

## TERMS OF REFERENCE FOR IMPEL PROJECT (2014)

\* Please read the supporting notes before filling in each section of this form.

### 1. Project details

Name of project IMPEL-TFS Prosecutor Project 2014/01

### 2. Scope

#### 2.1. Background

- The compliance deficit of the Basel Convention and the European Waste Shipment Regulation (1013/2006) or 'WSR' is very serious. Figures indicate that about 20% of all waste shipments are in violation.
- Prosecution of environmental crime is a national competence. The differences in approach and the number of convictions in European countries are significant. There appears to be a lack of communication between authorities both on a national and on an international level. In practice, criminals who are involved in shipping waste may illegally take advantage of the differences in enforcement and the lack of communication between authorities.
- To improve the collaboration and alignment within prosecution of the WSR, frequent contact between all relevant authorities is necessary. Prosecution is an important part of the enforcement and compliance cycle. Therefore, European prosecutors need structured, personal and frequent contact where they can strengthen their network, exchange experiences of case law and good practices and align prosecution actions of European environmental law and regulations in Europe.
- In 2012 the IMPEL TFS Prosecutor Project was carried out which aimed to meet the needs as described above. One of the products was a workshop held on 12-15 November 2012 near Segovia in Spain. The workshop hosted 22 prosecutors and 3 representatives from IMPEL, the BASEL secretariat and Eurojust. This workshop was the start of a network of prosecutors dealing with WSR.
- In the 2012 workshop the need for a database/website for the exchange of information such as good practices, case law and prosecution policy was discussed. The participants supported the realisation of this database/website. While making the proposal for the database it became clear that the database will have to meet certain requirements like search options and access levels/rights. Furthermore the participants of the workshop felt the need for a yearly held prosecutors workshop in order to improve capacity building and cooperation.
- In 2013, the IMPEL TFS prosecutors' workshop will be held within the Eurojust/ENPE strategic meeting *Towards an enhanced coordination of environmental crime prosecutions across the EU: the role of Eurojust*, in The Hague on 27 and 28 November.
- **A coordinated audit on the enforcement of the WSR was conducted by the Supreme Audit Institutions of Bulgaria, Greece, Hungary, Ireland, Poland, the Netherlands, Norway and Slovenia. The joint audit report (*Coordinated audit on the enforcement of the European Waste Shipment Regulation, Joint report based on eight national audits*) was published in October 2013. In its main conclusion, the report identifies wide discrepancies in the enforcement of the WSR. 'The enforcement strategy, the number of inspections, the interpretation of regulation and the way in which infringements are dealt with all differ widely from one country to another.' One of the report's recommendations is that**

	<b>'Countries are recommended to assess whether their sanctions policy is proportionate and dissuasive and share information on the use that is made of sanction instruments, within the existing public prosecutors network.'</b>
<b>2.2. Directive / Regulation / Decision</b>	<ul style="list-style-type: none"> <li>➤ European Waste Shipment Regulation (1013/2006);</li> <li>➤ EC Directive 2008/99 on the protection of the environment through criminal law</li> <li>➤ Commission Regulation (EC) 1418/2007 concerning the export of certain wastes for recovery to NON-OECD countries;</li> <li>➤ European Council Conclusions of 20 May 2010 (5956/5/10) on the 'Prevention and combating of illegal trafficking of waste, particularly in international trafficking'.</li> </ul>
<b>2.3. Article and description</b>	<p><u>EC Regulation No 1013/2006 on the supervision and control of shipments of waste within, into and out of the European Community</u></p> <ul style="list-style-type: none"> <li>➤ Article 50(1): Member States shall lay down the rules on penalties applicable for infringement of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive;</li> <li>➤ Article 50(2): Member States shall, by way of measures for the enforcement of this Regulation, provide, inter alia, for inspections of establishments and undertakings in accordance with Article 13 of Directive 2006/12/EC, and for spot checks on shipments of waste or on the related recovery or disposal;</li> <li>➤ Article 50(5): Member States shall cooperate, bilaterally or multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments.</li> </ul> <p><u>EC Directive 2008/99/ on the protection of the environment through criminal law</u></p> <ul style="list-style-type: none"> <li>➤ Article 3 Offences: Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence: (...) (c) the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked; (...)</li> </ul> <p>Article 5 Penalties: Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.</p>
<b>2.4 Link to the 6<sup>th</sup> EAP</b>	Articles 3(2) and 9(d) of the European Community 6 <sup>th</sup> European Action Programme.
<b>2.5. Link to MAWP</b>	The IMPEL-TFS cluster MAWP covers 2011-2015 and this project links to the following key partners, strategic goals and themes of the TFS cluster: <u>2. Key Partners</u> : Public Prosecutors (with links to the other key partners like ENPE and environmental inspectorates); <u>3. Strategic Goals 1, 2 and 3</u> : Increased Awareness, Capacity Building and Improved Cooperation; <u>4. MAWP Themes 3 and 4</u> : Better Collaboration Enforcement Partners and Interpretation Issues.
<b>2.6. Objective (s)</b>	<ul style="list-style-type: none"> <li>- Strengthen/continue the network of prosecutors in the European Union involved in the prosecution of environmental crime with a special focus on the WSR 1013/2006 through:</li> <li>- The development and implementation of a database/website which will facilitate the exchange of relevant case law, prosecution information such as the level of fines, working methods, prosecution approach, interpretation and practical experiences. The exchange of information through the database will be of a non-operational nature.</li> <li>- The organisation of a workshop for prosecutors in 2014 which will be</li> </ul>

