

A Position Paper from the IMPEL network on 'Environmental Compliance Assurance'



European Union Network for
the Implementation and Enforcement
of Environmental Law

Introduction

The IMPEL¹ network welcomes the European Commission's Communication, 'Delivering a Europe that protects, empowers and defends'² and the initiative on stepping up efforts on the application, implementation and enforcement of EU environmental law. The IMPEL network recognises that there are deficiencies in Environmental Compliance Assurance (ECA) which is undermining public confidence in the effectiveness of EU laws, encouraging unfair competition and fostering environmental, economic and social harm.

IMPEL's own research highlights that a lack of capacity (lack of skills, particularly at a municipal level and insufficient resources and capacity in the organisations responsible for regulation and enforcement); insufficient data, evidence and information to support effective implementation; inadequate sanctions and a low level of fines for those that breach the law, are underlying causes of poor progress with implementation and are leading to a lack of a deterrence factor³.

The IMPEL network, through its 51 members in 36 countries, has access to world leading expertise and a deep reservoir of experience in ensuring good implementation generally and tackling environmental crime. There is often no need to develop new methods and approaches to tackle the most common causes of non-compliance. Instead, the key challenge is ensuring that best practice is transmitted and shared in an efficient and effective way to those that need it most and that they have political and administrative support to implement the required changes. Today's environmental problems however also require new tools and innovative thinking in addition to the more 'traditional' tools and approaches. Developing, promoting, sharing and applying of new technologies and approaches are therefore essential.

What would we like to see going forward

IMPEL recognises and broadly supports the European Commission's Roadmap on the ECA⁴, particularly to: *Identify, develop and share good practices in environmental compliance assurance, and strengthen the cooperation and coordination of actors in the compliance assurance chain.*

¹ <http://www.impel.eu>

² COM (2016), 710 final, Commission Work Programme 2017

³ Challenges in the Practical Implementation of EU Environmental Law and How IMPEL Could Help Overcome Them: <http://www.impel.eu/wp-content/uploads/2015/11/Implementation-Challenge-Report-23-March-2015.pdf>, pp.6.

⁴ Communication from the Commission on an Action Plan on Environmental Compliance Assurance, http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_env_066_environmental_compliance_assurance_en.pdf, pp.2.

IMPEL aims to contribute to the ECA Initiative by an enhanced coverage of relevant topics and regulations, further promoting capacity building, sharing know-how, best practices and coordinated EU enforcement actions and an exchange of practitioners, but also by developing, embedding and promoting the use of tools, approaches and methodologies. IMPEL wants to reach out to a wider number of organisations and practitioners and ensure a feedback loop to policymakers and developers at EU, national, regional and local level, and involving permittees, inspectors, law enforcement bodies to other actors of the compliance chain. Therefore IMPEL wishes to continue joined work with partner networks of prosecutors, judges, police and auditors and importantly, with the European Commission, Committee of the Regions, Council and Parliament.

Furthermore IMPEL wishes to further enhance the robustness and sustainability of our network, whose strength comes from the expertise and experience of practitioners from authorities who work on a day-to-day basis with implementation and enforcement on the ground, many times in a context of decreasing resources. This will be a key challenge.

Therefore, to move further towards compliance, IMPEL feels it is necessary to:

1. Build **strategic relationships** between agencies and authorities responsible for implementing and enforcing legislation at national, regional and local level *within* countries, across thematic areas (for example ensuring that environmental authorities and agriculture authorities are in lock-step on the goals and targets to be achieved) and across the compliance chain – policy makers, permittees, inspectors, police, prosecutors, judges and auditors. These national networks must be complemented with strong and stable networks *between* countries such as IMPEL EUFJE ⁵, ENPE ⁶, ENVICrimeNet ⁷ and Eurosaï ⁸. Complementary relations with organisations like Interpol and Europol, and importantly, the EU Institutions, - the European Commission, Committee of the Regions, Council and European Parliament are key too.

How can IMPEL contribute?

