



European Union Network for the Implementation
and Enforcement of Environmental Law

Big/Little TFS Project

Final Report

Date of report: 2021-11-15

Report number: 2021/07

Introduction to IMPEL

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

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

During the previous years IMPEL has developed into a considerable, widely known organisation, being mentioned in a number of EU legislative and policy documents, e.g. the 7th Environment Action Programme and the Recommendation on Minimum Criteria for Environmental Inspections.

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

Information on the IMPEL Network is also available through its website at: www.impel.eu

<p>Title of the report:</p> <p>Big Little Project Final Report</p>	<p>Number report:</p> <p>2021/07</p>
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	<p>Total number of pages: 16</p>
<p>Executive Summary</p> <p>The Big/Little TFS project was initiated after many years of TFS exchanges, all across Europe with multiple agencies involved. The exchanges had revealed a certain kind of problem and disconnect between the overarching intent of the legislation when it trickles down to the actual physical work that is carried out by inspectors in the field. There are systems to address these issues, but there are certain issues that can be so on such a detailed level, be very strictly connected to physical aspects and be linked to and span across multi-focal points in the inspections that it is hard to lift these issues higher in the different organizations.</p> <p>The issues identified in the project were brought forth by eleven member states that took part in the survey. The total amount of experience of the participants adds up to over 100 years of TFS experience combined. There were multiple issues that were identified, in connection to different articles in the legislation, Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste. Primarily a discrepancy in how to evaluate the importance for annex VII transport in connection to inspection priority. There's a lack of traceability for green listed waste and the importance of the waste when it comes to cooperating authorities.</p> <p>Another issue is the lack of practical solutions to a lot of the mandates that are in play in the member states for the physical transports themselves. There are however exceptions and these member states could be used as a good example.</p> <p>The guidelines connected to the legislation works, but there's a need for updates and some of the information to be adopted into the legislation.</p> <p>Article 49 and 50 works generally speaking and there's a relief that those articles are there for</p>	

the inspectors, but the articles need adjustments.

Increased cooperation with other agencies is required and there needs to be a resolve when it comes to contamination levels.

The project has only been able to identify issues during the project, even if the initial scope of the project was larger and included solutions. An application to extend the project has been sent in.

Disclaimer

This report is the result of a project within the IMPEL network. The content does not necessarily represent the view of the national administrations or the Commission.

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1. Background

During 2014 to 2020, authors of the report took part of physical exchanges in Europe concerning TFS during multiple exchange projects. The authors also themselves initiated and hosted a number exchanges during these years, mostly under the code name “Operation Midnight Sun” up in the north of Europe inside the arctic circle.

During these exchanges, when interacting with other colleges in Europe a growing awareness of the intricacies of the legislation developed and in conjuncture with increased knowledge of physical inspections, it started to become apparent that there were certain reoccurring issues that came into play during the inspections and that these issues were not limited to one country’s interpretation of the legislation in connection to the physical TFS inspections.

During the dialogue with other inspectors there also became apparent that there was a concerns that these issues, while very important on a per transport basis, where too detailed and could be seen as to insignificant to trickle its way up from the inspections back up to the Commission, the Council and legislative branch. Since the legislation cover two big and complex topics, transboundary transport and waste, often bigger issues are raised on national levels and higher, but these issues are often connected to the overarching goals and is often connected to the notification and other major articles in the legislation. Sometimes these goals go hand in hand, but sometimes they do not.

2. Methodology

After these exchanges the authors of the report took the initiative to request IMPEL to be able to carry out a project to identify and find solution to these issues that prevent inspectors across Europe from carrying out the intent of the legislation.

TFS inspectors across Europe together have had thousands of inspections out in the field and this have boiled down to an extensive knowledge of the legislation connected to physical inspections of transboundary shipments of waste by these inspectors. However, despite several legislative changes and reviews of the legislation, there are still lacking a connect between legislators and inspectors out in the field when it comes to some of the details in the legislation. These “details” could be where there are certain intentions with the legislation but due to the disconnect due to long lines of communication and many agencies between legislators on a EU-level and TFS inspector and the level of which such “details” might not be brought up higher in each nations priorities towards the commission since they are just that, “details”.

However, many of these “details” are prohibiting the intended TFS work to take place or to be as efficient as it could be I accordance to intend of the legislation. By having a dedicated project to identify these issues and to, via IMPEL, let the commission review the findings to identify and act if there’s a disconnect between the intend of the commission and the actual physical work out in the field.

