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"

Final draft Report on the IRI that took place in
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Executive summary

The IRI team found that the Basque environmental service has a good system in place for the public to make enquires on every possible subject (Zuzenean) and also a good system for sharing all governmental information (Ingurunet). Furthermore there is the good practice of publishing permits and inspection reports online. New staff are oriented on the job with a handbook for inspections and the Impel IRAM tool is used for the risk assessment. The team found some opportunities for development mainly to make more efficient use of the staffing capacity, reduce the workload of staff and reduce the liability of individual inspectors.

This report is a short summary of the key findings, good practices and opportunities for development found during the review. More information, including more detailed presentations on the topics discussed are available on request.

Table of contents

Introduction

Introduction to IMPEL

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international non-profit association of the environmental authorities of the EU Member States, acceding and candidate countries of the European Union and EEA countries. The association is registered in Belgium and its legal seat is in Brussels, Belgium. IMPEL was set up in 1992 as an informal Network of European regulators and authorities concerned with the implementation and enforcement of environmental law. The Network's objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. The core of the IMPEL activities concerns awareness raising, capacity building and exchange of information and experiences on implementation, enforcement and international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.

During the previous years, IMPEL has developed into a considerable, widely known organisation, being mentioned in a number of EU legislative and policy documents, for example the 8th 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.

Introduction to 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)**[1], 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."*
In the past the IRI was primarily focused on Inspections, nowadays the IRI covers the whole regulatory cycle.

Purpose of the IRI

The aims of the IRI scheme are to:

- Provide advice to environmental authorities seeking an external review of their structure, operation or performance by experts from other IMPEL Member 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 the EU ("the level playing-field")

The IRI is an informal review, carried out by colleagues from IMPEL. It is not an audit. The IRI is intended to enable the environmental authority and the 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

The IRI uses a questionnaire to review the environmental authority against the requirements of the RMCEI. The **IMPEL "Doing the right things for permitting and Inspections"** Guidance Book has been used to help structure the questionnaire and the review. The Guidance Book was initially developed to support authorities in implementing the Industrial Emissions Directive and describes the different steps of the **Environmental Permitting and Inspection Cycle**.

[1] **http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:118:0041:0046:EN:PDF**

Review Findings

The Institutional and legal Framework

Framework

There are 2.2 million inhabitants in 7500 km^2 of territory in the Basque country. Tasks are laid down in regulations on control and prevention of pollution. In addition to EU and Spanish legislation there is local Basque legislation on IPPC and environmental protections. The Spanish government transposes EU legislation. There is some sectoral work with the Spanish government and the 17 autonomous regions where they can give input to the process, but the Basque autonomous government must wait until the national law is published before they can begin implementation.

To finance their activity, the Public Administrations of the Basque Country obtain most of the resources through the exercise of levying powers. In addition, they financially adjust with the State the collection of Value Added Tax and Special Manufacturing Taxes.

There are no charges for permits or inspections. Only the soil unit has fees related to their work.

The principal tasks of the IED Unit:

- Integrated Environmental Permits (called AAI)
- Regulate the industries that must have Single Environmental Permits (called AAU)

The Environmental Inspection Unit of the DEPARTMENT OF ECONOMIC DEVELOPMENT, SUSTAINABILITY AND ENVIRONMENT (hosting organisation) are responsible for:

- Inspection activities with Integrated Environmental Permits (called AAI)
- Inspect the industries that must have Single Environmental Permits (called AAU)
- Control of Cross-Border Movement of Waste
- Environmental risk assessment reviews
- Management of environmental warning and complaints in the territory
- Control of Environment Collaboration Entities (called ECA)
- Control of companies that have ceased their activity
- Surveillance of problematic zones
- Air-quality improvement projects
- Odour / noise control and follow-up of action plans
- Provide Public information

- Parliamentary reports
- Response to Ecological associations and citizens
- Participate in developing regional regulations

Policy, Goals, objectives and strategic alignment

The main goal of the department is to create a balance between economy, society and environment, with industry and technology as the main levers. This being done by

- creating a strategy that establishes the guidelines that feed sectorial planning;
- defining 6 major priority challenges inspired on the VIII European Program (sustainable policies, health, competitive sustainability, conscious consumption, sustainable financing and advanced monitoring and management);
- creating 8 transformational projects.

Two challenges and two projects specifically affect the work of the unit. The challenges are health and environment and competitive sustainability. These goals are put in place by the environment agency Ihobe.

