# Implementation Challenge 21 - Results Summary

This survey focused on the practical challenges associated with the application and implementation of environmental law by practitioners across Europe. The results highlighted a number of issues relating to the challenges to implementation, as well as barriers to compliance. Responses were submitted from 26 countries and from national, regional, and local organisations who are responsible for the implementation of environmental legislation.

The full results and analysis are detailed in the report; however, this summary will give some idea of how participants responded to the survey and can be of use when considering the Multiannual Strategic Programme.

## Environmental Topic Areas

### Industry, Noise and Air Quality

- 48.71% of those who responded to the survey answered for this question area and were asked to highlight the most challenging elements of their role, answers included; the identification of pollution sources, the clarity of permit requirements, the application of emission limit values and insufficient flexibility in current regulations to respond to industrial changes driven by, for example, climate change, decarbonisation, or circular economy.

- The biggest barrier to good levels of compliance is complex legislation. With significant pieces of legislation such as the Industrial Emissions Directive applying to operations in this area of work, both terminology and requirements in the Directive can be misunderstood.

- The biggest barrier to enforcement was identified as a lack of resources for inspection. Inspections are a key requirement in environmental regulation, and a lack of trained staff with the time to carry out a thorough inspection is a problem.

### Enforcement

- Around 65% of those who responded to the survey answered this question, showing the cross cutting nature of this topic with enforcement being a key aspect to all sectors
- A range of answers was provided on the types of enforcement interventions used most often, including site inspections, provision of formal advice/guidance, use of notices/warning letters, issuing fines with respondents indicating that these interventions were effective 'most of the time'.

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- Answers indicated that the legal process for prosecution is too complex in their country, with most respondents following on to say that even when convicted, it is not common to receive the maximum criminal penalty. There are complex reasons for this, but it was indicated that some of the biggest contributing factors were the complexity of cases and heavy workloads.
- The biggest individual piece of training/guidance that participants cited as being the most helpful to overcome these barriers to enforcement, is provision of training to prosecutors to better understand cases of environmental crime (particularly in cooperation with partner networks).

## Waste Crime

- Just over a third of participants responded to questions on this topic area, with the most used approaches to combat waste crime identified as issuing of fines, site inspections (including regular routine checks, investigation of complaints, targeted inspections, on the spot checks and ad-hoc inspections), cooperation with other authorities and gathering intelligence
- The biggest challenges associated with this topic were recognized as detection of illegal activity, illegal storage of waste and improper classification of waste types. The barriers to effective management of this were highlighted as efficiency of waste tracking, staff capacity and lack of site inspections. These answers suggest that a lack of resourcing seems to be the biggest contributing factor with regard to management of waste crime.
- Respondents provided a list of training resources or opportunities that they felt would improve their ability to regulate in this area, including more peer-to-peer learning, Information/material for national authorities which are not competent authorities for waste shipments, but do inspections more often (e.g., national police) and training on interpretation of complex legislation.

## Abandonment of Sites

- Less than a third of respondents to this survey answered questions on this topic, but answers clearly showed that dealing with abandoned waste sites make up the majority of their work. They raised the issue of responsibility for site clean up, which can vary amongst jurisdictions and that the lack of clarity on this can cause further conflicts and difficulties for regulators.
- Most organisations opt for traditional techniques to identify and monitor abandoned sites, but some are now making use of drones and conducting aerial/satellite surveys which can improve accuracy and save on time and resources.
- Respondents cited training on how to use innovative tools/techniques such as drones and satellites would be beneficial. This poses an opportunity for peer-to-peer knowledge exchange with organisations which are actively making use of these techniques/tools.

### Waste and Trans-frontier Shipment of Waste

- Almost a third of survey participants responded to this topic area, with the main challenges highlighted as problems with classification of waste types, waste crime, surveillance of illegal dumping, the tracking of hazardous waste and insufficient capacity to deal with waste legally. The greatest challenges in terms of specific industries or process in this work area were end of life vehicles, plastic waste, and electrical waste.
- Two thirds of respondents acknowledged that illegality is now common within the waste management sector, however over 40% said they would state that compliance in the sector is 'broadly compliant'.
- Several factors have created barriers to compliance, including lack of knowledge of legislation, lack of resources for inspection and adverse economic incentives with a similar answer of lack of resources for inspection in addition to inadequate levels of sanctions or fines as key barrier to enforcement in this area.
- Respondents highlighted that specific training of prosecutors, creation of simpler procedures/guidance that can be used uniformly, and knowledge exchange (particularly tools/strategies/approaches that are utilised for site inspections) would be of use

### Single Use Plastics

- Around 20% of survey participants responded to this question area, which focused on Single use plastics, and the process of responding to and implementing new regulations. Some respondents have had experience of dealing with plastics in their day to day role, but nearly half said they had not worked with any aspect of single use plastics until this point.
- There is still some uncertainty around where the responsibility for the implementation of the Single Use Plastics Directive lies, with almost a quarter of respondents stating they still weren't sure if they would be involved in the implementation of this Directive. Two thirds of respondents have not received or taken part in training on this topic yet either, and little guidance has been provided, so this does not provide the clarity required to help regulators do their job.
- The biggest challenge for implementing this Directive is expected to be lack of resources, with staff having to do more work and take on additional duties. Most respondents also stated that they will be planning to collaborate and share knowledge with other regulators on this topic, with some already doing this.