3. Survey

The survey was posted on Basecamp, a platform used by IMPEL, and was available for TFS inspectors and NCP’s who had the possibility to forward the survey to inspectors in their respective country. There were responses from eleven different member states in the survey, which is about 40% of the different member states. The member states that responded to the survey were:

Finland

Germany

Ireland

Iceland

Norway

Portugal

Scotland

Slovenia

Sweden

The Netherlands

Wales

The total amount of years of TFS work, that highlights the competence of the individuals and agencies that were involved, were 103 years. This is a substantial amount of years of working and understanding the intricates of the legislation and how these details with disconnect can affect the intent of the legislation.

The survey covered several questions that were connected to work out in the field on a per transport basis, see annex I, but the focus areas were article 16 (notifications), article 18 (green listed waste), article 49 (environment protection), article 50 (enforcement tools) and guidelines. This was the case since these are articles and guidelines that affect an officer during inspections and is used while carrying out the physical work in real time either directly or indirectly.

The key phrase is “in real time”. The work carried out in real time and the tools and interpretations of the above-mentioned article is key for an inspector’s work. There are many other important articles in the legislation that often are up for discussions on higher levels, but without these initial step that are carried out in the physical work, the following articles cannot be applied therefor it is crucial that the work out in the field and the article connected to that work is working as intended and working effectively all across Europe.

The first part of the survey was several statements. All statements were answered by ticking a box for what answer that was most applicable for that specific question. The different answers were:

1. I fully agree
2. I partially agree
3. I somewhat agree
4. I do not agree

The answers have after this been aggregated and divided to produce a base value that indicates the answer across all participants.

The statement in the survey were as follows:

Do you agree that the existing legislation, guidelines and policies implemented by the Commission deliver an effective TFS system to trace and promote environmentally sustainable waste movements from, to and through Europe to be dealt with it in an environmentally sound manner? Average numerical response: 2.2.

Do you agree the tools provided by the legislation and guidelines make it possible for you to carry out the Commission's intent via physical stops, repatriation, administrative fees, and prosecution? Average numerical response: 2.

Do you agree that there needs to be a much higher awareness across all blue light authorities in order to prioritize the illegal waste shipments in a practical sense?

Average numerical response: 1.9.

Do you agree that there's an issue with the term "waste" in connection to prosecution and the burden of proof in connection to specific transports? Such as suspected waste transports and the reverse burden of proof? Average numerical response: 2.3.

Do you agree that is there are inadequate practical prerequisites, such as physical capacity, at the EU borders to, for example, detain transports that are suspected illegal waste transport or that they are detained until the country if dispatch repatriates the shipment? Average numerical response: 1.7.

Do you agree that blue light authorities are the main source of detection of illegal or suspected illegal shipments of waste? Average numerical response: 2.7.

The second part of the survey were free text boxes where the participants were supposed to respond to the asked question. The answers in the second part of the survey were as follows, and are written as a summary of the answers:

Question 1(a-c) – Article 16 transports

A good process overall and is important because it is hazardous waste. Provides protections for notified waste but is based on the correct information by the notifier. Some requirements may not be in play due to administrative burdens and needs an electronic system, as mentioned by multiple sources. Interim sites are an issue and create problems. The traceability of the system should be emphasized.

There's an issue with different judgements on specific transport between CA's. There's also an issue to validate the percentages of a waste for a live transport. No equipment available for X-ray scans which makes the visual inspections very difficult. There also need to be higher awareness for these transports by cooperating authorities out in the field, such as Police and Customs.

Question 2(a-c) – Article 18 transports

There's a lack of traceability and there's a big issue with these transports, especially for non-OECD countries. Both the traceability and issues with non-OECD countries are mentioned by multiple participants. There's a poor understanding of cooperating agencies of the priority for this stream, and this is also mentioned by multiple respondents. Very limited intelligence in this stream. There are issues

in the repatriation process when the person who arranges the shipment or transporter is MIA. Since there's no requirement to send in information before the transport starts, risk based, and strategic inspections are very difficult. The number of transports is huge and so the risks are high. Needs an electronic system. In addition, efficient administrative fees are necessary. The most illegal waste transports are found here.

Question 3(a-b) – Guidelines

The guidelines are used, mostly administratively but sometimes also out in the field. The guidelines are a good foundation for general knowledge for the work in the field. The guidelines need updating and to be clearer and would benefit from including visual representations. A majority of the responses point out the issue with the guidelines not being legally binding or information in them are not applied into the legislation.