The main environmental challenges are air and odour, due to the topography and proximity of industrial activities to inhabitants. There are no specific limits on odour in European legislation. Modelling is done in areas where there are odour issues by external companies. There are emission limits for industrial sites but also local air quality limits. Specific projects to tackle an issue or sector can be carried out, sometimes with the involvement of universities or external partners. In addition to these challenges other environmental aspects such as waste, discharges and noise are relevant in the management of the territory (environmental integrity of the territory).

External Relations

In the Basque Government, there is an information access way, called Zuzenean. The public can contact this organisation for every kind of information and will then be redirected to the precise governmental organisation or civil servant. Zuzenean has telephonic, written and onsite ways of asking. There are around 5200 questions a year on environmental issues. On those, Atmospheric Pollution and Waste are the more asked and they also receive many complaints on odours. Approximately 300 warnings and complaints are received by the unit from outside the Zuzenean system. The “Irekia” and “Open Data Euskadi” systems (available through their corresponding websites) also give public access to relevant government and provincial/municipal data. All requests for information should be answered in a timely manner.

In some cases, the Inspection Service receives requests for public information regarding the annual PVAs of IED companies that may contain confidential data. This obliges technicians to black out confidential data. A public annual environmental report that is provided by the industry itself could be considered (PVA). This could prove more efficient and in line with what industry feels is fit for publishing.

INGURUNET is the Basque Government's Environmental Information and Processing System. Its objective is to electronically process any administrative procedure of an environmental nature and integrate all the information and/or documentation that is requested from the interested party and that is generated by the administration.

They also have the SIR electronic platform for communication between administrations in all of Spain.

About the environmental inspection team

There were 8 inspectors in 2023 and now 12 in 2024, plus a head inspector and an administrative assistant.

Inspectors work alone and must cover all aspects of the **IED permit** every time they do an inspection and they must sign each report. Furthermore, an inspector might be called to court if the industry or public in general does not agree with the report. This gives pressure on the work and may affect the recruitment of new inspectors. The reports could be signed by senior management as well and a disclaimer could be added to the report stating that the inspection has been done as well as possible but is still a snapshot of the moment. It could be considered to have 2 or more inspectors for the larger industrial companies, this prevents the loss of knowledge and expertise when the inspector leaves the agency and also gives the opportunity to have different expertise for one installation.

3200 companies have been identified for **non-IED activities**. Of these, around 200 inspections are done annually which are led by an inspection team but supported by external services.

The environmental inspection team is also in charge of analysing the Environmental Risk Assessment that IED installations must do to comply with the Environmental Liability Law (transposed from 2004/35/CE Directive). For that the Inspection Unit is supported by two technical assistances.

Environmental collaboration entities (for example water, soil, air and odour measuring entities) are accredited by the national organisation (called ENAC). The Basque inspectorate, however, controls the way in which these entities work. This takes a lot of time of the inspector in charge of this project, time that he/she cannot spend on inspecting the industry. This checking could be done by another unit depending on the type of Environmental collaboration entity or by ENAC themselves.

The inspection of transboundary waste shipments is included in the control and inspection program and inspection plan. This consists of on-site inspections of operators that receive cross-border waste , on site inspections on the borders, customs stopping trucks on the border to check the waste they are carrying, and containers in the port. These last inspections are carried out in collaboration with the police because the unit itself does not have the competence to stop transport on the road. The IMPEL SWEAP project could provide useful training of customs officers on environmental issues.

The control of ceased companies is also a competence of the Inspection Unit. They are following up more than 5 companies per year. They are inspected to prevent accidents, reduce the environmental impact, ensure the proper management of the waste and material after cessation and prevent vandalism.

Accidents and Environmental Incidents

One of the functions entrusted to the inspection unit is the reception of different warnings, complaints, accidents and incidents, notifications and claims (hereinafter warnings) on environmental aspects or problems occurring in the Basque Country. These notices may be received from different bodies, companies or citizens in general, with the aim of responding to an environmental incident that may be associated with atmospheric emissions. This can be odours, noise, spills, soil contamination, deposition of hazardous and non-hazardous waste, fires, vehicle accidents involving spills and, in general, any incident that has or could have environmental repercussions. For the management of all notifications, whether accidents, complaints or communications, the unit relies on external technical assistance (TA), which acts on its behalf in the administrative part of the management, with personnel suitably trained to carry out field verifications of any type of environmental incident. The TA could also act using technical resources on site.

