

European Union Network for
the Implementation and Enforcement
of Environmental Law

IMPEL Project
“Developing a checklist
for assessing legislation
on practicability and enforceability”

VRROM  Inspectie



Inspectie Verkeer en Waterstaat



Introduction to IMPEL

The European Union Network for the Implementation and Enforcement of Environmental Law is an informal network of the environmental authorities of EU Member States, acceding and candidate countries, and Norway. The European Commission is also a member of IMPEL and shares the chairmanship of its Plenary Meetings.

The network is commonly known as the IMPEL Network

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on certain of the technical and regulatory aspects of EU environmental legislation. 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. It promotes the exchange of information and experience and the development of environmental legislation, with special emphasis on Community environmental legislation. It provides a framework for policy makers, environmental inspectors and enforcement officers to exchange ideas, and encourages the development of enforcement structures and best practices.

Information on the IMPEL Network is also available through its website at:
<http://europa.eu.int/comm/environment/impel>

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<p>Project participants: Representatives of 17 IMPEL Member countries, the European Commission, the Tabling Office of the European Parliament and the IMPEL secretariat.</p>	
<p>Executive summary:</p> <p>In the policy debate on better legislation at the European and national level, there is a growing consensus on the need to address the implementation deficit. EU legislation, including environmental legislation, is too often not properly or fully implemented across Europe. There is real evidence of practicability and enforceability problems caused by the way legislation is designed and written and by poor implementation conditions.</p> <p>In order to encourage policymakers, legislators and stakeholders to devote more attention to likely problems of practicability in implementation and enforceability throughout the legislative process, with a view to anticipating and remedying practicability and enforceability problems through a pro-active approach, IMPEL, the European Union Network for the Implementation and Enforcement of Environmental Law, initiated a project aimed at producing a practical checklist to assess the practicability and enforceability of existing and new legislation with the aim of improving the overall implementation of EU environmental law in the Member States.</p> <p>The checklist, as presented in this report, was developed through a process designed to draw upon the practical experience of members of the IMPEL Network in the implementation and enforcement of EU environmental law. A two day international workshop with 62 representatives from across 17 countries explored and tested a draft checklist prepared by IEEP under the guidance of a project team and international review group. This led to its fine tuning, clarification of where it could be used and recommendations for its uptake.</p> <p>The checklist is designed to enable actors and stakeholders in the legislative and implementation process to assess EU environmental legislation (and associated national legislation and implementation efforts) on various aspects of practicability and enforceability, both ex ante and ex post. A list of questions is contained in this report –it can be used as a checklist, an aide-mémoire or as a questionnaire depending on the needs and interests of the user.</p>	
<p>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.</p>	

IMPEL PROJECT
**“Developing a checklist for assessing legislation
on practicability and enforceability”**

Contents

- **Preface**
- **Summary and overview of checklist**
- **Project Recommendations**
- **Introduction**
- 1. The Need for a Practicability and Enforceability Checklist**
- 2. What are Practicability and Enforceability Issues?**
- 3. Where and When do Practicability and Enforceability Issues Arise?**
- 4. Assessing and Addressing Practicability and Enforceability Issues**
- 5. Workshop proceedings**
- 6. The Practicability and Enforceability Checklist**
- **Annex 1**
List of members of the Project Team and Review Group
- **Annex 2**
When and how can the P&E checklist be used by IMPEL so as to contribute to Better Regulation?
– *Annex to the draft report discussed at the Project Workshop*
- **Annex 3**
The link of the P&E checklist to the Commission’s Impact Assessment System
– *Annex to the draft report discussed at the Project Workshop*
- **Annex 4**
Table of Eleven
- **Annex 5**
Golden rules for Environmental legislators

Acknowledgements

This report was written by the Institute for European Environmental Policy (Marc Pallemmaerts, Patrick ten Brink, Andrew Farmer and David Wilkinson) in close co-operation with the project leader and in consultation with the other members of the Project Team and the International Review Group. The report was developed also on the basis of the Project Workshop findings and the views of the IMPEL Better Legislation Cluster.

Preface



Dear reader,

On many occasions national authorities are confronted with legislation that is difficult to implement or to enforce. It's no use simply blaming others for these failures. Member States are as much responsible for good lawmaking and proper implementation conditions as the European Institutions are. I believe that we have a shared responsibility to do our best to make EU laws more practical and enforceable. And to jointly put efforts in creating the necessary conditions for a sound implementation in practice.

I am therefore very pleased that so many representatives of IMPEL member countries as well as experts from both the European Commission and the European Parliament were willing to contribute to the development of a checklist to assess the practicability and enforceability of EU legislation.

The checklist presented in this report will, in my opinion, help those involved in the legislative and implementation process to obtain a better understanding of the practicability and enforceability aspects of legislation. I am therefore convinced that the checklist will get a broad uptake and that its use will contribute to the improvement of the implementation and enforcement of EU legislation in the Member States.

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Inspector General
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Summary and overview of the checklist

In the policy debate on better legislation at the European and national level, there is a growing consensus on the need to address the implementation deficit. EU legislation, including environmental legislation, is too often not properly or fully implemented across Europe. There is real evidence of practicability and enforceability problems caused by the way legislation is designed and written and by poor implementation conditions.

Problems of practicability arise when competent authorities in the Member States encounter difficulties in the practical application of legislation, because insufficient attention has been paid to the need for proper transposition into national law and application through individual administrative decisions, or to the need for adequate infrastructure and resources. Problems of practicability may also be faced by the regulated target group when their obligations as defined by the legislator are unclear or unrealistic. At the end of the regulatory chain, legislation, to be credible and effective, also needs to be enforceable by competent authorities if the regulated target group fails to comply. Enforceability requires thoughtful consideration, at an early stage, of such issues as the technical and practical feasibility of monitoring and inspection, the resources required to detect and prove violations, and the availability and deterrent effect of administrative or penal measures to sanction offenders.

In order to encourage policymakers, legislators and stakeholders to devote more attention to likely problems of practicability in implementation and enforceability throughout the legislative process, with a view to anticipating and remedying practicability and enforceability problems through a pro-active approach, IMPEL, the European Union Network for the Implementation and Enforcement of Environmental Law, initiated a project aimed at producing a practical checklist to assess the practicability and enforceability of existing and new legislation with the aim of improving the overall implementation of EU environmental law in the Member States.

The checklist, as presented in this report, was developed through a process designed to draw upon the practical experience of members of the IMPEL Network in the implementation and enforcement of EU environmental law. A draft checklist was prepared by experts in consultation with a project team and international review group consisting of legal and enforcement experts, based on research into practicability and enforceability problems and various existing national and European initiatives and tools designed to address these problems. The draft checklist was discussed at an international project workshop with the participation of experts from 17 IMPEL Member countries and EU institutions. Participants to the workshop assessed the provisions of two pieces of EU legislation, the IPPC-directive and the Waste Shipment Regulation, with the aim of exploring practicability and enforceability issues and testing the checklist. The checklist was further refined in light of the workshop's findings and recommendations. The checklist was finalised taking into account the views of the review group and the IMPEL Cluster on Better Legislation.

The checklist is designed to enable actors and stakeholders in the legislative process to assess EU environmental legislation (and associated national legislation and implementation efforts) on various aspects of practicability and enforceability, both *ex ante* and *ex post*. Practicability and enforceability considerations can be assessed and addressed at various stages of the legislative process by different actors: policy and legal experts and officials of the Commission and of the Member States, Members of the European Parliament and their staff and the legal/drafting services of the European Parliament and Council secretariats. In their different capacities and roles, all these actors can have a decisive influence on the design and wording of environmental legislation. Stakeholders such as national authorities competent for implementation and enforcement, European networks like IMPEL, the regulated community and NGOs, can also use the checklist to provide input into the legislative process based on their own insights and experiences.

The checklist is structured in five sections to facilitate its use at various stages of the legislative and implementation process. It takes into account the differences between different types of EC legislative acts. The questions are intended to help users address the relevant issues thoroughly. However, not all questions are relevant at all stages of the process, and users may decide to use parts of the checklist selectively, based on their specific role in the process, expertise and concerns.

In most cases, it will not be possible to answer the questions by "yes" or "no". Users are encouraged to approach them rather as open questions. In a way, asking the questions is as important as answering them. In fact the questions here below can be used in different ways: as a real checklist, as a questionnaire and as an aide-mémoire.

An overview of the checklist with sample questions is provided in the box below.

A. Questions relating to legislative policy and the choice of legislative instrument

- Primary addressees: Commission policy makers and MS experts involved in the consultation process.
- The questions in this section relate to the choice of the legislative instrument – whether directive or regulation and – address issues of subsidiarity and proportionality. They are most relevant at a very early stage of the legislative process (potentially also as part of an ex post evaluation).
- Sample question: *Does the Directive allow for the use of different regulatory instruments and alternative options for implementation and, if so, is it sufficiently clear under what conditions these instruments and options can be applied?*

B. Questions relating to the suitability for transposition and implementation

- Primary addressees: Commission policy makers, evaluation units, and Member States' policy and legal experts/negotiators
- Important stakeholders: national authorities competent for implementation
- The questions in this section address issues relevant to the proper transposition and implementation of legislation in the Member States, from the perspective of the public authorities competent for these stages of the process. They are best addressed at the proposal stage of the legislative process (potentially also as part of an ex post evaluation).
- Sample question: *Are the implementation burdens for the authorities competent for the implementation of the legislation clear? (human resources, financial resources, knowledge and/or training, performance of new functions, ICT, organisational structure, etc.)*

C. Questions relating to the quality of the legislation

- Primary addressees: Commission, Council and European Parliament legal drafting units; MEPs; Member States' legal experts/negotiators
- Important stakeholders: national authorities competent for implementation
- The questions in this section relate to the intrinsic quality of legislative drafting. They are designed to help improve the wording of the legislation at the proposal stage, where policy objectives need translation into robust legislative language.
- Sample question: *Have all the key terms been properly defined? Are these definitions clear and consistent with the definitions in related legislation?*

D. Questions relating to the practicability of compliance by the regulated target group

- Primary addressees: Commission policy makers, evaluation units, Member States' policy experts/negotiators
- Important stakeholders: national authorities competent for transposition and implementation and regulated target group
- The questions in this section are aimed at assessing the likely response of the regulated target group to the legislation with a view to ensuring the highest possible level of non-coerced compliance with the rules that are intended to be laid down. They are best addressed at the proposal stage of the legislative process (potentially also as part of an ex post evaluation).
- Sample question: *In the target group's perception, could breaking the rules be thought to yield little or no advantage (i.e. no incentive not to comply) or even disadvantages (i.e. positive incentive to comply)?*

E. Questions relating to the enforceability of the legislation

- Primary addressees: Commission, Council and European Parliament legal drafting units; MEPs; Member States' legal experts/negotiators
- Important stakeholders: national authorities competent for enforcement (e.g. public prosecutors)
- The questions in this section address the possibility and likely effectiveness of the use by national public authorities of legal, administrative and other means at their disposal to check compliance and to convince or if necessary compel the ultimate addressees of the legislation to comply with their obligations.
- Sample question: *Is it clear what means of enforcement under administrative and/or criminal law can be used under the terms of the legislation and are these likely to be effective?*

Project Recommendations

1. All actors at the different stages of the EU legislative and implementation process should take Practicability and Enforceability (P&E) issues into account.