Question 4 – Article 49, environmental protection

The article is appreciated, as mentioned by multiple responses. However, it needs to be more specific. It is often used in day to day work to check transport and downstream facilities, however downstream checks can be difficult. The definition "in environmentally safe manner" needs to be clarified.

Question 5 – Article 50, inspection mandates

The article is very appreciated according to multiple respondents. Is always used for EEE in one member state. Difficult to enforce and more training for cooperating authorities is required. It is often involved in take back procedures, initiated by authorities in other member states. There are difficulties for transports outside the EU. There's low knowledge of the legislation by the stakeholders. The risk assessment for the use of the article is unclear. Is used both on transport and during on site inspections. There's a heavy administrative burden, needs to be smoother especially for real time transports.

Question 6 – other issues

There's an issue with taking back ELVs and the responsible individuals goes MIA.

There's no reflection in WSR to refuse shipments connected to article 9.

4. Interviews

Following the survey, there were three interviews carried out. The individuals that were interviewed were selected from the eleven responses of the survey. The purpose with the interviews was to achieve an even higher level of granularity within the responses, since the goal was to pinpoint detailed issues that are very small but have a large impact on the desired goals with the legislation.

Question 1 - Article 16 transports

Very low violation rates within this stream according to one member state. Customs are well trained within this stream. Do not have any issues with the take back procedure. Problems with the lack of permits for receiving facilities and there are sometimes discrepancies. Larger problem with brokers and trailers.

Transporters cannot produce the information necessary and there's a lack of copies of the permits. In the documentation there's an issue where the description of the waste is not used correctly, instead used with internal codes. There're often discussions about what should be considered illegal and go under administrative procedures or judicial procedures and that line must be clarified. Also on how many violations can be made, while still keeping a permit. Must be specific big issues to in the field be able to determine if something is correct due to the current system. It's connected to the technical aspect of inspections.

Cooperating authorities do not do many inspections on these kinds of transports.

If you stop something it has to go back if it cannot produce the necessary documentation, however there's pressure for the hauler industry to release it. If the original producer do not have a permit, it still has to go back to that site. There are logistical problems at the road and the CA is relying on very weak documentation in connection to other documentation that is required, such as guarantees. There's also an issue whether or not an exporter has to be located in the country of dispatch. Should be made clear in the legislation. No idea on how to carry out sampling in the field, not specified via legislation or guideline, only via the overarching data. Date of production could be beneficial where applicable. The railroad needs to be looked at, it's currently a big black hole.

Question 2 – Article 18 transports

This stream contains most illegal waste. Companies and brokers that do not have permits are found here. More dangerous stream to the environment in that sense, even if initial procedures states

otherwise. The Malta system is very good were you also have to submit annex VII before the transport. Priorities are made for this stream when planning.

Has got a high level of risk when it comes to the transports. Certain waste that are not green listed gets sent as green listed waste. Difficult to validate if the receiving facility has got the correct permits to receive the waste out in the field. The lack of the phrase "actual site of generation" can lead to unnecessary issues concerning interpretation. There needs to be a clearer link for the traceability on a national level.

In one member state you have send in the annex VII before transport according to national legislation. The bill of loading often doesn't add up with the documents. Should not be allowed for shipments with R12/R13 without it being actual R12/R13 in play. It's not green listed if you need to send it to a R12 facility. Huge issues with box 12 as the stakeholders seldomly know what they are actually signing. Often there's no green contract available for the transport. Box 13 and box 4 almost never filled in correctly. There's an issue with sending it back to the correct location if box 6 is too general. If a carrier just has got a heap of papers and say – the right one is in there somewhere, then that's a problem. Multiple containers on one annex VII are allowed in one member state but not in another member state.

Question 3 - Guidelines

The guidelines are good to use for Police and Customs. Both for physical inspection guidelines and for administrative parts. Implementations have been made via regulation on a national level.

Guidelines are not used in the field according to two member states. Own guidelines are used in a general sense in conjunction with the correspondents' guidelines.

Question 4 – Article 49, environmental protection

In the field some of the member states do not use it, only for office use. But if used it the field, it is a great tool according to another member state. The connection to the actual fieldwork needs to be clearer. There're unclear rules and guidance on how to visually determine the origin of a certain waste. Needs to be specified.

It is very frequently used it to stop anything that is uncertain. Some clarification might be necessary in the legislation. To assess the environmental standard is almost impossible to prove. Especially in real time.