The inspection unit has an on call duty system for warnings, complaints and communications on environmental issues. The management and closure, if applicable, will be the responsibility of the inspector on call during working hours. However, the head of the unit has to be available 365 days per year, 24 hours a day. The technician on duty is responsible for the supervision of the management carried out and its closure. Inspectors are on call only on working hours/days. Registration of all these complaints/issues means data can be analyzed on most frequent issues/ companies reported.

Good practices and observations

- There is a public enquiries service for the public (Zuzenean) provided by the Basque government, where people can call about environmental issues and complaints.
- There are good systems in place for sharing information on environmental issues between authorities and staff (INGURUNET and SIR)

- Universities and partners are involved on specific projects.
- The inspectorate use external technical assistance (TA) for some incidents and accidents response.

Opportunities for development

- Consider including a disclaimer on the inspection reports
- Consider having the head of unit sign the inspection reports after approving them
- There are currently no charges for permits or inspections. This could be introduced and could cover the cost of staff
- Ask companies to provide a public PVA (Environmental annual report) in addition to the detailed report for the inspection unit
- Consider how to reduce the burden of the team leader's responsibility to respond to incidents 24hrs a day/ 365 days a year
- Consider transferring the control of ECA entities to another unit of the Department or to ENAC.

Permitting

Context

There are currently 275 IED installations. The IPPC Directive was transposed in 2002 and 240 permits were given before a delayed deadline in April 2008. There were 120 appeals and 62 trials which created a huge amount of work for the team. At the time there was no unit for IPPC so the drafts were developed by private consultants and checked by the legal unit. This gave some issues for accountability. The conditional permits were inspected by the inspection team before the final permit was granted. This was before the permitting team was set up and now these initial inspections are mostly done by the permitting team. It could be useful to do initial joint inspection visits of the permitter and the inspector for all new IED sites.

The initial permits from 2008 are complex and long, there is a heavy work load for adapting every permit to new legislative requirements. In 2010 a specific unit was set up and a dedicated civil servant allocated for the permitting of each installation. Permits are updated when the updated BREFs are published for the main activity. All permits have been updated with BREF changes on time. The only delay was the BREF on pigs and poultry.

The permitting unit are currently working on law 10/2021 which leads to a permitting process based on general binding rules (GBRs). The IED permitting model is being extended to the other 120 non-IED industrial installations in their territories. A new structure has been agreed with team (for IED and Non-IED single permits) and there are also positions available in the permitting team, but like the inspections unit, they are struggling to fill them.

Permits were shown including those with standardised components and a template is used to generate new permits. All final permits are published online. Derogations have only been granted twice. There are central meetings in Madrid to discuss approaches. Sometimes courts ask for the civil servant responsible to appear; the manager will take this upon himself. The leader of the team goes to court with the lawyers due to the technical aspects of the permit. There is a systematic control on the number of permits and changes but the team is fairly independent in the writing of permits. There are no specific timescales for producing permits.

There is no written procedure for working with inspectors but there is friendly collaboration before and after visits. There could be more feedback, but the teams work well together. Permit changes are not usually merged in one single document but added as annexes to the basic permit. This means that an inspector needs time to gather the latest information and find the current conditions that need to be

inspected.

The majority of staff are non-permanent civil servants and there could be a risk of staff turnover and loss of experience. This is an issue across Spain. There is a general mistrust of civil servants by the public. The team have no involvement in the recruitment process of new staff.

Good practices and observations

- All permits are published online and publicly available
- Permitting and inspection teams work well together informally; data is shared.
- Template for new permits with general conditions works well

Opportunities for development

- Consider that first visits to newly permitted sites could be done jointly between the permit writer and the inspector. This saves time and helps the inspector to understand why the permit conditions were imposed.
- Working arrangements between the permitting and inspection teams are quite dependent on personal relationships and could be more formalised.
- Ask permit writers to implement the changes in permits to one consolidated document so that there is no misunderstanding what the inspector should focus on.

Inspection

Describing the context

There are around 275 IED installations and 3000 non-IED installations. Inspections are programmed at the beginning of the year depending on different criteria and organized using the IMPEL tool, IRAM. IEDs are inspected by the Inspection Service and around 140 complete inspections are carried out per year. Non-IED installations are inspected by two external organisations both carrying out around 200 inspections per year. Non-IED industry includes metal works, waste treatment, crematoriums etc. Around 1200 of these non-IED sites will get single environmental permits in the near future. There is no inspection frequency legally set although the Inspection Unit include them in their yearly schedule/plan for inspecting these installations.

This unit does not inspect SEVESO installations, Environment impact assessment (EIA) issues, Biodiversity issues or agricultural inspections.