IMPEL is a strong European network of practitioners, whose member authorities are drawn from national, regional and local inspectorates, permitting authorities and Ministries. More work needs to be carried out in expanding IMPEL's membership, identifying the scope of work and capacity of member authorities involved. IMPEL will carry out surveys to identify the gaps in membership and then put in place a plan to encourage membership of those authorities into the network. IMPEL will continue to encourage the building of 'national IMPEL networks'⁹ that build relationships between authorities within member countries. IMPEL can, and will, continue to build links with partners in the compliance chain as demonstrated for example by our hosting of joint conferences with ENPE, EUFJE and ENVICrimeNet¹⁰. Additionally, some specific examples of further work that needs to be carried out (in a coordinated way between the networks) are on enforcement strategies and on sanctioning.

⁵ EU Network of Judges for the Environment: <http://www.eufje.org/index.php/en/>

⁶ European Network of Prosecutors for the Environment: <https://www.environmentalprosecutors.eu/>

⁷ ENVI CrimeNet: <http://www.envicrimenet.eu/EN/>

⁸ Working Group on Environmental Auditing: <http://www.environmental-auditing.org/>

⁹ Being an example the one in Portugal where Portuguese environmental authorities formalise involvement in IMPEL activities: <http://www.impel.eu/portuguese-environmental-authorities-formalise-involvement-in-impel-activities/>

¹⁰ 'First ever joint EU Environmental Enforcement Networks Conference highlights need for further strengthening the compliance chain,' <http://www.impel.eu/first-ever-joint-eu-environmental-enforcement-networks-conference-highlights-need-for-further-strengthening-the-compliance-chain/>. A follow up conference is scheduled for 20/21 September 2017 in Oxford, UK.

2. Understanding the **implementation challenges** posed by environmental legislation, obtaining a detailed – crosscutting – insight, and how IMPEL, in close cooperation with key partners, can facilitate actions to close the gaps. The number and types of Petitions and Infringement cases are relevant indicators of where implementation and enforcement is failing or is inadequate but it is not the only source of information relating to where effort needs to be applied in improving compliance assurance. By using information and data from the organisations involved in delivering implementation and enforcement, we can learn what the key challenges and gaps are and where we should be directing our limited resources.

How can IMPEL contribute?

IMPEL will carry out at appropriate intervals reviews and surveys of its member organisations and partners on the main implementation gaps and challenges, and then articulate how IMPEL, in close cooperation with key partners, can facilitate actions to close those gaps. For example, in IMPEL's last review of the key implementation challenges for the implementation of the Water Framework Directive and the achievement of 'good ecological status, diffuse water pollution, physical modifications and over-abstraction of water resources were cited as the key problems. On waste, hazardous waste enforcement and achievement of waste targets were key; on industry, permitting of installations to reflect Industrial Emissions Directive requirements (BAT Conclusions); on nature, inspections and enforcement of Birds and Habitat Directives and an integrated approach between environment and agriculture sectors were cited as key challenges. Such results may not be reflected in Petitions at an EU level or in a large number of Infringement cases, however these are what most concerns authorities carrying out implementation and enforcement in IMPEL.

3. Develop and **build capacity** in agencies and authorities responsible for implementing and enforcing environmental legislation at national, regional and local (municipal) levels. This includes, at the national level, developing, hosting and coordinating an accessible platform of training material and an integrated needs-based programme, including training with competent trainers (both on-line and face to face); the adaptation, possibly translation, promotion and use of guidance, manuals, tools and toolkits, mutual integrated inspections, development of skills and experiences, peer exchange and reviews.

How can IMPEL contribute?

IMPEL already provides a range of opportunities to help train officers and staff involved in IMPEL activities by offering seminars, best practice meetings, conferences and technical workshops on a whole range of topics. Building capacity is a core priority for our network. For example, the implementation of the outcomes of projects by IMPEL's members is essential. IMPEL offers guidance and training to its members to support implementation and wishes to further strengthen this approach. Given stable and secure funding over the long term, IMPEL can continue to develop guidance, manuals, tools and toolkits, skills and experiences of all involved and to make them available through a wide and solid programme on capacity building and training. Such a programme will then be designed to offer targeted and tailored activities by competent trainers and training materials. The IMPEL Review Initiative (IRI) programme will ensure that each peer review is followed with a tailored training package and capacity building workshop to implement the recommendations of the peer review process. The IRI programme will be flexible to ensure the coverage of IMPEL's thematic areas and to ensure other key actors within the compliance and enforcement chain are connected and involved where appropriate.