Relevant stages are:

- During the pre-legislative (pre-proposal) phase: when drafting proposals and organising Impact Assessment (IA) and consultative processes on draft proposals for legislation;
- During the formal EU legislative procedure: when negotiating legislative proposals;
- After adoption of EU legislation: when transposing the adopted legislation or establishing complementary legislation at Member State level;
- During implementation of legislation: when securing sound implementation conditions;
- After implementation of legislation: when carrying out ex post assessments and review processes.

Actors are: European Commission, Council, European Parliament, Member States (through Council and at transposition/implementation stage).

2. Stakeholders - parties who have an interest in practical and enforceable legislation and who can give insights on how to achieve this – should be consulted in a timely manner to ensure that relevant experience on practicability and enforceability is taken on board.

Stakeholders are: national authorities competent for implementation and enforcement, the judiciary, IMPEL and other Implementation and Enforcement Networks.

3. In order to get involved and to time efforts, stakeholders need a clear, accurate and up-to-date timetable of the Commission legislative agenda (roadmaps), including information on what issues are involved.
4. Actors and stakeholders are recommended to use the P&E Checklist to ensure that all relevant P&E issues are taken into consideration and that P&E issues are assessed and addressed in a structured way.
5. The P&E Checklist can be used stand alone or in conjunction with other better legislation tools, like the *Joint Practical Guide* of the EU institutions. It is recommended to explore the possibilities of incorporating elements of the P&E Checklist in the Guide and in the Impact assessment Guidelines of the European Commission.
6. More effort is needed to secure that stakeholders have sufficient capacity to provide the necessary input, to maximize synergies between existing networks and to make sure that the full range of stakeholders (e.g. public prosecutors) get involved.

IMPEL specific Recommendations

- 7.** IMPEL cluster 3 (Better Legislation) is recommended to use the P&E Checklist when offering advice on the practicability and enforceability of new and existing legislation on basis of IMPEL Members experience. It is suggested that the Cluster apply the Checklist on some more legislation to develop it further.
- 8.** IMPEL members are recommended to use the Checklist in national fora and to exchange experiences on its use, for example in the IMPEL cluster 3. IMPEL is recommended to provide for translations of the Checklist in the IMPEL country languages so as to get the broadest uptake possible.
- 9.** IMPEL and its members are recommended to promote the Checklist, contacting all relevant actors and stakeholders in the EU legislative process both on a national and EU level and using a proper communication strategy.
- 10.** IMPEL is recommended to consider developing links to relevant networks and Better Legislation initiatives from interested parties. In particular IMPEL should look for opportunities to promote the P&E Checklist in connection with *The Barriers to good environmental regulation* Paper, currently developed by The Heads of European Environmental Protection Agencies Network.

Introduction

This report was produced for the IMPEL Project “Developing a checklist for assessing legislation on practicability and enforceability” (hereafter referred to as “P&E checklist”). The project aimed at producing a practical checklist to assess the practicability and enforceability of existing and new legislation with the aim of improving the overall implementation of EU environmental law in the Member States.

The Project was led by a project team consisting of experts of the Inspectorate and the Legal Services of the Netherlands Ministry of Housing, Spatial Planning and the Environment (VROM) and of the Netherlands Transport and Water Management Inspectorate. An international Review Group guided the project team. The Institute for European Environmental Policy (IEEP) was commissioned by VROM to provide assistance in executing the project. The IMPEL Cluster on Better Legislation served as a further sounding board group. The Cluster gave its views on the final draft of this report, before it was submitted to the IMPEL Plenary for approval.

A draft version of this report, containing a draft checklist, was discussed at an International Project Workshop, hosted by the VROM Inspectorate in Rotterdam, The Netherlands on 12-13 October 2006. The present report was developed in light of the workshop findings and recommendations. Section 5 contains information on the workshop and its findings.

1. The Need for a Practicability and Enforceability Checklist

This report presents a Practicability and Enforceability Checklist for assessing environmental legislation, covering both directives – which require transposition into national law for them to be applicable – and regulations – which are binding and directly applicable without transposition. Its primary focus is on EU environmental legislation and associated national legislation, and its practicability and enforceability at the national level.

This checklist responds to an identified need. There is an ever increasing understanding that there have been problems concerning the practicability and enforceability of EU environmental legislation and that had more attention been paid to likely problems of practicability in implementation and enforceability, a number of issues might have been avoided. The need for focus on practicability and enforceability has already been identified in the context of a range of better regulation initiatives, including the *IMPEL Better Legislation Initiative*.

Box: IMPEL Better Legislation initiatives

The present project follows on from *the IMPEL Better Legislation Initiative*, a project carried out in 2003, which aimed at examining the challenges that IMPEL members have faced in the practical implementation of EU legislation. According to its Terms of Reference, the project was...

'undertaken in order to prepare a detailed report on aspects of current EU legislation where difficulties arise *in terms of practicality or enforceability*, for example because of how the legislation is written, definitions are presented, etc. This would focus primarily on the legislation covered by the MCEI Recommendation [on minimum criteria for environmental inspections in the Member States], and other measures insofar as they relate to these primary MCEI laws. The project would also *set out recommendations for how more practical and enforceable legislation might be produced in the future, including a set of principles and tests against which future legislative drafts might be considered.*' (emphasis added)

These recommendations addressed such issues as legislative strategy, coherence, purpose, language, structure, comprehensibility, timeframes, definitions and technical details. See for the project report: http://ec.europa.eu/environment/impel/better_legislation.htm.

More recently, the IMPEL Cluster on Better Legislation was established with a mandate to further develop and coordinate IMPEL's role in providing advice on the practicability and enforceability of existing or proposed EU legislation, giving priority to the production of a checklist to help identify aspects of legislation that hinder practicability and enforceability. Accordingly, a new project was adopted by the IMPEL Plenary Meeting in Cardiff in December 2005, aimed at producing such a checklist.

Like the previous project, the current one is intended as an IMPEL contribution to the EU's 'better regulation' agenda, as set out in various policy documents of the EU institutions.

This Practicability & Enforceability Checklist is part of the broader set of initiatives seeking to encourage better regulation and good governance. One of these initiatives is *The Barriers to good environmental regulation* paper by The Heads of European Environmental Protection Agencies Network. This paper will be published shortly. It contains a simple diagnostic tool for environmental legislation developed by the Network's Better Regulation Interest Group. The P&E Checklist and the Barriers paper can be regarded as complementary. In addition, there are *the Golden Rules for Environmental Legislators Paper* (See Annex 5 of this report), produced by the Netherlands Office of Public Prosecutors, the Justice Department and VROM. Furthermore, the European Policy Centre (EPC) have launched the EPC Working Paper: *Making Europe work: improving the transposition, implementation and enforcement of EU legislation*.

2. What are Practicability and Enforceability Issues?

What is 'practicability'? This refers both to practicability as experienced by competent authorities and by the target group of the legislation. More explicitly practicability can be defined as:

- on the one hand, the suitability of the legislation for the purpose of its practical application by competent authorities in the Member States, taking into account the possible need for transposition into national law and for application through individual administrative decisions, as well as the infrastructure and resources needed in order to enable competent authorities to perform all their obligations under Community law and to take the necessary implementing decisions.
- on the other hand, the suitability of the legislation in terms of the definition of the obligations of the regulated target group in the Member States and of the feasibility for these individual addressees of the legislation to spontaneously comply with their obligations as defined.

Box: Examples of Practicability Issues

A range of 'complaints' have been heard, noting that a given directive or provision in a directive makes it not very practical to implement. Examples of 'practicability' problems include:

- *Definitions:* The IPPC directive includes the term 'technical connection' which is fundamental to the decision as to what processes will come under the IPPC directive. Many Member States (MS) have found it very difficult to choose how to define technical connection and associated activities leading to a range of different interpretations as to what is meant by 'installation' and hence this is regarded as a problem.
- *Definitions:* Again within the IPPC directive, defining 'significant change' - which is a trigger for requiring new permit conditions to be set - is regarded by some MS as difficult, not least because they do not wish to be more demanding than other countries. In principle there should be no practicability problem as the national authorities could define significant change to make interpretation practicable, but in practice problems arise. Other practicability issues around definitions include: 'returning a site to a satisfactory state', 'significant negative effect', 'operators' and 'change in operation'. There are also problems due to definitions being seen as inappropriate, for example using capacity thresholds for volatile organic compounds (VOCs), when some would argue use would be more appropriate.
- *Requirements:* The ground water directive prohibits the discharge of hazardous substances into groundwater - in other words zero discharge. It is not possible/practicable for MS to achieve zero discharge.
- *Timescales:* Existing IPPC installations all have to have a permit by October 2007, 11 years after the adoption of the directive. This is in principle a sufficiently long time scale and should not cause problems. However, in practice, several member states are struggling with this deadline. Some blame the late BREFs for the practical problems. This is a problem with many directives; others include the packaging waste directive, the landfill directive and the urban waste water treatment directive.
- *Need for confidence and up front investment of effort:* Under the EU ETS, it is of paramount importance to have absolute and total confidence that the monitoring and reporting is really accurate. If not, the whole system falls down. This underlines the need to put sufficient effort in early into monitoring protocols.
- *Industry practicability:* Many companies work across Europe and face different national interpretations of EU legislation. Even where the range of national interpretations are acceptable given the flexibility of the directive, practicability concerns arise for industry. One example of such a problem is the different national interpretations of what constitute IPPC installations and hence what permits are required.

What is 'enforceability'?

Enforceability refers to the suitability of the legislation in terms of the ability of the competent authorities to use legal and administrative means at their disposal under domestic law to encourage or, in the event of wilful non-compliance, compel individual addressees to comply with their obligations under the legislation (either the directly applicable obligations laid down in EC Regulations or the obligations laid down in national implementing measures of EC Directives)

Box: Examples of Enforceability Issues

- *Technology availability:* If one cannot measure it – e.g. no suitable measurement technology – there is no point setting standards.
- *Capacity:* Sometimes inspections are not carried out sufficiently regularly or thoroughly as the authorities do not have the capacity to inspect – capacity in terms of staff numbers or skill type. This is a dynamic situation as a problem now is not necessarily a problem later. The problem can be addressed by national efforts to develop the needed capacity if the timescale is sufficiently long.
- *Limits to legal instruments:* There may be legal or practical limits on the level of fines and other non-compliance penalties and hence these do not provide a sufficient incentive to comply
- *Political opposition:* In reality it may be disproportionate or politically not possible to require closure of a plant that does not comply and will not invest in measures to meet the requirements. This is not really about the regulation at all. This links to practicability, rather than the language of regulation.

In some cases, legislation may be enforceable in principle, but not so in practice.