Inspection documents are on the public data sharing platform – INGURUNET and searchable with a map. Additional documents are available to the team in the cloud. All the different software programs will be merged/connected soon. For IED installations, documents are stored in INGURUNET to prepare for inspections. Here the inspector can find the financial guarantees, data on waste production, management, shipments/ monitoring reports and also an annual environmental report (PVA) for IED installations. Incidents and complaints are verified and documents stored in an internal system called V77. Templates are available for all these documents and automatic generation of reports works well. This means the inspector can check all related documents on previous incidents and non-compliance.

The inspection consists of a site visit with an inspection of the whole installation, emphasizing the points seen before, changes in the permit, incidents, complaints possible origin and past non-compliances and also a document review. Most inspections take place with only one inspector but for larger, more complicated sites, more inspectors could be sent together.

After the inspections for IED installations, minutes are produced. Afterwards, an internal report is released, including non-compliances & consistency with the permit. There is a requirement with non-compliances and follow-up or notification (if 100% compliance). The inspector writes a public report with the summary of the inspection which is published on the website. Finally, a risk assessment evaluation takes place. The documents are mostly generated by automatic software. This system works well but reporting could be simplified, perhaps using more standardised documents.

For non-IED installations, there is an internal report showing non-compliances & consistency with the legislation. A requirement with non-compliances and follow-up or notification (if 100% compliance). The inspector also makes a risk assessment evaluation.

Setting priorities

IRAM is used for planning inspections. This determines the frequency of 1-3 years for IED facilities, using criteria of complexity of activity, locations (if sensitive) air and water emissions, complaints etc. However, the inspector and head of inspection can agree to be more restrictive, thus lowering the frequency suggested by the IRAM method. On the other hand, this frequency cannot be increased beyond what is indicated by the IRAM method. For non-IED the focus is on those installations with lower consistency to the permits and those with higher environmental risk. Planned inspections are agreed at the beginning of the year. Additional unplanned inspections may need to be carried out in response to complaints/ incidents.

Resource and time allocation

Time spent on inspection of IED installations:

– Preparing inspection: 1 inspector- 1-5 days

– Performing inspection: 1 inspector – 1-3 days

– Post-inspection work: 1 inspector - 1-3 days

Time spent on inspection of Non-IED installations

– Preparing inspection: 1 inspector - 1-2 days

– Performing inspection: 1 inspector - 1 day

– Post-inspection work: 1 inspector - 1-3 days

The mentioned times only include inspection time they do not reflect the time that the head of the inspection Unit, law technicians or administrative technicians need to put in.

There are plans for a new structure. In that case the inspection team will be split in two separate units, for IED and for Non-IED. The review team supported this proposal.

Defining objectives

Objectives are defined according to legislation, the Basque industrial framework and resources. It is aligned with the Basque 2030 Environmental Framework Programme. Resources, tasks and potential contracts are assigned according to the activities in the annual plan. There are qualitative and quantitative objectives.

Regarding the IED inspections that are the main task of the Unit, these are planned using IRAM for 1-3 years depending on the risk. All reports must be completed and sent to the facility within 2 months and public reports must be published within 4 months. Permitters visit the site first and a first inspection must be done within 1 year. As mentioned in the permitting section, the review team suggested that the first one could be a joint visit with IED Unit. Landfills are inspected every year as they have been identified as high risk. There are inspection strategies on a range of priority topics.

Besides, the objectives of other projects are defined annually and are set out in an annual programme which is publicly available on the website.

Planning and review

A general working plan covers 8 years and there is also an annual plan. Besides the inspections for IED and non-IED installations, other projects are planned each year. For example, LRM, cross-border, ECAs, and others.

The annual inspection plan is set up by one inspector and the team leader. Then it is up to each inspector to plan when the sites that have been appointed to him/her will be inspected through the year. Each inspector has between 15-25 full IED inspections per year. Non-compliances are flagged and they have a fixed period (10,15,30 days) for the operator to comply before sanctions are taken. Observations are included in the inspection plan, that give more relevant information on the sites/activities that would be useful when planning the inspection, for example operating times for the facility or relevant weather conditions. The head of unit has a spreadsheet to control all the projects (new initiative this year).

Transfrontier waste shipment inspections are planned in collaboration with the national police. 20 companies import and export waste according to notification and consent. There is no possibility to check movement of trucks electronically so they need to call the operator to find out when the trucks will enter the country, usually one week in advance (unless they send multiple trucks per day). Additionally, unannounced inspections take place at the border.