Question 5 – Article 50, inspection mandates

It's used frequently and there are facilities that can accommodate for potential physical stops in accordance with the legislation in some member states, but in others not. There's a national legislation that limits the stop for up to two hours in a certain member state. However, then legislation could be more clearly written. There are issues with end-of-waste transports. When reporting back to the commission, member states do not always report article 50 violations, instead report article 24 violations only.

Question 6 – other issues

There is a big need to clarify levels of contamination. Preferably BAT levels in combination with a stricter limit if a receiving country has a stricter policy and if so, adopt that in that specific case. There also needs to be a better system for transit authorities. Transport are always ongoing, and you need to quickly come into contact with CA's in different nations. There's a need for an overarching electronic system. Also, a minimum reference point for adequate protection equipment for staff would be useful, for example in a practical guideline. A repatriation fund fee would be useful to be able to deal financially with repatriations.

5. Conclusions

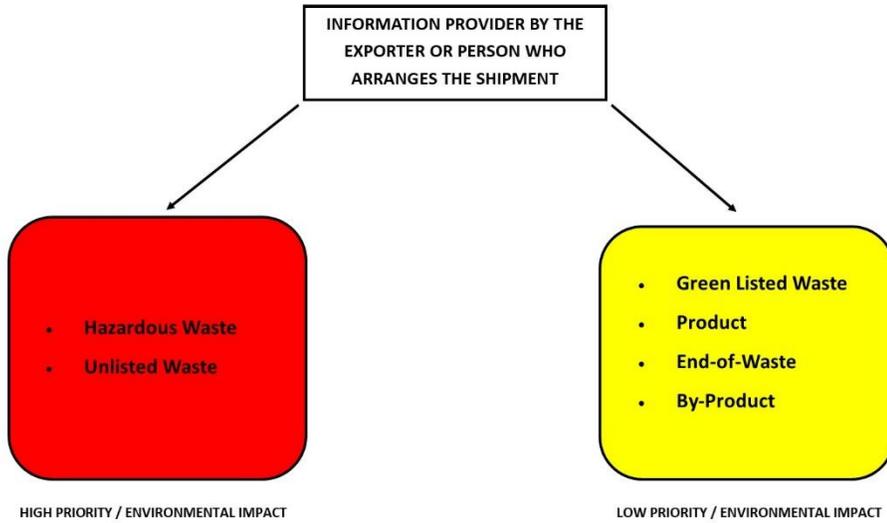
The authors have tried to differentiate the answers and sort them into two main categories, one category that is mainly connected to national interpretations that more or less is designed to have this kind of ambiguity where certain issues are not set in stone, rather they are up for interpretation.

With that in mind, the results from the survey and the interview indicates that there are numerous different issues with the legislation on many fronts. But also, that there are many things that work very well with the legislation. This is to be expected since the development of the legislation has been under progress for many years. Yet it looks like there are some key areas that needs to be addressed.

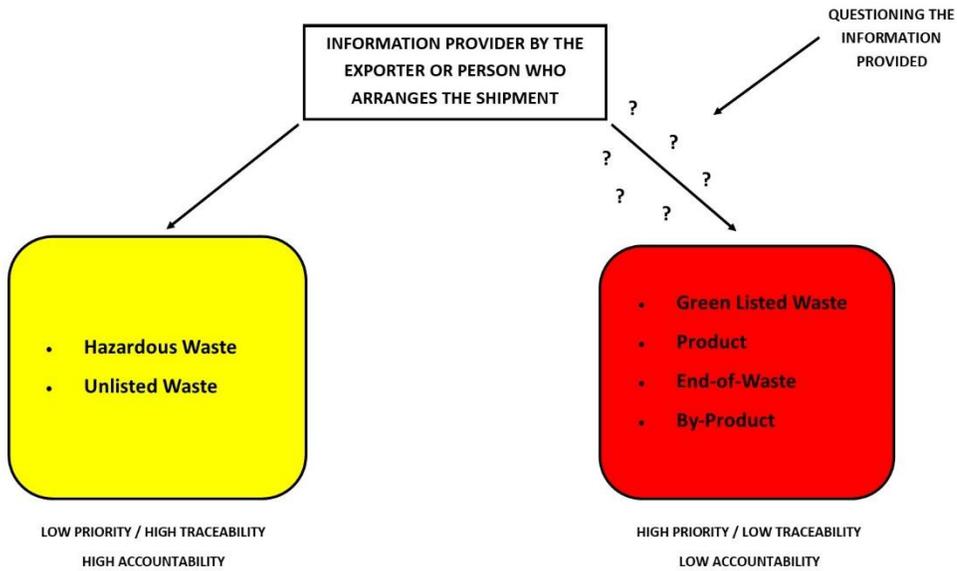
Article 18 transports - This question had the highest and most, in detail, answers in the survey. This seems to be a key emphasis by the inspectors. This is very interesting since green listed waste generally is seen not as important as notifiable waste. There seem to be two ways to interpret environmental protection. One part is directly connected to the environmental impact on a specific waste. However, a different part is the traceability of a waste and to verify that a specific waste has been classified correctly and that there's accountability.