- *Exceptions:* Where legislation provides for many exceptions to a general rule, the enforceability of the general rule will be weakened as many addressees may seek to rely on exceptions and enforcement authorities will have to refute such claims.
- *Burden of proof:* The complexity or ambiguity of a rule may be such that the burden of proof that public authorities will face to demonstrate a violation of the rule may be insurmountable in practice.

In some cases, the drafting of legislation may even establish a formal link between practicability and enforceability. For instance, where a certain rule is to be complied with 'as far as practicable', the duty to comply will effectively be conditioned by practicability and the rule will be very difficult to enforce as practicability is a subjective notion that is likely to be interpreted differently by rule addressees and enforcement authorities.

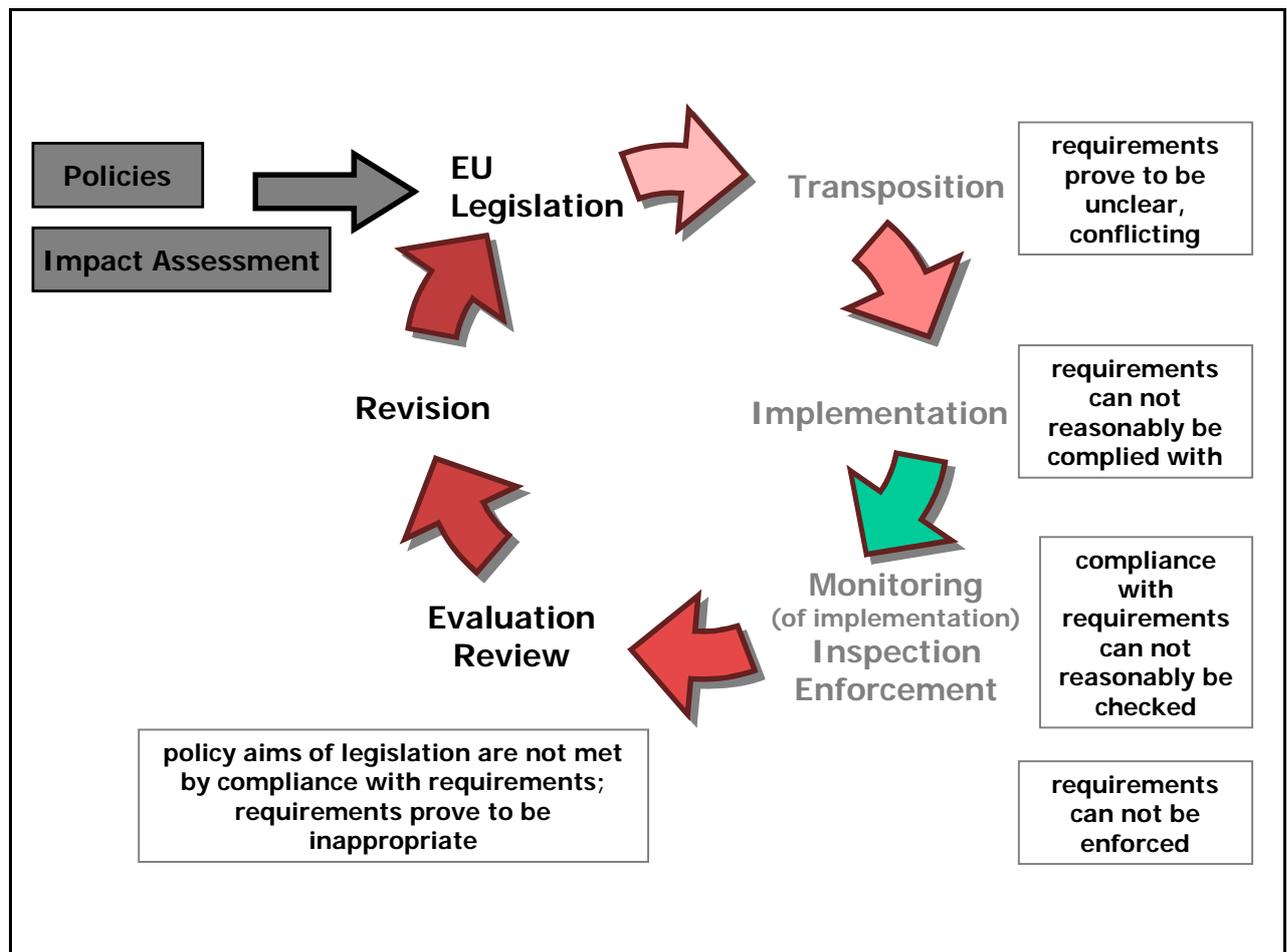
Sometimes enforceability is purely a national issue in that a Member State might not have allocated or wish to allocate sufficient resources. For example, the IPPC Directive is in theoretical terms largely enforceable, but the challenge of enforcement is to take IPPC seriously, sufficiently early and ensure that there is the necessary capacity in place. If this is done then the legislation is enforceable. A 'cut price approach to enforcement' will not be sufficient.

Not all issues of practicability and enforceability are due to a lack of consideration at the EU legislative drafting stage. Many problems of enforceability arise at the level of the Member States and have to be addressed through national legislation and national efforts (guidance, investment in inspection or enforcement capacity).

3. Where and When do Practicability and Enforceability Issues Arise?

Practicability and enforceability issues can arise in all the stages of the EU regulatory cycle: at the transposition stage, the implementation stage and the stage of monitoring, inspection and enforcement. By 'implementation' we understand here all the measures and decisions of the competent authorities to apply the legislation, and all the measures by the addressees to comply with the legislation (e.g. applying for a permit, issuing of a permit and taking measures to comply with the permit obligations). **Figure 1** presents a schematic overview of these phases of a typical piece of EU environmental legislation, e.g. a Directive. A Directive that contains requirements to be complied with by companies in the Member States may, when it is transposed, implemented and enforced, cause various problems in practice. Some examples of these practicability and enforceability issues that can arise, are shown in the figure below.

Figure 1: The EU Regulatory Cycle and examples of practicability and enforceability issues that can arise



4. Assessing and Addressing Practicability and Enforceability Issues; use of a Practicability and Enforceability Checklist

The EU legislative process contains a range of steps – from considering the objectives and whether these are best met through EU initiative or national initiatives, to choosing the type of instrument (e.g. directive or regulation – if and where a legislative approach is considered appropriate), to drafting a legislative proposal, carrying out an Impact Assessment (IA) on the proposed legislation (see Annex 3) and negotiating an agreed final text (see box below). On a national level, this sequence continues with transposition (in case of a directive), implementation, inspection, enforcement and monitoring. Subsequently, on the EU level a review and a revision of the legislation may take place.

Box: Legislative drafting in the context of the co-decision procedure (main procedure for EU environmental legislation)

1st draft = **Commission proposal** (*result of drafting by Commission services and negotiations within the Commission*)

2nd draft = **Council common position** (*i.e. Commission proposal as amended as a result of negotiations within the Council; EP first reading amendments generally not very influential unless preceded by negotiations aimed at adoption at first reading; common position can become final version if EP votes to accept it without amendments*)

3rd draft = **Council common position as amended by EP at second reading** (*i.e. incorporating amendments drafted by EP rapporteur or proposed by other MEPs and adopted by an absolute majority of EP plenary; can become final version if Council votes to accept all EP amendments*)

4th draft = **Joint working document of Council and EP** (*as basis for negotiations within Conciliation Committee; includes Council counterproposals for EP amendments it cannot accept; Commission may propose draft compromise texts*)

5th draft = **Joint text agreed within the Conciliation Committee** (*final outcome of negotiations within Conciliation Committee; includes amendments to Council common position adopted by Conciliation Committee*)

Final version = **Legislative act adopted by EP and Council in accordance with joint text** (*joint text is subject to legal/linguistic editing but no substantive amendments are possible at third reading; EP and Council can only vote to adopt or reject final text*)

= Text of Directive or Regulation as published in OJ

Practicability and enforceability considerations can be assessed and addressed at all stages by different actors and stakeholders. By actors we mean the policy and legal experts and officials of the Commission and of the Member States engaged in the different phases of the process of legislation, Members of the European Parliament and their staff and the legal/drafting services of the EP and Council secretariats. In their different capacities and roles, the following actors can all have a decisive influence on the final wording of environmental legislation:

- **Commission:** DG Environment, DG Sanco (Health and Consumer Protection), DG Energy and Transport or DG Internal Market (when initiating environmental legislation) and other DGs through inter-service consultations;
- **Council (Member States):** Working Parties, COREPER, Presidency and Secretariat;
- **European Parliament:** Rapporteur & shadow Rapporteurs, individual MEPs (through amendments), especially members of the EP Environment Committee, and of the EP delegation to Conciliation Committee, Secretariat;

- **Member States:** when holding the Presidency or otherwise through their negotiators in Council and Conciliation Committee; national legislative drafting at the transposition/implementation stage.

These actors can and should try to design and draft the legislation in such a way that it can be implemented and enforced without any major problems. Together with the implementing and enforcing authorities in the Member States they can also consider measures that can further support the implementation, for instance the exchange of good implementation practices.

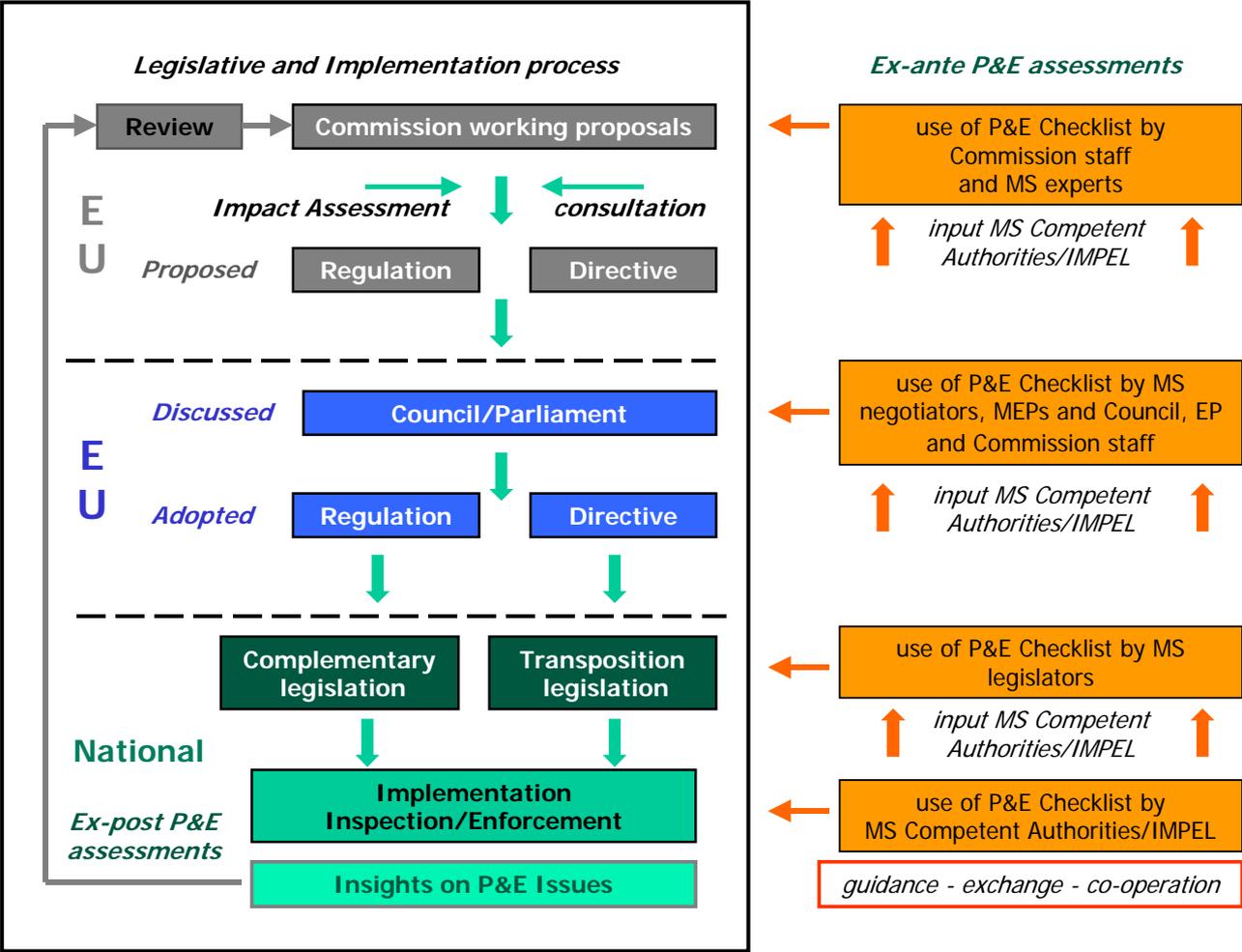
By stakeholders we mean all the interested/informed parties who in one way or another will be affected by the legislation, e.g. the different national authorities (administrative and judicial) competent for implementation and enforcement, the regulated community (e.g. industry) and NGOs. These stakeholders often can provide insights on practicability and enforceability issues, based on their own experiences and knowledge.