4. Develop a **European ‘knowledge and innovation centre’** for practitioners on environment. This involves creating, hosting and coordinating an accessible platform or centrally run bank and repository of current and ‘next generation compliance and enforcement’ tools, guidance, webinars and knowledge spreading across the environmental acquis. It also includes the development and how to use new or complimentary tools, approaches and methods and showcasing the use of new and emerging techniques and technology, as well as the provision of specialised language courses, helping to extend the pool of potential IMPEL experts. Experience has shown IMPEL that, gathering, where appropriate, best practices from around the world and not just in Europe, is also important. Where possible synergies will be sought with existing platforms.

How can IMPEL contribute?

IMPEL aims to support its members by using its programme to develop innovative approaches and methods for environmental regulation that will help them to carry out their roles more efficiently and effectively. In this context IMPEL has already developed a significant number of guidance materials, tools and knowledge and is willing to continue to share these materials. IMPEL, with appropriate resources, is willing and able to develop and host a knowledge and innovation centre and platform. As an example: available tools, methodologies, guidelines, and innovative techniques developed and used primarily in Europe but also from around the world will be inventoried and compared with or added to the existing IMPEL toolkit on this matter. Such an inventory will be evaluated and validated, and actions will be taken, together with key partners at EU and national level, to further improve tools by integrating crosscutting aspects, streamline and update and mapped against the compliance spectrum in order to develop new ones, when necessary. Such tools should be easily accessed and retrieved on an online platform. As far as possible, multilingual translation of main project results should be used to lower language barriers, which hamper significantly the successful and widespread exchange of best practice.

5. Coordinating and carrying out **Inspection & enforcement actions** with transboundary relevance by initiating, coordinating and facilitating EU-wide actions performed by member countries. As a follow up to this, collect, where appropriate, transboundary inspection data and facilitate access to nationally published data, as well as offering a system for inspection reporting and analysis in order to spot, understand and elaborate on trends, target work, set priorities and organise cross border interventions.

How can IMPEL contribute?

Over years, IMPEL has built broad experience with cross border cooperation. Under the IMPEL work programme a broad variety of cross border activities has been carried out, such as inspections and projects as ‘enforcement actions’ on waste. These result in large amounts of data which gives relevant information about trends, the nature of non-compliances and gives input to key players in the compliance and enforcement chain to act and intervene adequately. IMPEL is willing to extend this broad experience to other thematic areas where appropriate and to initiate, coordinate and facilitate EU-wide inspection and enforcement target actions and cross border interventions. In that regard IMPEL is willing to be a hub for reporting, managing and analysing related inspection data in close cooperation with other key stakeholders.

6. Formalise the **feedback loop**, by ensuring that practitioners are able to provide feedback to policy makers, planners and others who have responsibilities in implementation at EU level with regard to the practical implementation, application and enforcement of EU environmental law.

How can IMPEL contribute?

IMPEL's member authorities with their expertise of practitioners in carrying out practical implementation and enforcement on a day-to-day basis and understanding how it really works on the ground, are able to identify with their peers what works and what does not work and then provide feedback to policy maker's planners and others who have responsibilities in implementation. It helps to understand root causes of deviations from expected results and it reveals opportunities to intervene by adjusting and promoting strategies, approaches, and actions, targeting the work and providing tailored support. IMPEL will endeavour to carry out in appropriate intervals surveys on root causes for and main emphasis of implementation challenges and will analyse current trends and most efficient best practice approaches. Such feedback supports a more robust, coherent, coordinated and harmonised implementation of standards and procedures within the EU, on the benefit of environment and public interest. IMPEL is willing to further work closely with other key stakeholders to establish a mechanism that ensures feedback to policy makers, planners and others who have responsibilities in implementation on new and existing legislation/regulation and on strategies, processes and procedures with practical experience and expertise from practitioners. Furthermore, IMPEL is willing to improve, by integrating on this feedback loop, the follow-up of proposals and recommendations that arise from IMPEL projects and activities through tailored support based on identified needs.