

TOR Reference No.: 2017/22	Author(s): Kim Bradley
Version: 1.2	Date: 18 November 2016
TERMS OF REFERENCE FOR WORK UNDER THE AUSPICES OF IMPEL	

1. Work type and title

Financial Provision, phase 2

1.1 Identify which Expert Team this needs to go to for initial consideration	
Industry	<input type="checkbox"/>
Waste and TFS	<input type="checkbox"/>
Water and land	<input type="checkbox"/>
Nature protection	<input type="checkbox"/>
Cross-cutting – tools and approaches -	X
1.2 Type of work you need funding for	
Exchange visits	<input type="checkbox"/>
Peer reviews (e.g. IRI)	<input type="checkbox"/>
Conference	<input type="checkbox"/>
Development of tools/guidance	X
Comparison studies	X
Assessing legislation (checklist)	<input type="checkbox"/>
Other (please describe):	<input type="checkbox"/>
1.3 Full name of work (enough to fully describe what the work area is)	
Financial Provision: Protecting the Environment and the Public Purse – Phase 2	
1.4 Abbreviated name of work or project	
Financial Provision: Protecting the Environment and the Public Purse	

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

2.1 Name the legislative driver(s) where they exist (name the Directive, Regulation, etc.)
<ul style="list-style-type: none"> This is a broad issue which cuts across many legislative drivers and sectors for example Environmental Liability Directive, Landfill Directive, Mining Waste Directive, Water Framework Directive, Industrial Emissions Directive, Seveso and relevant domestic legislation. It is relevant during the planning, operation and restoration stages of business.

2.2 Link to IMPEL MASP priority work areas

- | | |
|--|--------------------------|
| 1. Assist members to implement new legislation | <input type="checkbox"/> |
| 2. Build capacity in member organisations through the IMPEL Review Initiatives | <input type="checkbox"/> |
| 3. Work on 'problem areas' of implementation identified by IMPEL and the European Commission | X |

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

The impact of direct environmental incidents as well as business insolvency resulting in risk to the environment must be protected against.

In cases where there is either an environmental incident which results in actual/potential harm to the environment or where a company becomes insolvent and can no longer meet its obligations, suitable financial provision can mitigate or prevent an impact on both the environment and/or the public purse.

Where appropriate, a financial provision mechanism should ensure that the provision is:

- Sufficient
- Secure
- Available when required

However, where no financial provision has been made there is a risk to both the environment and to the public purse. The interaction between company/insolvency law and environmental law is complex and will differ between countries. In addition, the mechanisms/ products available to secure financial provision between countries may vary. Further, the experience of EPA's and regulated sectors in applying financial provision mechanisms across member states is likely to be variable.

Ensuring suitable financial provision is most critical where environmental licencing has permitted degradation of the environment on the condition that the degradation will be mitigated at the end of the life of the activity (for example, in landfill restoration) and this is applied successfully in many member states.

However, in the case of insolvency, even where financial provision is made, this may not be available to be called upon when required. Ultimately, lengthy legal battles may still result in the taxpayer covering the expense; contrary to the polluter pays principle.

Background

IMPEL approved funding for the first year (2016) of a two-year project.

The findings from Year 1 confirmed the premise of the project, in that many IMPEL members have experienced challenges in calling upon financial provisions to meet environmental liabilities. The project also harvested examples of circumstances in which financial provisions had been successfully called upon, along with pointers to national level guidance and recommendations to improve financial provision. This will inform year 2 of the project.

The report presented approaches to financial provision across Europe, along with case studies where it has been both effective in providing protection against the problem of abandoned liabilities, and, on the other hand ineffective because it was not secure sufficient or available when required. Preliminary conclusions were provided, addressing the scope of the problem, the

acceptability and availability of suitable financial provision mechanisms, and the role of regulators in ensuring financial provisions work in practice. Recommendations for a work programme for Year 2 of the project were set out. These included a further workshop with regulators from across Europe to share experience, and the development of practical guidance leading to the production of a decision making tool in support of good regulatory process in the field of financial provision.