The draft checklist presented below consists of questions that are designed to enable actors and stakeholders in the legislative process to assess EC environmental legislation (and associated national legislation and implementation efforts) on various aspects of practicability and enforceability. *Ex ante*¹ assessments at the early phases of the legislative process are most valuable – they can help in the development, completion or fine-tuning of legislation (and associated guidance). *Ex post* assessments during implementation can help as inputs to an eventual review and potential amendment of the legislation.

The left column of **figure 2** below shows the different phases of the legislative and implementation process of EU legislation at EU and national level. The right side of the figure indicates the actors in that process that can perform ex-ante P&E assessments to address P&E issues and may use the checklist for that purpose (orange boxes). National authorities competent for implementation and enforcement and the IMPEL Network, being both important stakeholders, may give input (insights on practicability and enforceability issues) to these actors. Insights on P&E issues, gained during the implementation phase (bottom left of figure) can also be gathered as part of a ex-post assessment and serve as input to a review and possibly revision of the legislation. Again the P&E Checklist may be used as a tool here.

¹ *Ante* comes from Latin, meaning 'before' (in this case before legislation is passed) and '*post*' comes from Latin, meaning 'after' (here after legislation has been passed), hence *ex ante* and *ex post* assessment or ex ante or ex post use of P&E checklist.

Figure 2 : The Legislative and Implementation process of EU legislation at EU and national level and where the P&E checklist could be used



5. Workshop proceedings.

The project workshop, held in Rotterdam on 12 and 13 October 2006, was attended by 62 participants from 17 countries, the European Commission (DG Environment) and the Tabling Office of the European Parliament.



A bouquet of the workshop participants, Thursday, 12 October, Golden Tulip, Rotterdam-Centre Hotel

The aims of the workshop were to:

- explore problems of practicability and enforceability by discussing different provisions of the IPPC-directive and the Waste Shipment Regulation that have led to problems in the implementation and enforcement stages in the Member States;
- in the light of the experiences with the implementation and enforcement of the IPPC-directive and the Waste Shipment Regulation discuss and comment on a draft Practicability and Enforceability checklist, presented in a report sent to workshop participants preceding the workshop also;
- obtain a better understanding of the EU legislative process, what roles different actors and stakeholders have and possibilities for intervention;
- explore whether such a checklist could be useful, who could use it, where and when and
- consider what IMPEL could do to contribute to improving the practicability and enforceability of legislation.

Box: Structure of the Workshop

Day 1 (chaired by Hugo von Meijenfeldt, Director International Affairs, VROM)

-- Presentations

- *Introduction to the project and project objectives:* Jan Teekens, project leader, VROM-Inspectorate, the Netherlands
- *Issues of Practicability and Enforceability and the Regulatory Cycle:* Patrick ten Brink, IEEP
- *The legislative process - points of intervention - and introduction to the Practicability and Enforceability Checklist:* Marc Pallemmaerts, IEEP
- *The IPPC Directive and P&E issues:* Terence Shears on behalf of Martin Quinn, Environment Agency of England and Wales, UK
- *The Waste Shipment Regulation and P&E issues:* Paul van Oosterhout & Atze Dijkstra, VROM Inspectorate, The Netherlands

-- Three parallel working group sessions and Reporting back to the plenary

*Discussing P&E issues related to the **IPPC-directive** and **Waste Shipment Regulation** and the usefulness, content and form of the checklist*

Day 2 (chaired by Patrick ten Brink, IEEP)

-- Presentations

- *The experience of a judge in environmental criminal cases:* Jan Van den Berghe, Vice-President, Court of First Instance, Ghent, Belgium
- *Thoughts on how legislators and practitioners can jointly contribute to more practical and enforceable legislation:* Gustaaf Biezeveld, Public Prosecutor, The Netherlands
- *Who should use the checklist, when and where?:* Marc Pallemmaerts, IEEP

-- Three parallel working group sessions and Reporting back to the plenary

Discussing who could use the checklist, when and where

-- Chairman's Conclusions

Key findings of the workshop²

General observations on P&E issues

There is an implementation deficit – legislation is often not properly or fully implemented across Europe. There is real evidence of practicability and enforceability problems caused by the way legislation is designed and written and by poor implementation conditions across Europe.

Policy makers and legislators should seek and take consideration of practical experience from practitioners – this included reference to permit authorities, inspectors and enforcers, prosecutors and judges. The planning and organisation of the legislative process at the European level must provide adequate opportunities to gather and assess this input and feedback properly. Actors in the legislative process should withstand pressure from various parties and stakeholders to speed up the legislative process. Although there are often experienced, skilled practitioners available who could provide useful insights, links are needed to access this capacity. More effort is needed to maximise synergies between existing networks or build new networks where they do not yet exist (e.g. public prosecutors). Involvement of practitioners is sometimes difficult to organise. Networks like IMPEL can be helpful in this respect. A particular reference was made to the need to ensure links also to prosecutors and judges. In some areas additional capacity must be developed (prosecutors and judges specialised in environmental enforcement).

There is a difference in vision between inspectors and enforcers on the one hand and policy makers and legislators on the other. Policy makers and legislators have a rather optimistic view on the willingness of companies to comply with environmental legislation. Enforcers however have learned that while many companies have taken up their responsibilities to actively protect the environment, other companies are still looking for ways to avoid compliance with the aim of saving costs. Legislation must therefore be accompanied by good conditions for enforcement and should not provide easy opportunities for non-compliance.

Some participants noted that in the present political climate, in which deregulation is very much favoured, attempts to propose additional or more detailed legislative requirements with the aim of creating opportunities for improved implementation and enforcement are not welcomed. Others argued that the effectiveness and efficiency of the legislation at the end of the day very much depends on whether rules are precise and concrete enough to be applied in practice without too much difficulty. They argued that improving practicability and enforceability is not necessarily about adding rules, but about clarifying obligations. Also it was noted that soft law instruments, like guidelines, may be used to make more general legal requirements work in practice. It was, however, acknowledged that it is very desirable to perform regulatory assessments that serve other purposes, like those that aim at reducing administrative burdens for companies, and P&E assessments in an integrated manner, so that interlinkages can be properly addressed.

The P&E checklist - is it potentially useful?

All agreed that P&E issues need to be better integrated in the legislative process. Furthermore, all agreed that the checklist could be a useful tool and a useful part of the process. It helps ensure that the issues are thought about. The checklist provides for a structured approach that also offers increased credibility. It was felt that this would increase the likelihood that people would listen to the insights raised.

It was also agreed that the P&E checklist can be useful at all stages of the EU Legislative process - *see figure 2 in section 4* - namely:

- During the pre-legislative (pre-proposal) phase: when drafting proposals and organising Impact Assessment (IA) and consultative processes on draft proposals for legislation;
- During the formal EU legislative procedure: when negotiating legislative proposals;

² Based on the reports of the working groups to the Plenary and the Chairman's conclusions.

- After adoption of EU legislation: when transposing the adopted legislation or establishing complementary legislation at Member State level;
- During implementation of legislation: when securing sound implementation conditions;
- After implementation of legislation: when carrying out ex post assessments and review processes.

It was also agreed that it would be useful for both the national and EU levels, though it was noted that at the national level a suitable ambition would be for IMPEL to make the tool available for use at national discretion.

Observations on the content and form of the P&E checklist

All agreed that the right questions were asked and that the checklist was generally comprehensive. In some areas questions could also be added, notably on the transposition process, the expected burdens for the regulated community and on enforceability, picking up some elements from the *Golden Rules for Environmental Legislators Paper* (See Annex 5 of this report), produced by the Netherlands Office of Public Prosecutors, the Justice Department and VROM.

Others were concerned that the checklist might be too long and risked deterring people. There were, however, no specific calls for the deletion of any particular questions. One solution proposed was to complement the P&E Checklist with the *Barriers to good environmental regulation paper*, currently developed by The Heads of European Environmental Protection Agencies Network, so as to have one higher level shorter checklist and one more comprehensive checklist. Additionally it was suggested to provide for a one page summary of the checklist containing the key issues covered by the checklist.

It was also noted that not all stakeholders would (have to) answer all questions at each stage of the regulatory cycle and hence the list was less onerous than it seemed at first sight. This could be clarified in the introduction to the checklist.

In addition, it was noted that there should be some further fine tuning to the questions and that more open questions and not just yes/no questions should be considered.

There was a strong plea for providing translations of the checklist into the IMPEL country languages, so as to get the broadest uptake possible.

Use of the checklist by national authorities

There was a stated intention from a range of parties in the audience to explore or even start the use of the P&E checklist in national fora and procedures, for example:

- when performing national regulatory impact assessments on proposed EU legislation and formulating the MS position on the legislative proposals;
- in discussions between inspectorates and national representatives in Council Working Groups who are negotiating the Council's common position;
- in communicating with Members of the European Parliament during consideration of the proposals in the European Parliament's Environment Committee;
- in transposition processes, and
- in reviews of existing EU legislation.

It was noted that *the proof of the pudding is in the eating*. It was understood that the tool will be taken up and used on a regular basis if applied and proven useful in practice. There will be no better recommendation for its use than someone who has applied it letting others know how it proved helpful.