Time consumed in each task is not monitored by the inspection unit. But planned inspections are always carried out. The planned inspections are carried out before December so they can support other colleagues with tasks. There are sometimes delays due to unplanned activities and responses.

The inspectors do full inspections at every installation which means reporting is only done once but the work is intensive. Perhaps the inspectors could focus on specific aspects of the permit (based on risk) to make better use of the available time of the inspectors. Some aspects of an industry would only need an inspection every 3 or 5 years and other aspects could be done more frequently

Protocols

There is an inspection/ enforcement handbook which is very useful for new members of the team.

There is a limited capacity for sanctioning as it implies a lot of paperwork and there is a minimum level fine of € 20,000. It would be useful to have smaller sanctions available which can be imposed more esily and faster. Inspectors have the authority to give a **stop notice** if there is an acute and risky non-compliance. The company must stop the non-complying activity immediately. If the companies don't follow these notices, and legal proceedings are taken, then fines are very high. The stop notice is active for four days. After that, if a sanctioning procedure is not firm, the notice decays. A clear procedure on steps in issuing notices/ sanctions would be helpful for the inspector who would then not need to call the legal department. Norway has the possibility to give coercive fines during an inspection with a time limit for compliance before a fine is given. Sanctions are not made public but they have considered options for this.

The communication officer deals with enquiries and complaints but doesn't always talk to the inspector to confirm aspects before replying to the press. This could be improved.

Cars are available for inspectors who are split across three locations. They use branded clothing, but they don't have ID cards. It is recommended to use identification (ID cards). These could use a pseudonym to protect the inspector's privacy. There are mobile air quality labs and the water agency has sampling equipment. This is good practice, but drones are not currently used and could be beneficial for inspections.

Training and exchange

Training is available or specific courses can be requested if relevant. The inspectors can apply for this but there are no procedures for checking training needs. There are no inspector exchanges but they do work with IMPEL and with the national network REDIA. The inspectors have flexible working arrangements and can reduce their hours in summertime, making up for the hours in wintertime. The inspection team, the director and the legal team are located on the same office floor which aids cooperation and exchange of information.

There is not much time for performance evaluation and there are no rewards for excellent performance, which can be demotivating. Team leader positions are demanding and staff are not keen to fill this position. Perhaps an HR assessment of the positions and activities could help. Due to the nature of public service positions, staff can be moved to other departments with a consequential loss of experience. Also

staff can be added to the team by the HR department that are maybe not suited to inspection work. Some involvement of the team leader in the recruitment process could be beneficial.

There are general principles in the Basque Government regarding ethic and combating issue blindness that every civil servant must comply. However, there is no a specific training regarding this matter for the units.

Communication

There are weekly team meetings, a meeting with the water agency every three months and specific meetings with other departments when they are required. The inspection plan and programme are published as well as the public inspection reports.

The aim is to conduct most inspections unannounced (routine/non routine). If there is an incident the company must communicate straight away with the unit. Companies don't know whether they will be inspected or not.

Good practices and observations

Reporting

- Inspection reports are publicly available and can be searched through an online map
- Report templates are good
- V77 report system works well

Planning

- Risk assessment evaluation is good
- Automatic generation of confidential and public reports works well

Sanctions

- The ability to issue a stop notice is good practice

Staff

- The inspectors handbook is very useful and also new video updates help new staff get started
- Weekly meetings within the unit and with other unit managers helps internal coordination
- Flexible working arrangements good for staff
- Proximity to colleagues, other relevant units and the Director in the office aids cooperation and information exchange
- Participation in the REDIA network is beneficial for information exchange within Spain as a whole
- It is a good idea to appoint two coordinators to lead the IED and Non IED units

Opportunities for development

Reporting

- Think of a way to simplify requirements for inspection minutes, inspection report and public report. Could one document be used? Time could be saved with digital solutions
- Consider sending 2-3 inspectors for large installations

Planning

- Consider doing partial inspections based on risk assessment.
- The unit could benefit from the use of new technologies, especially drones for supporting inspections.

Sanctions

- Consider different/ more simple approaches to allow smaller sanctions for deviations

Staff

- It is recommended that Inspectors are given ID cards stating they are environmental inspectors of the Basque government to ensure their legal rights and to avoid uncomfortable situations when visiting companies unexpectedly.
- Training needs assessment and associated time for training would benefit the staff
- Consider how to mitigate the risk of loss of staff and experience
- Find a way to involve the team manager in the recruitment process for new staff.