The aim for 2017 is, therefore, to add value to the 2016 project by harvesting broader and more in-depth evidence. The information from both phases of the project will be used to produce some practical guidance that will better equip regulators and others to make informed decisions about financial provision for unforeseen and foreseen liabilities.

This proposal seeks approval for funding for the second phase and year 2 of the project for delivery during 2017.

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

Regulators and operators will have a better understanding of the availability and suitability of financial tools resulting in improved:

- Protection of the environment
- Protection of the public purse
- Implementation of polluter pays principle
- Investment in pollution prevention.

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

This project follows on from and builds on the outputs of the IMPEL project Financial Provision – Protecting the Environment and the Public Purse (2016).

3. Structure of the proposed activity

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

1. Project Team meetings – scope and manage project plan and budget, programme work, allocate tasks, peer review project products
2. Follow up interviews to ground truth Year 1 evidence (particularly on availability of different forms of financial provision, and the acceptability and reliability of financial provision in different circumstances)
3. Identify and engage with key stakeholders to harvest and collate evidence and guidance documents from a broad geographical base. It is anticipated that this will focus primarily on European regulators
4. Workshop of key stakeholders (30 participants) identified in Year 1 of project and in Stage 3 above
5. Production of practical guidance to assist in decision making
6. Project report.

In the event that supplementary funding is not made available the workshop will not take place and the project products will be tailored accordingly.

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

Translating useful information from the 2-year project into a practical guide. The guide will identify the decision making process in financial provision, highlighting the factors that influence decisions and helping users to find solutions that are likely to result in the successful operation of the mechanism. The outcome will be that regulators and others will be better informed about financial provision and will understand the pitfalls and ways to overcome these.

It will arm the regulator with a better understanding of the different forms of financial provision when in negotiation with operators etc. The practical guide will also highlight issues about on-going maintenance of financial provision during the lifetime of an operation (such as a landfill), and any constraints on accessing the financial provision in the event of a pollution incident, which also leads to the demise of the operator.

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

- Engage with key stakeholders
- Workshop (this is the most critical milestone of this proposal)
- Develop and test practical guidance
- Project report.

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

This is a low risk project. The main risks are associated with delivery within the timescale. This will be managed by structuring the project with in-project milestones and timescales. These will be agreed at the first meeting of the project team.

There will a risk that EPAs and others may accept mechanisms for financial provision based on the information provided, and the financial provision subsequently proves to be defective or inaccessible. The risk will be managed by giving careful consideration to the advice given and the context in which it is presented.

4. Organisation of the work

4.1 Lead (who will lead the work: name, organisation and country) – this must be confirmed prior to submission of the TOR to the General Assembly)

Scotland and Ireland to lead. Kim Bradley (SEPA), Stephen McCarthy (Irish EPA)

4.2 Project team (who will take part: name, organisation and country)

Max Folkett (English EPA)
 Paul Corrigan (SEPA)
 Valerie Fogleman (University of Cardiff, Stevens and Bolton LLP)
 Colin Mackie (University of Aberdeen)
 Phil Crowcroft (ERM, NICOLE)
 Isaac Sanchez (Ministry of Agriculture, Food and Environment, Spain)
 Camilla Lindholm/Sandra Backland (EPA, Sweden)

Ana Carrola (Portugese Environment Agency, Portugal)
Regina Vilao (Portugese Environment Agency, Portugal)
Moa Ek (EPA, Sweden)
Clotilde Silva (Ministry for Environment, Spatial Planning and Energy and Agriculture and the Sea, Portugal)
Rodrigo Ferreira (Ministry for Environment, Spatial Planning and Energy and Agriculture and the Sea, Portugal)
Darren Cordina. Malta (mepa) .
Dušan Pichler, (Ministry for Environment and Spatial Planning, Slovenia)
Colleagues from Greece, Finland and Slovakia have also been invited to participate in the project team.