It was noted that the checklist can best be applied through a dialogue between practitioners and policy makers, following a bottom-up approach and having clarified each other's roles in the process beforehand. They may jointly set priorities on what proposals should be assessed, taking into account expected compliance and environmental risks involved.

Use of the checklist at EU level; role of P&E checklist vis-à-vis IA and consultations

It was agreed that the checklist may be very useful at Commission level. Similarly, the potential for a constructive link to the Environment Committee of the EP was raised. Also it was suggested that the checklist or parts of it could be incorporated in the *Joint Practical Guide* of the European Institutions.³ The recommendation was that each of these potential areas should be further explored.

The P&E checklist was seen as a useful complement to IA. Commission officials should take account of the checklist when performing an IA or organising a consultation process. Participants suggested also that elements of the checklist could be incorporated in the IA guidelines. However, it was noted that it would not be desirable to solely rely on formal incorporation as review of the IA guidelines by the Commission is some time away.

It was felt that there were strong possibilities for the use of the checklist in consultation processes – both as part of the formal process (responding to calls for inputs) and as part of an earlier informal process (even before draft proposal).

Authorities in Member States, competent for implementation and enforcement, as well as the IMPEL Network were regarded as important stakeholders that could use the checklist to structure the insights on P&E issues that they wish to present in formal and informal consultation processes. It was underlined that this was not to be considered as the provision of policy advice, but the submission of relevant evidence, facts, figures and experience.

It was agreed that there is a need for these authorities and IMPEL to have a clear, accurate and up to date timetable of the Commission legislative agenda (roadmaps), including information on what issues are involved, to be able to time efforts.

Use of the checklist by IMPEL; what needs to be done to get uptake?

It was agreed that while the P&E checklist was already a workable tool, some improvements to the checklist are desirable to make it more robust. This would involve not just taking on board the comments made in the workshop (now integrated into the updated checklist that forms the main body of this document), but also applying the checklist on some other directives and regulations. The process of applying the checklist on the IPPC Directive and the Waste Shipment Regulation was regarded as very useful.

It was agreed that IMPEL could constructively take a number of initiatives:

- IMPEL Cluster 3 (better legislation) is recommended to use the Practicability and Enforceability checklist when offering advice on the practicability and enforceability of new and existing legislation on the basis of IMPEL Members' experience. It is suggested that the Cluster apply the Checklist on some more legislation to develop it further.
- IMPEL members are recommended to use the tool in national fora and to exchange experiences on its use, for example in IMPEL Cluster 3.
- IMPEL and its members are recommended to promote the tool contacting all relevant actors and stakeholders in the EU legislative process both on a national and EU level and using a proper communication strategy.
- IMPEL is recommended to consider developing links to relevant networks and initiatives from interested parties, including networks of public prosecutors and judges. In particular IMPEL should join forces with the Heads of European EPA's Network by linking the P&E Checklist to the *Barriers* paper and vice versa.

³ Joint Practical Guide of European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community Institutions.

See: http://europa.eu/eur-lex/en/about/techleg/guide/index_en.htm

The immediate step was fine tuning the checklist and then submitting the checklist accompanied with recommendations on further uptake to the IMPEL plenary in December for adoption, after having discussed the project report in Cluster 3.

6. The Practicability and Enforceability Checklist

The checklist is intended as a tool to assess and address practicability and enforceability issues in a structured way and to gather information and insights which can help inform and improve the legislative and implementation process and, ultimately, the effectiveness of EU environmental legislation.

It is drafted primarily for use by public authorities (authorities on the EU level, in Member States or co-operating in for instance the IMPEL Network) with the intention of ensuring the effectiveness of EC environmental legislation by having due regard to the main factors that may affect its practicability and enforceability. Other stakeholders, such as industry and NGOs, may also find the checklist useful though it has not been drafted from their perspective.

The questions in the checklist can be applied to evaluate legislation both ex ante and ex post. For the sake of simplicity of text, subsequent reference is to ex ante though the reader should remember that in all cases the questions also apply in the past tense where used as part of an ex post assessment.

The checklist is structured in such a way as to facilitate its use at various stages of the legislative and implementation process and to take into account the differences between different types of EC legislative acts as well as, where relevant, the requirements of transposition. The checklist is structured in five parts:

A. Questions relating to legislative policy and the choice of legislative instrument

B. Questions relating to the suitability for transposition and implementation

C. Questions relating to the quality of the legislation

D. Questions relating to the practicability of compliance by the regulated target group

E. Questions relating to the enforceability of the legislation

These five sections have different primary addressees/users and stakeholders and are generally to be applied at different stages of the legislative and implementation process.

The checklist includes a large number of sometimes rather detailed questions, which are intended to help users address the relevant issues thoroughly. However, users should not feel intimidated by the number and range of questions, as no single user is expected to be able to answer all questions fully. Not all questions are relevant at all stages of the process, and users may decide to use parts of the checklist selectively, based on their specific role in the process, expertise and concerns. Different types of information and expertise will be required to answer different types of questions, and users may find that the most productive way of applying the checklist is to create a panel of experts which collectively have the full range of knowledge required to address all the issues raised in the questions.

Obviously, answering many of the questions in the checklist implies some form of value judgement which will vary from user to user. In most cases, it will not be possible to answer these questions by "yes" or "no". Users are encouraged to approach them rather as open questions that call for a more sophisticated and nuanced answer. In a way, asking the questions is as important as answering them. In fact the questions here below can be used in different ways: as a real checklist, as a questionnaire and as an aide-mémoire.

The checklist is presented below section by section, each with a short introduction.

A. Questions relating to legislative policy and the choice of legislative instrument

Primary addressee: Commission policy makers and MS experts involved in the consultation process.

Phase of the legislative process: very early stage of the legislative process, as part of IA when there is a proposal, and potentially as part of an ex post evaluation.

Explanatory remarks: The questions in this section relate to the choice of the legislative instrument – whether directive or regulation. They are inspired by relevant policy documents on the application of the principles of subsidiarity and proportionality and on 'better regulation'. In practice the choice of legislative instrument might well have been made before the Impact Assessment and the IA is only carried out on the actual proposal – i.e. after the choice between regulation or directive (or other instrument) has been made. In this case the evaluation of the practicability and enforceability of proposed legislation arises only after the basic policy choice to have recourse to legislation as an instrument has already been made.

In the Inter-institutional Agreement on better law-making of 16 December 2003, the European Parliament, the Council and the Commission have recalled the definition of the term 'directive' in Art. 249 of the Treaty, which provides:
'A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.' The same Inter-institutional Agreement further states that, in formulating proposals for directives, 'the Commission will ensure that a proper balance is struck between general principles and detailed provisions, in a manner that avoids excessive use of Community implementing measures.' In the Agreement, the Commission commits itself to 'explain and justify to the European Parliament and to the Council its choice of legislative instrument'.

The following provisions of the 1997 Protocol on the application of the principles of subsidiarity and proportionality annexed to the EC Treaty are also directly relevant to the choice of legislative instrument: 'The form of Community action shall be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement. The Community shall legislate only to the extent necessary. Other things being equal, directives should be preferred to regulations and framework directives to detailed measures. (...) Regarding the nature and the extent of Community action, Community measures should leave as much scope for national decision as possible, consistent with securing the aim of the measure and observing the requirements of the Treaty. While respecting Community law, care should be taken to respect well established national arrangements and the organisation and working of Member States' legal systems. Where appropriate and subject to the need for proper enforcement, Community measures should provide Member States with alternative ways to achieve the objectives of the measures.'

Questions

- 1.** If the proposed choice of legislative instrument is a Directive, is this choice justified in view of its contents and purpose?

Does it provide sufficient flexibility to facilitate its transposition and insertion into the national legal systems of the Member States, without compromising the effective achievement of the results it pursues?

Is the Directive sufficiently clear about the results to be achieved by Member States?

- 2.** If the proposed legislative instrument is a Directive, has a proper balance been struck between general principles and detailed provisions?

Does the Directive allow for the use of different regulatory instruments and alternative options for implementation and, if so, is it sufficiently clear under what conditions these instruments and options can be applied?

Where desirable flexibility is provided by the Directive, would it nevertheless be useful to provide complementary, non-binding guidance material for national authorities in charge of transposition and implementation?

Where flexibility is considered undesirable, would the choice of a Regulation not have been more appropriate in view of the perceived need for a fully harmonized approach?

- 3.** If the proposed choice of legislative instrument is a Regulation, is this choice justified in view of its contents and purpose?

Is it necessary that the intended measures be applied in a uniform manner in all Member States?

If there is no true need for uniform application, would the choice of a Directive not have been more appropriate in view of subsidiarity considerations?

- 4.** If the chosen legislative instrument is a Regulation, are its provisions actually capable of direct application in all Member States?

Has the need for complementary legislation clearly been identified?

B. Questions relating to the suitability for transposition and implementation

<p>Primary addressees: Commission policy makers, evaluation units, and Member States' policy and legal experts/negotiators</p> <p>Important stakeholders: national authorities competent for implementation</p>
<p>Phase of the legislative process: is primarily focused on the proposal stage of the legislative process (and could be a core part of IA process). Potentially also as part of an ex post evaluation.</p>
<p>Explanatory remarks: This set of questions addresses the next stages in the EC regulatory chain, from the perspective of the public authorities competent for transposition and implementation in the Member States. Issues of practicability from the perspective of the regulated community are no less important, but are addressed by a separate set of questions (see section D).</p> <p>Transposition, as explained above, is only relevant where the EC legislative instrument used is a Directive. In this case, implementation in the Member States follows transposition into their domestic law. In the case of a Regulation, no transposition is required, and the directly applicable provisions of the EC legislative instruments are to be implemented as such, though complementary provisions of domestic law may be required to enable effective implementation. Because of this fundamental difference between both types of legislative instrument, additional specific questions have been developed to complement the general ones that are common to both choices.</p>
<h3>Questions</h3>
<p>5. Does the legislative instrument clearly and unambiguously spell out the requirements and tasks for the national authorities competent for implementation?</p>
<p>6. To the extent that EU institutions or EU bodies, specifically established under the legislative instrument or designated by it, are given implementation tasks, is the division of responsibilities between these institutions or bodies and the competent national authorities clearly spelled out?</p>
<p>7. Does full implementation of the legislative instrument require the adoption of implementing measures at the EU level (i.e. delegated rule-making through comitology procedures)? If so, are such measures likely to be adopted in time?</p>
<p>8. Has the need for any support on EU level for the national authorities competent for implementation prior to the date of application of the legislative instrument (e.g. through guidance materials or other practical measures) sufficiently been considered?</p>