	<p>as cost neutral as possible by finding a free venue if possible and/or ask a contribution of participants for either travelling or accommodation expenses or both.</p> <ul style="list-style-type: none"> <li>- Strengthening ties with IMPEL, the BASEL secretariat, the European Commission, Eurojust, ENPE and other organisations dealing with WSR enforcement.</li> </ul>
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### 3. Structure of the project

<b>3.1. Activities</b>	<ul style="list-style-type: none"> <li>➤ Continuation of the project team for the development of the database and the organisation of the workshop.</li> <li>➤ Project 1: Two day workshop covering at least 2 topics:             <ol style="list-style-type: none"> <li>1. Information exchange on WSR prosecution in practice;</li> <li>2. Share relevant developments.</li> </ol> </li> <li>➤ Project 2: completion and implementation of the database. The costs of this project cannot be estimated now as this will to largely depend on whether the website/database can be built in an already existing database or not</li> <li>➤ Report results (continuation network, workshop, database etc)</li> </ul>
<b>3.2. Product(s)</b>	<ol style="list-style-type: none"> <li>1. One 2-days-workshop for 20 participants</li> <li>2. A working database of relevant case law</li> <li>3. Project report</li> </ol>
<b>3.3. Planning (Milestones)</b>	<ol style="list-style-type: none"> <li>1. Workshop second half 2014</li> <li>2. Working database first half 2014</li> <li>3. Final report December 2014</li> </ol>

### 4. Organisation

<b>4.1. Lead</b>	Mr. Rob de Rijck (Public Prosecutors Office, The Netherlands)
<b>4.2. Project team</b>	<ul style="list-style-type: none"> <li>• Kristina Persson (Sweden)</li> <li>• Antonio Vercher Noguera (Spain)</li> <li>• Anne Brosnan (England)</li> <li>• Howard McCann (England)</li> <li>• Marc van Cauteren (Belgium)</li> </ul>
<b>4.3. Participants</b>	Prosecutors of environmental crime specialised in WSR in Europe (or their representatives), project team, relevant organisations.

### 5. Quality review

The project manager will regularly report the process and outcomes to the IMPEL-TFS Steering Committee and the IMPEL General Assembly. IMPEL procedures are applicable and have to be followed by the project team.
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### 6. Communications

<b>6.1. Dissemination of results</b>	News Item on IMPEL website and, inform national partners like inspectorates and main target groups as stated below about results
<b>6.2. Main target groups</b>	Prosecutors of environmental crime, IMPEL-TFS network, European Commission, Secretariat of the Basel Convention, Eurojust, International Association for Prosecutors, INECE etc.
<b>6.3. Planned follow up</b>	TBC