### Climate Change

- This is the first Implementation Challenge where climate change has featured as a standalone topic, with just over half of survey participants responding to this topic area. It's interesting that almost half of those who responded to the survey chose not to answer on this topic, given its impact on environmental regulation.
- Most respondents indicated that issues around climate change were considered at a strategic level in their organisation, and so in their day to day role there is not yet a

strong focus on climate change. The main challenge highlighted in relation to climate change and the regulation of its causes or impacts, was legislation not providing opportunities to regulate effectively to protect against the impacts of climate change.

- Some respondents were able to give examples of how their organisations have already taken measures to overcome challenges in relation to reducing and mitigating the impacts of climate change, including taking into account weather extremes when permitting activities, creation of cross functional teams to consider climate emissions, climate risks and circular economy and increasing the level of knowledge on sustainability and climate change in formal and non-formal settings, including with those who are regulated. Sharing of case studies like these, along with sharing of best practice were identified as useful resources or guidance by respondents.

## Protection of land and water

- Almost a third of survey participants answered questions on water and land, with answers highlighting some of the biggest challenges as ensuring implementation of good agricultural practice, reducing water pollution, monitoring/assessing groundwater. However, with such a wide ranging topic there were many answer options, with all being selected by at least one respondent.
- Almost a third of answers indicated compliance in relation to water and land was broadly compliant, however a quarter of answers expressed concern that compliance levels were at risk. The biggest factors contributing to reaching compliance were staff capacity and lack of self-monitoring or reporting by the operator.
- Staff capacity and lack of resources for inspection were again highlighted as the biggest barrier to enforcement, along with inadequate level of sanctions or fines. Respondents stated that some ways to improve these challenges would be to have specific training for environmental prosecutors, guidance on good practice and harmonizing the approach across authority levels and exchange of experience between IMPEL members.

## Soils

- A quarter of survey participants answered questions on soils, giving a range of answers on the challenges in this work area, including; ensuring implementation of good agricultural practice, monitoring and assessing soil contamination, and enforcement and co-operation of different authorities (similar to the responses in the Water and Land topic area).
- Illegal dumping of waste was identified as the biggest problem within this topic for regulators (in line with information provided in the Waste Crime topic area), with the overall compliance of the sector largely unknown due to lack of information and regular monitoring regimes. Answers also indicated some issues contributing to non compliance are a lack of understanding of the importance of soil and lack of

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understanding of impacts or consequences on soils, highlighting a fundamental lack of knowledge on the topic from the regulated community.

- The biggest barrier to enforcement was lack of staff capacity, along with inadequate levels of sanctions or fines. Several respondents indicated that there was a lack of clarity in responsibilities, especially around agricultural regulation where other agencies are involved. Respondents highlighted that day to day guidance would be of most use in terms of support, but it would also be useful to train prosecutors in the complex nature of environmental problems and share best practice or case studies of successful campaigns on compliance.

## Nature protection (biodiversity and habitats)

- Around a fifth of survey participants responded to this topic, indicating the most challenging issues were preserving or restoring vulnerable protected habitats, managing invasive species and managing the impacts from activities outside protected areas. Again, a wide range of answers were provided, with each being chosen by at least one respondent. A majority of respondents also indicated that the most sector posing most challenges to protecting habitats and diversity was intensive farming.

- There was not a clear picture of overall compliance with regards to nature protection, and respondents answered that barriers to good compliance were mainly around lack of knowledge or understanding of legislation and staff capacity.

- Barriers to enforcement followed a similar theme to compliance barriers, with staff capacity and lack of equipment or tools for inspection being popular answers however the most chosen answer was inadequate level of sanctions or fines. Respondents suggested training and guidance for others involved in the compliance chain, such as prosecutors would be beneficial.

## Environmental damage and restoration

- Around 15% of survey participants responded on this topic area, outlining some of the actions and incentives that they have deployed to help deal with environmental damage including assessments to understand the extent of damage, use of EU Directives, and tracking down the party responsible for the damage. However, it's not clear if these actions are working, with half of respondents unsure about their effectiveness.

- Most organisations require regulated operators to have financial provisions for environmental restoration, with a majority of respondents indicating that this should be a mandatory requirement for operators. There was also uncertainty around the success of organisations in recovering costs from operators, with half of respondents indicating they did not know if they had successfully recovered from operators and over a third stating that they could not recover the costs from operators or polluters.

- Respondents suggested that a greater understanding of the Environmental Liability Directive, and successful case studies to show the process of recovering costs would help to improve confidence of regulators.

## Cross cutting themes:

### Underlying causes of implementation challenges

Respondents selected six underlying causes of implementation challenges from a range of answers. These underlying causes are:

- Insufficient capacity in competent authorities in human resources; it's clear that having enough staff, who are trained appropriately for the role is a huge obstacle in an organisations ability to regulate.