The different viewpoints are both important and can be visualized as follow:

TYPICAL TFS INSPECTION



TRACEABILITY BASED TFS INSPECTION



It seems like this is a cornerstone of the inspections where different member states look at the different types of inspection from different viewpoints. One country might look mostly at the typical TFS

inspection and other member states look at the traceability based TFS inspections, where a key aspect in how the traceability and accountability is. However this is a key issue which makes the inspection prerequisites totally different.

When it comes to green listed waste under article 18, the transports mainly lack traceability which is a big problem for multiple member states and there's no system to get an overview. There's also issues with non-OECD countries where it is hard to determine if the downstream site is a valid site. There's also lacking understanding of the importance of these transport with cooperating authorities. The documents themselves are very rarely filled in correctly which makes assessing the environmental impact on individual transports extremely difficult, if not impossible.

Guidelines – The guidelines seem to be fairly implemented in everyday word, just as intended. However, there is a delay when it comes to updating the guideline which impacts the work heavily. Also, the guidelines have a huge problem when they are not legally binding. This is nothing new, and the ambiguity will always be there to some degree, but it is extremely worrying that a majority of the member states voice the issue about this fact. This indicates that there are certain things in the guidelines that needs to be clarified, via updates, or be added to the legislation.

Article 16 transports – There are logistical issues in play for these transports, and for the ones under article 18. Limited practical spaces for holding, seizing, and repatriating transports in connection to physical locations. Certain member states have solid infrastructure when it comes to these issues, but other member states are really struggling with this. There's a lack of priority in the cooperating agencies when it comes to physical checks. There seem to be better compliance in with waste under article 16, which makes sense.

Article 49 – There seems to be a great need to start using this article on transport in real time and not only in the administrative work afterward. The article is very appreciated, but it needs clarification for certain parts.

Article 50 – Very much appreciated by almost all member states. But some aspects of statistics connected to the article can be improved and certain practical issues when using article 50 can be found. The article seems to need to be polished, but is very appreciated and helpful for the practical work.

Other issues – There's a big need for quantifying contamination levels. This issue has been ongoing for years, but there needs to be a resolve. Current situation is not acceptable, there needs to be work done here. There's also a need for an electronic system. This has been discussed and is currently worked on, but there's a clear need for the field work to get this going, for all stakeholders.

We can also see from the statements that countries work was differently when it comes to cooperating agencies, for instance blue light agencies and how these agencies are used to detect illegal waste transport. It is also connected to how hand on the CA is in the member state. We also see in the statements that a big issue is that there's lacking a physical site for transports to be inspected and help, just like previously mentioned under article 16.

Initially the scope of the project was to identify and present remedies to the issues found. However, this was quickly determined to be a too ambitious goal and the focus during the project has instead been on the first part. This is something that was done, however the project team feels like there's even more to explore here and solidify in a possible extension of the project where we would include suggestions for solution for the issues in cooperation with the member states. Therefore the project team have asked IMPEL for an extension to the project during 2022 and possibly 2023 to be able to complete all initial objectives with the project and together present solutions to the problems where possible.

The project teams' final thoughts is that there is a large number of very competent TFS inspectors with deep knowledge on the legislation and how it trickles down to individual transport and the issues that are connected to physical inspection. The mentioned issues should not be underestimated as without the work in the field, we are unable to validate transports and assess their environmental impact. Therefore the issues should be addressed and progress within the project should continue.

Also, the granularity, the details that we're wanted was only partially achieved. This was achieved via the interviews so moving forward, the qualitative data should be primarily used.

The end goal could be to produce another report and/or help to create a guideline for practical TFS work, a feature that several member states felt was needed.

Thank you for your time – the project team.

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