## 7. Project costs/Resources required

	Estimated costs	Budget requested from IMPEL (€)	Total payments committed by lead authority (€)	Payments by lead authority directly to the project (€)	Payments by lead authority via the IMPEL budget (€)
• <b>Project meetings in total</b>					
<u>Meeting 1:</u> project team meeting workshop					
No of Participants:	5				
Travel:		2.000			
Accommodation:		500			
Catering:					
Meeting venue:					
Sub-Total:		<b>2.500</b>			
<u>Workshop</u>					
No of participants:	20				
Travel:		7.500			
Accommodation:		2.500			
Catering:					
Meeting venue:					
Sub-Total:		<b>10.000</b>			
<u>Database</u>					
Implementation		<b>5.000</b>			
<b>TOTAL</b>		<b>17.500</b>			
<b>Human Resources</b>					

## **Supporting Notes for completing an IMPEL project Terms of Reference**

### **3. Structure of the project**

Please state what activities will be undertaken to achieve the objectives stated in 2.6. and what the products will be resulting from these activities.

For milestones, a GANT chart would be welcome but the main thing is to describe when the following actions will be carried out: 1) Approval is expected to be given, 2) the start of the project, 3) when communications actions and the dissemination of results will be carried out, 4) project milestones, 5) the products will be finished and can be circulated, 6) which General Assembly the project report will be presented to.

### **5. Quality review**

Please state who will check the quality of the project work and when e.g. IMPEL Cluster, a consultant...

### **6. Communications**

For 'Dissemination of results', the questions to be considered are:

- Will the report be posted on the IMPEL Website?
- Are you going to write a News item for the IMPEL website?
- Are you going to send the results to the Commission desk officer concerned?
- Are you going to write a press article for media in your country?
- Are you going to write a press article for media in Brussels/European wide media or environmental trade bodies?
- Are you going to send the results to each target group identified in 3.6? If not, why not?

For 'Main target groups', some examples include:

- Are the European Commission involved e.g. as a workshop or conference participant or as a core team observer? If not, why not?
- Expert Working Groups e.g. European IPPC Bureau in Seville
- Networks e.g. Interpol, REACH forum, Basel Convention, European Chemicals Agency (ECHA), INECE...
- Non Governmental Organisations (business and environmental) e.g. Business Europe, European Environmental Bureau, WWF...
- European Parliament Environment Committee e.g. specific MEPs interested in an issue, Chair and Vice Chairs of ENVI, rapporteurs on specific legislative dossiers
- Economic and Social Committee
- Committee of the Regions
- Domestic national, regional and local government

Please state which are relevant AND add to the list where appropriate.

### **7. Resources required:**

**Note: it would be helpful if for this item an excel sheet template (using these exact headings) would be provided!**

- This matrix is for one year only. If your project is taking place over more than one year, please fill in another for each year your project is taking place
- Accommodation per person, per night should be priced at a maximum of € 125
- Travel should be priced at a maximum of € 500 per person for a return journey
- Under 'Human Resources', please consider how many days commitment this project will require from: a) the project manager, b) the project team members and, c) participants at workshops, seminars etc.

To understand IMPEL's financing mechanism, it is important to consider the following:

- IMPEL is financed partly through its Members and partly through the EU-Commission's share of the LIFE+ fund. The applicable budgetary rules for this kind of Commission's financing differ to some extent from the budgetary rules applicable for LIFE+ project funding in the EU Member States. For example, Member State's human resources put into a project cannot be accounted for in monetary terms.
- IMPEL Members have to pay at least 30% of the overall IMPEL-budget (minimum!), the Commission may then pay 70% of this overall budget (maximum!)  
Therefore, the size of the Commission's payment is limited through the size of the IMPEL Member's payment. For every 3 Euros a Member pays into the IMPEL budget, the Commission may pay 7 Euros to IMPEL. As a rule, if Members pay more into the IMPEL budget, the Commission will pay more to IMPEL as well.
- Only direct payments of IMPEL Members into the IMPEL-budget are recognised by the Commission's financial rules as "payment of a Member towards IMPEL". Neither in-kind - contributions like rooms, meals, human resources NOR PAYMENTS of a Member which are paid DIRECTLY INTO A PROJECT are counted as part of the IMPEL Member's share of 30%.