4.3 Other IMPEL participants (name, organisation and country)

4.4. Other non-IMPEL participants (name, organisation and country)

Hans Lopatta (European Commission, DG Environment)

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

	Year 1 (exact)	Year 2	Year 3	Year 4
How much money do you require from IMPEL?		6000		
How much money is to be co-financed		11890		
Total budget		17890		

6. Detailed event costs of the work for year 2

	Travel € (max €360 per return journey)	Hotel € (max €90 per night)	Catering € (max €25 per day)	Total costs €
Event 1				
<i>Project Team 1</i>	500	360	175	1035
<i>March 2017</i>				
<i>Edinburgh, Scotland</i>				
<i>7 1</i>				
Event 2				
<i>Workshop</i>	10800	2700	750	14250
<i>Data of event tbc</i>				
<i>Brussels or Edinburgh tbc</i>				

30				
1				
Event 3				
<i>Project Team 2</i>	500	360	175	1035
<i><tb></i>				
<i>Edinburgh, Scotland</i>				
7				
1				
Event 4				
<i>Project Team 3(to finalise practical guidance)</i>	500	720	350	1570
<i>August 2017</i>				
<i>Edinburgh, Scotland</i>				
7				
2				
Total costs for all events	12300	4140	1450	17890

7. Detailed other costs of the work for year 2

7.1 Are you using a consultant?	<input type="checkbox"/> No
7.2 What are the total costs for the consultant?	
7.3 Who is paying for the consultant?	
7.4. What will the consultant do?	
7.5 Are there any additional costs?	<input type="checkbox"/> Yes Namely: A small amount of the budget may be used for translating some correspondence/reports etc into English
7.6 What are the additional costs for?	Administration, reporting etc
7.7 Who is paying for the additional costs?	Project Lead organisations
7.8. Are you seeking other funding sources?	Yes Namely: EPA Network Better Regulation Interest Group Members including the European Commission and other EPAs

7.9 Do you need budget for communications around the project? If so, describe what type of activities and the related costs	<input type="checkbox"/> No Namely: Tbc
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8. Communication and follow-up (checklist)

	What		By when
8.1 Indicate which communication materials will be developed throughout the project and when <i>(all to be sent to the communications officer at the IMPEL secretariat)</i>	TOR ✓ * Practical Guidance report ✓ * Project report ✓ * Progress report(s) ✓ Press releases News items for the website ✓ * News items for the e-newsletter Project abstract ✓ * IMPEL at a Glance ✓ Other, (give details):	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	As set out by IMPEL requirements shown in project plan and basecamp milestones
8.2 Milestones / Scheduled meetings (for the website diary)	See Basecamp		
8.3 Images for the IMPEL image bank	<input type="checkbox"/> Yes		
8.4 Indicate which materials will be translated and into which languages	All materials will be in English. DG Environment have indicated that they are giving consideration to translating the practical guide into other languages (not specified).		
8.5 Indicate if web-based tools will be developed and if hosting by IMPEL is required	Not known		
8.6 Identify which groups/institutions will be targeted and how	Regulators, European Commission, Financial provision sector through IMPEL member contacts, NGO's and industry		
8.7 Identify parallel developments / events by other organisations, where the project can be promoted	Scottish guidance on financial provision for the waste management sector, Environmental Claims Conference 2017. ELD Stakeholder Workshop European Commission ELD multi-annual rolling work programme (MARWP)		

✓) Templates are available and should be used. *) Obligatory

9. Remarks

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

The European Commission have provided positive feedback on the outputs of the 2016 (2016/20) project and indicated that they intend to feed the outputs into their ELD multi annual rolling work programme (MARWP) for the work of the Commission with the Member States until 2020.

*In case of doubts or questions please contact the
IMPEL Secretariat.*

*Draft and final versions need to be sent to the
IMPEL Secretariat in word format, not in PDF.*

Thank you.