<p>9. Has the need for any cooperation between the Member States (and, if relevant, between Member States and non-member States) in the implementation of the legislative instrument sufficiently been considered?</p> <p>Has sufficient attention been given to the possible need for exchange of experience on EU level between the national authorities competent for implementation after the coming into force of the legislative instrument?</p>
<p>10. Are the implementation burdens for the (national and, where applicable, European) authorities competent for the implementation of the legislation clear? (human resources, financial resources, knowledge and/or training, performance of new functions, ICT, organisational structure, etc.)</p> <p>Are these burdens proportionate to the intended results?</p> <p>Has a proper balance been struck between public and private burdens?</p>
<p>11. To the extent that the legislative instrument imposes monitoring and/or reporting obligations on national authorities, are these obligations proportionate to the intended results and has the resulting administrative burden been kept as low as possible?</p>
<p>12. To what extent are/were national authorities competent for implementation involved in the development of the legislation at the appropriate stages of the legislative process and have their opinions on implementation burdens been taken into account ?</p>
<p>Specific question for Directives</p>
<p>13. Is the time period allowed for transposition of the Directive into national law adequate (e.g. for administrative changes or making investments)? Does the date by which the Directive is to be transposed leave Member States sufficient time to properly prepare their implementing bodies for the practical aspects of implementation?</p>
<p>Specific questions for Regulations</p>
<p>14. To the extent that the provisions of the Regulation are not fully self-executing, does it leave Member States sufficient time to adopt whatever complementary national legislation may be required for its full implementation?</p>
<p>15. Does the date by which the Regulation comes into effect leave Member States sufficient time to properly prepare their implementing bodies for the practical aspects of implementation?</p>

C. Questions relating to the quality of the legislation

<p>Primary addressees: Commission, Council and European Parliament legal drafting units; MEPs; Member States' legal experts/negotiators</p> <p>Important stakeholders: national authorities competent for implementation</p>
<p>Phase of the legislative process: This is at the proposal stage - where the concepts of the proposal (objectives, targets, target audience, timescales) have been worked out and need translation into robust legislative language.</p>
<p>Explanatory remarks: These questions relate to the intrinsic quality of legislative drafting and are formulated in such a way that they can be applied to any existing or proposed provisions of EC environmental legislation, whether in the form of a Directive or a Regulation, referred to as 'the legislation' (in the event of legislative proposals this obviously should be read as 'the proposed legislation').</p>
<h3>Questions</h3>
<p>16. Does the preamble clearly state the intended environmental result of the legislation?</p> <p>Does the preamble justify and explain the enacting provisions in simple, understandable terms?</p> <p>Is it fully consistent with these provisions?</p>
<p>17. Does the legislation contain any provisions without legislative character (e.g. wishes, political statements) which may confuse the addressees or seem to contradict the actual normative provisions?</p>
<p>18. Have all the key terms been properly defined, while avoiding excessive detail in definition which may hamper enforcement? Are the definitions clear and consistent with the definitions in related legislation?</p> <p>Is the same term used throughout to express a given concept consistently with the definitions?</p>
<p>19. Is it clear from the provisions of the legislation who are the ultimate addressees of the rights and/or obligations they set out?</p>
<p>20. Are the rights and/or obligations of those to whom the legislation is to apply clearly defined?</p> <p>Has the use of exceptions been minimised?</p> <p>Are any technical standards laid down in the legislation clear?</p>

<p>21. Besides the actual target group, will other parties be confronted with the legal effects of the legislation and, if so, does this come across clearly?</p>
<p>22. Are the rules formulated in such a way that the addressees can read and understand them easily?</p> <p>Is the wording clear, simple, concise and unambiguous? Have unnecessary abbreviations, 'Community jargon' and excessively long sentences been avoided?</p>
<p>23. Are the various provisions of the legislation consistent with each other?</p>
<p>24. Is the legislation consistent with existing legislation (including any international conventions binding on the EC) and has pointless repetition of existing provisions been avoided?</p> <p>Are any references to other texts precise? Have unnecessary cross-references which make the text difficult to understand been avoided?</p>
<p>25. Does the legislation contain annexes or refer to implementing rules to be laid down at EC level (delegated legislation), guidelines, technical reference documents or other documents that have to be taken into account for purposes of implementation and/or enforcement?</p> <p>If so, is the legal status of these instruments clear and do they themselves meet the practicability and, where relevant, enforceability criteria of this checklist?</p>
<p>26. To the extent that the legislation amends or further develops existing legislation, have any opportunities for consolidation sufficiently been considered?</p> <p>Have any opportunities for integration with other relevant pieces of legislation sufficiently been considered?</p> <p>Has any relevant case-law of the ECJ on the existing provisions been taken into account?</p>

D. Questions relating to the practicability of compliance by the regulated target group

Primary addressees: Commission policy makers, evaluation units, Member States' policy experts/negotiators

Important stakeholders: national authorities competent for transposition and implementation and regulated target groups (e.g. industry)

Phase of the legislative process: is focused on the proposal stage of the legislative process (and could be a core part of IA process). Potentially also as part of an ex post evaluation.

Explanatory remarks: This set of questions is aimed at assessing the likely response of the regulated target group to the legislation, bearing in mind that the political choice to have recourse to legislation as a policy instrument has in principle been made. It draws most heavily on the *Table of Eleven*, a tool developed in the Netherlands which can help map the strong and weak points of rules with respect to the likelihood of compliance and the feasibility of enforcement. It consists of eleven dimensions, which together determine the extent to which legislation is complied with. The eleven dimensions are formulated with a view to achieving the highest possible practicability in the fields of policy development and law enforcement. See also Annex 4.

In applying this part of the checklist, users should be aware that what matters for the ultimate addressees of the legislation is not so much the EC legislative text itself, but their perception of it, as they are confronted at their level with either the provisions of domestic law transposing the requirements of a Directive, or the directly applicable provisions of a Regulation, as interpreted and applied by competent national authorities in the domestic legal context, together with relevant complementary provisions of national law. Since all of these elements are not fully known at the time EC legislation is drafted, users of the checklist will have to make a number of assumptions about these various factors which will influence the target group's perception and resulting behaviour. The relevance of some questions and the possibility of answering them with any degree of confidence will vary widely according to national circumstances. If it is not possible to address some questions during the legislative process at the EU level, the same questions will most likely have to be addressed at the stage of transposition or elaboration of complementary national legislation. To the extent that the ultimate impact of the legislation on the target group depends on choices made in a national legislative process, this section of the checklist will be of particular importance for those involved in this process.

Like all other sections, this section of the checklist has been drafted from the perspective of public authorities concerned with ensuring the highest possible level of compliance with rules that have been or are intended to be laid down. It is not primarily concerned with evaluating the burden and cost of compliance for the regulated community, which is an issue that normally should be addressed at an earlier stage in the policy development process, when the political decision whether or not to legislate, rather than how to legislate, is made. Obviously, the practicability of compliance is a question that is closely related to that of administrative burdens and compliance costs for the private sector, which are key issues for consideration in IA procedures. Consequently, those responsible for carrying out such procedures at the EU or Member State level may also find the questions in this part of the checklist useful, as will representatives of the regulated community who may be consulted during the IA process. The answer to some questions is likely to vary considerably depending on who answers them.

Questions

27. Is it clear who belongs to the target group?

Will it be clear to the target group what obligations it will be expected to comply with?

Is the target group actually capable of understanding the rules as formulated?

28. Are the obligations implementable (achievable/realistic) for the parties to whom they are addressed?

If there is no specific target group, are the parties responsible for implementation clearly identified or identifiable?

29. In the target group's perception, are the policy and rules embodied in the legislation likely to be regarded as reasonable and acceptable, and the burden of complying with them as not disproportionate?

Does the target group feel it shares responsibility for putting this policy into practice?

30. In the target group's perception, does compliance with its obligations cost relatively little time, money and effort?

31. In the target group's perception, could breaking the rules be thought to yield little or no advantage (i.e. no incentive not to comply) or even disadvantages (i.e. positive incentive to comply)?

32. In the target group's perception, could complying with the rules be thought to yield any advantages?

33. Can compliance with or contravention of the rules be easily and unambiguously established by the target group (e.g. through a fixed measurement method)?

34. In the target group's perception, is it likely that any violation would soon be noticed by its peers?

Does the target group's community generally disapprove of such violations?

35. Is there likely to be any horizontal supervision (e.g. financial auditing, disciplinary codes, auditing for certification) which may encourage or facilitate compliance with the rules laid down in the legislation?

36. Are there easy ways of avoiding compliance with the rules? Have the fraud-susceptible points in the legislation been identified and can measures be taken to address them ?

E. Questions relating to the enforceability of the legislation

<p>Primary addressees: Commission, Council and European Parliament legal drafting units; MEPs; Member States' legal experts/negotiators</p> <p>Important stakeholders: national authorities competent for enforcement (e.g. public prosecutors) – who know how the enforcement system works in practice.</p>
<p>Phase of the legislative process: is focused on the proposal stage of the legislative process (and could be a part of IA process), as well as at the stage of transposition into national legislation. Potentially also as part of an ex post evaluation.</p>
<p>Explanatory remarks: These questions address the final link in the regulatory chain: the possibility and likely effectiveness of the use by national public authorities of legal, administrative and other means at their disposal to check compliance and to convince or if necessary compel the ultimate addressees of the legislation to comply with their obligations, where they are found to be unwilling to do so without coercion. Enforceability, too, depends on a wide range of different factors, some of which are very difficult to judge at the time of drafting legislation at the EU level. Since compliance checking, inspection and enforcement remain essentially determined by national law, these questions will normally have to be addressed mostly at the stage of transposition (for Directives) or elaboration of complementary national legislation (for Regulations), taking into account specific national circumstances. However, if it is expected that the effectiveness of a piece of EU legislation heavily depends on adequate enforcement in the Member States, it is also crucial to already explore in the proposal phase what provisions should be regarded as key, what in practice is needed in terms of enforcement, whether the Member States have sufficient means in this respect and whether the EU legislation should contain concrete and detailed enforcement requirements. This also applies to the issue of enforcement co-operation between Member States in case of transboundary activities. Finally, users of the checklist should be fully aware of the fact that the decision to impose criminal sanctions on violators of environmental law ultimately depends on independent judicial authorities who operate in accordance with general procedures, rules and principles of criminal law whose rationale is unrelated to the objectives of environmental policy.</p>
<h3>Questions</h3>
<p>37. Is it clear which authorities will be in charge of checking compliance, carrying out inspections and enforcing the legislation and what their tasks and obligations will be?</p>
<p>38. To what extent were these authorities involved in the development of the legislation at the appropriate stage of the legislative process?</p> <p>Has their opinion on the enforceability of the legislation and the burden involved been sought and taken into account?</p>
<p>39. Has the need for any support on EU level for the national authorities competent for inspection and enforcement prior to the date of application of the legislation sufficiently been considered?</p> <p>Has the possible need for common guidance materials been anticipated?</p>

<p>40. What non-coercive means will be available to competent national authorities to achieve compliance without having recourse to formal enforcement action (e.g. penalties, coercive measures) under administrative or criminal law? Are such means likely to be effective or is recourse to enforcement action likely to be frequently required?</p>
<p>41. Is it clear what provisions should be enforced and what provisions should have priority in this respect (core provisions of the legislation)?</p> <p>Is it clear what means of enforcement under administrative and/or criminal law can be used under the terms of the legislation and are these likely to be effective?</p>
<p>42. Are the inspection and enforcement burdens for the competent authorities clear (human resources, financial resources, knowledge and/or training, performance of new functions, ICT, organisational structure, etc.)?</p> <p>Are these burdens proportionate to the intended results?</p>
<p>43. Are the monitoring and measurement methods to be employed consistently defined?</p> <p>Is the compliance checking effort expected of competent authorities realistically feasible?</p>
<p>44. Is sufficient capacity for the performance of the inspection and enforcement tasks available?</p>
<p>45. Where relevant, has the need for any cooperation and/or exchange of experience between competent national authorities in the actual inspection and enforcement of the legislation sufficiently been considered?</p>
<p>46. To the extent that EU-level bodies, specifically established under the legislation, are given tasks directly related to inspection or enforcement, is the division of labour between these bodies and the competent national authorities clearly spelled out?</p>
<p>47. Has the date on which the legislation will enter into effect been established in such a way as to allow sufficient preparation time for the national authorities competent for inspection and enforcement?</p>
<p>48. In the target group's perception, will there be a high risk of detection of a violation in the event of an inspection (i.e. a records inspection or a physical inspection) by the competent authorities?</p> <p>Is the inspection technology used sophisticated enough?</p> <p>Will there be a major real risk of detection in an inspection?</p>

49. In the target group's perception, will there be a high risk of a violation detected by others than the authorities (e.g. those exercising horizontal supervision or the general public) being reported to the authorities?

