personnel costs from the candidate inspectorate are not included in this assessment.
3.2. Fin. from IMPEL budget	€ 7120
3.3. Fin. from MS (and any other)	Host country will cover - meeting facilities for the project - costs for the hard copies - coffee breaks - lunches - 1 official welcome dinner in Pre-meeting and 1 in Review Cost to be confirmed depending on approval but will not exceed €2000
3.4. Human from MS	Two people to participate in preparatory meeting and project plus other preparatory work = 15 days.

4. Quality review mechanisms

Progress monitoring and quality assessment will be carried out by IMPEL Cluster I. Cluster I will appoint a contact person for this project.

5. Legal base

5.1. Directive/Regulation /Decision	The European Parliament and Council Recommendation on Providing Minimum Criteria for Environmental Inspections in Member States (300/331/EC)
5.2. Article and description	Recommendation 2001/331/EC is a substantial element of IMPEL' MAWP.
5.3 Link to the 7th EAP	

6. Project planning

6.1. Approval	At IMPEL 12th General Assembly, December, 2013.
(6.2. Fin. Contributions)	
6.3. Start	Work on composing the Review team can commence after approval. The review itself is planned for June 2014 with a pre-review meeting to be held in April 2014.

Annex 2

Main legislation MEPA enforces in Malta

L.N. 184 of 2011 – The Waste Regulations (2011)
L.N. 10 of 2013 – Industrial Emissions (Integrated Pollution Prevention & Control) Regulations (2013)
L.N. 12 of 2013 - Industrial Emissions (Limitation of Emissions of Volatile Organic Compounds) Regulations, 2013
L.N. 106 of 2007 – The Waste Management (Activity Registration) Regulations (2007)
L.N. 277 of 2006 – The Packaging and Packaging Waste Regulations (2006)
L.N. 99 of 2004 – The End-of-Life Vehicles Regulations (2004)
L.N. 63 of 2007 – Waste Electrical and Electronics Regulations (2007)
L.N. 54 of 2009 as amended – Control of Volatile Organic Compound-VOC Emissions (Storage and Distribution of Petrol from Terminals to Service Stations) Regulations, 2009
L.N. 194 of 2004 as amended – Water policy Framework Regulations
L.N. 340 of 2001 as amended – Urban Waste Water Treatment Regulations
L.N. 343 of 2001 as amended – Protection of waters against pollution caused by Nitrates from Agricultural Sources
L.N. 93 of 2010 on Certain Fluorinated Greenhouse Gases Regulations (2010)
L.N. 280 of 2010 on Substances that Deplete the Ozone Layer Regulations (2010)
L.N. 478 of 2010 on Ambient Air Quality Regulations (2010)
L.N. 22 of 2009 on Waste Management (Management of Waste from Extractive Industries and Backfilling) Regulations (2009)

Please note that these are the main pieces of legislation that MEPA implements and is not an exhaustive list.