Does the target group think that people generally know which authorities to report detected violations to and would be generally inclined to do so?

50. In the target group's perception, will there be a high risk of incurring a sanction if a violation is detected in an inspection or reported to the authorities?

Will there a major objective risk of a sanction being imposed once a violation has been detected or reported?

51. In the target group's perception, will the type of sanction associated with the violation and additional disadvantages of being sanctioned (e.g. damage to reputation) be regarded as sufficiently severe to have a deterrent effect?

Annex 1

Project Team and Review Group

Project Team (The Netherlands)

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Annex 2

When and how can the P&E checklist be used by IMPEL so as to contribute to better regulation? – Annex to the draft report discussed at the Project Workshop

This question is approached from the perspective of IMPEL as a network of authorities in the Member States responsible for the implementation and enforcement of EU environmental law on the ground. It considers the role that individual IMPEL members could potentially play at different levels, and, to a lesser extent, how the checklist might be of use to other actors in the legislative process.

The IMPEL Cluster on Better Legislation seeks to 'add value to the regulatory cycle by providing advice on the practicability and enforceability of new and existing legislation *at the early stages in its development.*' (emphasis added)

The work of the Cluster is intended to cover three areas, described as follows in IMPEL documents:

- The review of those prioritised areas of existing European Environmental Legislation where IMPEL is able to make a contribution by identifying concerns and proposing improvements
- When invited by the Commission and when appropriate for IMPEL, the Cluster can co-ordinate the review of new legislative proposals
- Where appropriate for IMPEL, the Cluster will propose and develop observations on the effect of the decisions from the European Court of Justice which would have a significant impact on the work of IMPEL members.

The first of these work areas relates to *ex post* assessment of existing legislation. In this field, IMPEL has the freedom to set its own priorities and to act quite independently of the EU institutions. However, the impact of this work is likely to be highest where IMPEL strategically responds to or anticipates the political agenda of the institutions, especially with respect to any scheduled reviews of existing legislation.

The second work area relates to *ex ante* assessment of the practicability and enforceability of proposed new legislation. This is where IMPEL's Better Legislation agenda raises issues of a practical, institutional and political nature. It is anticipated that IMPEL might act in this area in different circumstances: either 'when invited by the Commission' or when IMPEL itself considers it 'appropriate'. As **Figure 2 in section 4** shows, to be effective, *ex ante* assessment of practicability and enforceability by IMPEL and its members would mainly need to be carried out prior to the adoption, by the Commission, of proposals for legislation for submission to Parliament and Council, with a view to influencing the drafting of these proposals by the Commission services. Where this has not, or only partly, been successful, further opportunities for influencing the text of the legislation in order to improve its practicability and enforceability arise during the consideration of the Commission's proposal by the other two institutions.

After completion of the legislative process at the EU level, the focus of attention logically moves to the national level, where the checklist could be used by national officials, MPs and stakeholders in the process of development of transposition and implementation measures. The rest of this discussion, however, focuses on what can be done at the EU level.

The Commission has so far never expressly invited IMPEL to review its draft legislative proposals. Obviously, were the Commission to decide to seek IMPEL's input on specific proposals, this is where the network's potential influence might be the greatest. Accordingly, IMPEL should seek to come to an understanding with the Commission on how and when it might provide such input during the pre-legislative stage, i.e. when the Commission services are in the process of drafting legislative proposals for submission to the College and routinely undertake a wide range of consultations. If IMPEL can organize its work effectively to respond to such opportunities in a

timely manner, it might achieve its objective of focusing the Commission's attention on practicability and enforceability issues at an early stage.

IMPEL working procedures normally provide for the Cluster to submit its work to the Plenary for endorsement. However, 'where circumstances dictate and where that is not practicable', a written procedure may be followed. In view of the timeframes that the Commission is likely to impose on any such input, normal IMPEL working procedures involving the Plenary are likely to be inadequate, since IMPEL Plenary meetings are not sufficiently frequent to allow timely decisions to be made. Therefore, the Plenary should consider delegating appropriate responsibilities to the IMPEL Secretariat and Cluster, who will frequently need to apply written procedures. However, in doing so, it will be necessary to ensure that all IMPEL members, including those who are not members of the Cluster, have the opportunity to participate.

Once a proposal for new legislation has been formally approved by the Commission and sent to the other institutions for consideration, IMPEL can no longer hope to achieve its objectives by addressing the Commission services, but it should consider ways and means of influencing the decisions of the Council and Parliament at the subsequent stages of the legislative process.

Both these institutions could be addressed through two different channels: through their respective Secretariats and officials responsible for issues of legislative drafting, who might be convinced to have recourse to parts of the checklist in advising their respective political authorities, and directly at the political level, by communicating with individual members of both institutions and their advisers. While the former is a matter which could be entrusted to the IMPEL Secretariat or Cluster, the latter, due to its political aspects, would more appropriately be a responsibility of individual IMPEL members working through their respective national channels.

Thus IMPEL members might consider:

- using the checklist during the domestic process of formulation of their government's position on the legislative proposals submitted by the Commission;
- communicating with their national representatives on Council Working Parties who are actually negotiating the Council's common position;
- communicating with their country's MEPs through appropriate national channels, especially during consideration of the proposals in the European Parliament's Environment Committee and when those individual MEPs play a key role in the process as rapporteurs or shadow rapporteurs.

A final case that needs to be considered is the potential role that practicability and enforceability assessment can play in the process of adoption, by the Commission - but with the help of the Member States through 'comitology' procedures - of implementing rules for Directives or Regulations, i.e. when the Commission makes use of its delegated rule-making authority. This procedure is increasingly being used as a result of a general trend towards 'framework legislation' which leaves much of the details of implementation to experts. From a legal perspective, there is no difference between rules of EC environmental law depending on whether they have been adopted by the co-legislators (Parliament and Council) through the co-decision procedure, or by the Commission under some comitology procedure.

In this case, IMPEL members should monitor the comitology procedures and liaise with their national colleagues who are in charge of representing their country in the competent regulatory committee. Actually, there may be better opportunities to influence drafting in such delegated rule-making procedures than in the more formalized legislative co-decision procedure, since Member State experts may be involved in the drafting process not only formally, but also informally, at the discretion of the Commission official chairing the committee. National officials who are members of regulatory committees may find the proposed checklist useful when involved in such drafting exercises.

Annex 3

The link of the P&E checklist to the Commission's Impact Assessment System – Annex to the draft report discussed at the Project Workshop

The question of practicability and enforceability is closely related to the general debate on 'better regulation' and the effectiveness and legitimacy of EU policies. Another tool which is frequently mentioned in this context is impact assessment (IA).

In June 2002, the European Commission introduced as part of its 'better regulation' agenda a new system of impact assessment for all its significant legislative and policy proposals. This superseded and brought together in one integrated system all the existing impact assessment procedures previously operated separately by different Directorates-General. It was integrated also in the sense that likely economic, environmental and social impacts were to be considered together, in a balanced way. Guidelines for Commission officials on how to undertake IAs were issued by the Secretariat-General in 2002, and subsequently extended and revised in 2005 and 2006.

It should be stressed that there are a number of key differences between the Commission's IA system and the proposed practicability and enforceability checklist. They include the following:

- IAs are undertaken on all significant Commission policy initiatives and are not restricted to proposals for legislation alone;
- The focus of the IA system is on proposed, rather than existing, EU measures;
- Proposals are assessed in relation to all the stages in the process of policy development (i.e. What is the problem? What are the objectives? What are the policy options? What are the likely economic, social and environmental impacts? etc) – and not just the implementation and enforcement stages.

The Commission's Guidelines on IA in fact devote rather little attention to the question of practicability and enforceability. In section 4.2 '*How to analyse impacts*', Box 9 (***reproduced below***) discusses potential obstacles and incentives to compliance. Although there is a reference to the need for simplicity and ease of understanding in drafting proposals, almost all the potential obstacles are focused on the characteristics and behaviour of the target group(s), rather than constraints on national implementing and enforcement authorities. Moreover, Box 9 introduces a number of headings and questions for consideration, without amplifying how these issues should be assessed in detail.

As the Commission's IA Guidelines are revised periodically, IMPEL could make a good case for reference to be made in the next revision to the proposed checklist, which is clearly relevant beyond the boundaries of environmental policy too.

Identifying potential obstacles and incentives to compliance

Potential obstacles to compliance by the group whose behaviour is meant to change, and any incentives likely to increase its compliance, by considering the following questions:

Would the requirements of the options be simple and easy to understand?

Inaccessible and incomprehensible rules will reduce compliance, particularly for small businesses, which often lack time and resources to read and understand large volumes of complex rules.

Would the target group be willing to comply?

Their willingness may depend on:

Compliance costs, including administrative burdens, may affect overall compliance rates, in particular those of disproportionately affected groups such as small businesses.

Overly legalistic and technical regulation may appear not to relate to any substantive purpose, leading to a loss of confidence in the regulators and an tendency to evasive behaviour.

Coherence with existing market practices or cultural norms may help raise compliance rates.

Prior consultation builds in a sense of 'ownership', or at least understanding, of the rule and can ease compliance concerns.

Rigorous monitoring arrangements and sanctions for non-compliance can be expected to increase compliance rates.

Would the target group be able to comply? Implementation policies, including providing information and other support measures, can affect the ability of the target group to comply with the rule.

When you consider compliance issues, you need to always remember that EU rules are in general implemented by Member State authorities. Therefore, your compliance analysis needs to take account of any possible variation in how Member States implement the rule. For example, framework directives may leave lots of room for flexible implementation at Member State level. This could have a knock-on effect on compliance by the target groups in different countries. In the case of Directives, it is important to be aware of national difficulties in implementing certain requirements, in order to take them into account when setting implementation periods. Thus, to help you in your compliance analysis, it would be useful to consult with the target population and the Member States.

Apart from outlining the advantages and disadvantages of the policy options from the point of view of compliance, the analysis should also provide information about how best to design the option.

For example:

- What time scale should be set for implementation?
- What type of sanction is most appropriate - administrative, civil or criminal law?

Source: European Commission Impact Assessment Guidelines (with 15 March 2006 update) SEC(2005) 791

Annex 4 **Table of Eleven**

The *Table of Eleven* is a list of factors, which are important to compliance with rules. The *Table of Eleven* can help map the strong and weak points of rules with respect to the likelihood of compliance and the feasibility of enforcement. It consists of eleven dimensions, which together determine the extent to which legislation is complied with. The eleven dimensions are formulated with a view to achieving the highest possible practicability in the fields of policy development and law enforcement.

- 1. the anticipated extent of spontaneous compliance:**
 - T1 knowledge of the regulation in the target group (awareness and clarity);**
 - T2 cost/benefits: material and immaterial advantages and disadvantages of contravening or complying with the regulation;**
 - T3 extent of acceptance of the policy/regulation by the target group;**
 - T4 respect for authority amongst the target group**
 - T5 informal monitoring (the chance of discovery and sanctioning of the behaviour of the target group by non-government bodies)**

- 2. the extent of and opportunities for monitoring:**
 - T6 informal opportunities for reporting (the chance that contravention may come to light other than through government monitoring)**
 - T7 opportunities for monitoring (the chance of being monitored for committing contraventions)**
 - T8 the chance of detection (the chance of a contravention being detected during government monitoring)**
 - T9 selectivity (is the chance of a contravention being detected greater during selective monitoring than during non-selective monitoring?)**

- 3. the extent of and opportunities for sanctions:**
 - T10 opportunities of sanctions (opportunities for sanctions if contravention is established after monitoring)**
 - T11 the severity of sanctions (amount and type of sanctions and additional (immaterial) disadvantages)**

See also:

- http://www.handhavenopniveau.nl/Images/T11.Engels_tcm9-24242.pdf
- <http://www.it11.nl/it11/>

Annex 5

Golden rules for environmental legislators --- *Developed by the Netherlands Ministry of Justice, the Netherlands Office of Public Prosecutors and the Netherlands Ministry of Housing, Spatial Planning and the Environment*

Preparation

Golden rule 1

Start every new legislation project with a careful description of the policy problem for which the legislation must offer a solution, and with choosing a suitable direction to the mainlines of the solution. In doing so make deliberate choices concerning the way in which the behaviour of companies, citizens or government bodies is to be influenced.

Golden rule 2

A good starting memorandum for new legislation is the result of:

- teamwork of the policy maker and the lawyer who will draft the legislation;
- dialogue with practitioners.

Golden rule 3

For new legislation chose as much as possible for a legal framework or a legal basis, with which:

- both men and environment can be protected (concerns: purpose);
- all consequences for both men and environment can be met (concerns: reach);
- limits can be set to all activities and acting (legal) persons, that contribute (to a relatively considerable extent) to the problem (concerns: scope).

Doing so, take into account the existing possibilities of other legal provisions, also of other ministries and authorities.

Golden rule 4

Always use the need for new legislation to combine new and existing rules in one law or decree, in case these rules (partly) concern the same issue or the same target group. It benefits the implementation, compliance and enforcement of the rules.

Golden rule 5

Constantly be aware that the extent to which and the way in which the freedom of people is limited, is of a direct influence on the (possibilities of the) implementation, compliance and enforcement of the rules.

Golden rule 6

Make a well-considered choice concerning the administrative authority that will be competent to implement and enforce the rules, because of:

- the nature, volume and complexity of both the implementation- and enforcement tasks in relation to the activities they focus on, and the coherence with other sets of activities;
- the potential seriousness and scale of the consequences for men and environment and fair competition in case of non-compliance of the norm;
- the level of "mobility" (across administrative borders) of the target group.

Golden rule 7

Concerning enforcement make deliberate choices about the role of administrative law, penal law and if desired civil law in the light of:

- the collective and individual (legal) interests that an intended set of rules aims to protect as well as the potential nature, scale and effects of infringements on these interests as a consequence of non-compliance of these rules;
- the possibilities to inspect and trace offences of the intended set of rules and the efforts this probably will cost;

- the extent to which the competent authority for implementation and enforcement can get into a conflict of interest;
- the extent to which the target group, citizens and intermediate organisations may have an interest and are willing and capable to take (civil) action themselves against non-compliance of the proposed legislation.

Golden rule 8

During the preparation of the legislation develop, together with the involved competent administrative body, a vision on the desired organisation of the inspection. Create political consensus on this topic and lay it down in the explanatory memorandum to the legislation.

Golden rule 9

In all stages of the preparation of the legislation stay in touch with persons who have practical knowledge on the possibilities to implement, comply and enforce the intended rules.

Golden rule 10

Take good care of finding appropriate conversation partners with practical knowledge and create, where suitable, a knowledge pool of experienced practitioners, in cooperation with the administrative bodies involved in the issue.

Golden rule 11

In preparing or implementing European legislation, follow as much as possible the same approaches used for the preparation of national legislation.

Design

Golden rule 12

Always take care that there can be no doubt about:

- *what* the norm is that has to be complied with;
- to *whom* the rules refer, so by whom they have to be fulfilled or complied with and by whom the inspection on compliance is to be carried out and against whom, if necessary, enforcement action has to be directed;
- *how* inspection can be done and how it can be determined whether or not there is compliance with the norm.

Golden rule 13

Limit the number of exceptions to the norm as much as possible.

Golden rule 14

If an exception is absolutely necessary: describe it in a separate paragraph or article because of clear liability to punishment.

Golden rule 15

Assure that non-compliance of each direct or indirect norm is forbidden.

Golden rule 16

Assure yourself that every punishable rule has been formulated in such a way that it provides a sound basis for a future indictment. The norm must be formulated in one provision, be as short and coherent as possible and preferably without reference to another article or part(s) of article(s), annexes or other regulations.

Golden rule 17

Clearly indicate in every regulation what the 'core provisions' are, so that both the target group and the competent inspection and enforcement officials know which norms have to be fulfilled and enforced under all circumstances.

Golden rule 18

Constantly keep in mind while formulating provisions that in enforcement situations all elements of the provision have to be proven. So only use these elements that are absolutely indispensable.

Golden rule 19

When drafting a rule that includes a duty to provide for, look for a good balance between space for the addressee's own responsibility and the clarity on the reach of this.

Golden rule 20

If you have to choose between a so-called 'target-provision' and a 'means-provision' then let the aspect of 'enforceability by the authorities' have a heavier weight as the consequences of non-compliance for men or environment can be more serious.

Golden rule 21

Assure that for each norm with a technical character it is clear *how* it can be determined to what extent the norm is complied with.

Golden rule 22

Avoid that the way in which to determine the composition of the leach out values of a substance, product or waste product varies as it is considered to be a substance, a product or a waste product.

Golden rule 23

Leave enough room for technical and methodological developments and for the application of adequate inspection and enforcement methods in the description of a certain technique or method that is used to determine the compliance of a norm; preferably by determining that another than the prescribed technique or method is allowed, provided it has the same level or reliability and representativeness.

Golden rule 24

Always check if persons who - for the determination of the compliance of a (technical) norm - sample, analyse, measure or calculate or who make use of or provide others with the data acquired from these activities, can be obliged to practice the necessary care.

Golden rule 25

Always remember that without obligations to report and register, adequate inspection and enforcement against non-compliance is not possible in the area of (chain)activities with substances, products and waste products.

Golden rule 26

Indicate in the introduction to the rules or in the explanatory memorandum on which legal requirement(s) the norms in a governmental or ministerial decree are based.

Golden rule 27

When drafting a ministerial decree based on a number of different legal requirements, be aware of the consequences that differences between these legal requirements can have for the practicability and enforceability.

Golden rule 28

When changing a norm or penalization, pay ample attention to the legal transitional stage from the old to the new situation.

Golden rule 29

Let, as far as possible, the desired circle of target groups, strongly determine the choice for a specific legal framework or a specific regime of activities or a combination of legal frameworks and regimes of activities.

Golden rule 30

Constantly realise that the one who is not part of the target group of a set of rules, is not bound to comply with these rules.

Golden rule 31

Take care that the circle of the target group is sufficiently broad to assure that:

- a chain of activities with a substance, product or waste product is closed and
- all (natural or legal) persons that can act contrary to the (aim of the) rules, are under the rules and can be checked for compliance and can be addressed in case of non-compliance.

Golden rule 32

Nominate categories of target groups, that have to deal with more than one set of environmental rules, as much as possible in a uniform way. Anyway this goes for:

- the one who carries responsibility for a company;
- the manager (i.e. owner or keeper) of an activity (either or not in progress);
- the transporter.

Golden rule 33

Keep the description of the scope of a governmental or ministerial decree as simple and short as possible.

Golden rule 34

Make sure that the territorial sphere of action of a law is broad enough to, if necessary, also set norms and enforce these on board of your country's aircraft or ships.

Golden rule 35

Leave out demarcation provisions between laws concerning aim, reach or scope of the norms in laws and decrees. If possible delete existing demarcation provisions.

Golden rule 36

Give explicit attention to the penalization of norms, if enforcement support from the side of the penal law is considered desirable; also think about norms in European directives and regulations.

Golden rule 37

Forward a mature proposal to the Ministry of Justice concerning the way in which non-compliance with a norm can be included in the penal code.

Golden rule 38

Constantly be aware of the effects that a change of numbers of paragraphs or articles can have for the use of other legal provisions.

Golden rule 39

Always take care that there can be no doubt about the question which administrative authority is competent in a concrete situation for the implementation and administrative enforcement, including inspecting compliance with the norms.

Golden rule 40

As much as possible put the competence of implementation and administrative enforcement in one hand concerning all the norms that are valid for a recognisable category of target groups.

Golden rule 41

Make a coherent administrative enforcement possible of all the regulated activities of all target group, in case of activities with a substance, product or waste product being part of a chain.

Golden rule 42

Take care that the inspection on compliance of all norms in relation to all target groups has been properly organised. Make clear who is the competent authority and promote that officials of different authorities have simultaneous competences to inspect the compliance of the norms.

Golden rule 43

Make it possible that, in the case of activities with a substance, product or waste product, that is part of a chain, coherent chain inspections on all regulated activities and target groups can be carried out.

Implementation**Golden rule 44**

Properly and timely prepare the introduction of new legislation, in cooperation with those that have to implement it, comply with it and enforce it. Don't forget the police and the public prosecutor's office.

Golden rule 45

Make an implementation plan focused on the timely realisation of a situation in which all categories of actors have the *knowledge* and the *ability* to do what is necessary for a proper implementation, compliance and enforcement, and that these actors in vast majority are *willing to act* and *do act*.

Golden rule 46

Take at least two years for aftercare of new legislation.

Feedback and evaluation**Golden rule 47**

Always offer the ones that have to implement, comply or enforce the new legislation the opportunity to provide feedback in a practical way. Inform people what has been done with their feedback.

Golden rule 48

Always evaluate the functioning of legislation against the background of the policy problem for which it was intended to provide a solution.