- Unclear, incomplete or overly complex legislation; Not all organisations have a large group of staff with many specialities who are able to review all aspects of environmental legislation, understand it in its totality and then apply appropriately this to their own area of work.

- Insufficient evidence, data and information; inability to record an appropriate baseline or show negative impacts on the environment prevent an adequate response from a regulator.

- Unclear technical specification, terms or definitions provide further challenges to implementation; the use of technical language, terms or definitions in legislation, without further context or supporting information provided can cause problems.

- Complexity of prosecutions; a lack of trained and knowledgeable prosecutors, as well as lengthy prosecution processes where there is most often a lenient penalty for the operator

- Economic incentives not supporting regulations; a serious challenge for regulators as National governments often set Programmes for Governments or strategic goals focusing solely on economic development for operators and businesses. Possible solutions to Overcome Implementation Challenges

- Specific legislation that has posed significant challenges in implementation includes:
  - Industrial Emissions Directive
  - Waste Shipment Regulations, including a consistent use of waste codes
  - Urban Waste Water Treatment Directive
  - Single Use Plastics Directive
  - Legislation applying to agriculture
  - Waste Framework Directive
  - The intersection between legislation from different topic areas, such as the Industrial Emissions Directive, Medium Combustion Plant Directive, Energy Efficiency Directive, Waste Framework Directive and Emissions Trading Scheme

### Possible solutions to Overcome Implementation Challenges

Participants were asked about their view on how to overcome implementation challenges, and their experiences using solutions in their work.

Solutions were categorised as:

- Availability of information and data:

- o Most felt increased access to information on environmental enforcement issues would be a big step in solving issues, along with more standardised and relevant information on environmental condition and management and inspection reports
- o Further comments indicated that any data solutions have to be up to date and quality checked to be of any use, as well as flagging the issue of resource required to process data so it is useful, and complications in data protection laws and incompatibility of data sets
- Access to technology:
  - o Most felt that increased access to access to modern surveillance technology is the most important solution. Linked to this were the next most popular solutions, of access to integrated monitoring systems, mobile technology and communication platforms
- Exchange and cooperation within your authority and with other competent authorities:
  - o The most popular answer option was sharing knowledge, skills and good practice between your and other competent authorities (reducing siloed working and gaining access to a wider pool of expertise).
  - o There was further support for sharing knowledge, skills and good practice inside your authority, establishment of and active participation in networks of environmental professionals to facilitate communication and best practice exchange and co-ordinated communication and action with different inspection authorities.
- Complimentary approaches to improve compliance:
  - o A broad range of answer options were provided with the most popular revolving around three key themes; simplification/streamlining of processes and documentation (where possible), having better access to information, and increasing the involvement and cooperation of relevant parties e.g., local communities, stakeholders, interested citizens and NGO's
- Participants were asked to identify any tried and tested solutions they had success with which could be shared with the network. This included:
  - o Campaigns on compliance strategies
  - o Effective involvement of local communities and stakeholders in environmentally relevant planning and decision processes.
  - o Support for dialogue between site management and neighbours to reduce possible conflicts and complaints.
  - o Information sharing including environmental reports, use of online portals, provision of information to the public, guidance to duty holders, inspection results and high performers

## Non-regulatory goals/agreements/partnerships

There is increased recognition of the use of non-regulatory actions, such as voluntary goals and agreements, and the role they have in encouraging governments, businesses and society to reach ambitious targets.

Most participants indicated they did not routinely use non regulatory tools in their work, but those who did gave examples including:

- Green deals with business sectors, or with individual businesses.
- Guidance and online training for industry and the wider public.
- Accreditation schemes.
- Inclusion of sustainable development and socio-economic considerations in planning and policy development.

Answers indicated that partnership working is common place with other regulatory bodies, as well as non-regulatory bodies and third sector organisations, through knowledge sharing, project collaboration and routine planned work.

The potential benefits of using non regulatory tools or approaches are clear, and participants agreed that positive outcomes could include:

- Improving communication with stakeholders, including the regulated sector and the wider public.
- Providing networking opportunities to improve relationships within the sector and create opportunities with more unlikely organisations.
- Improving implementation of legislation.
- Creating a link to wider agenda or common goal such as the Sustainable Development Goals.

## Compliance and Barriers to Compliance

For most sectors, participants cited compliance as being 'broadly compliant'. The next most popular answers were generally 'I don't know' or 'at risk'. Very few respondents selected that compliance was 'excellent' or 'very poor'.

It's likely that most respondents have specific detail on compliance of the operators they regulate but this might not represent the overall compliance picture of the sector, so an answer of broadly compliant can capture a range of possibilities.

Of note is that a high number of respondents selected 'I don't know' for the compliance of the sector that they work in. This indicates that there is not enough information available to them about the sector that they work in to make a reasonable estimation of overall compliance.

Trends observed in the answers provided to questions on barriers to compliance include:

- Legislation; it's complex nature and a lack of knowledge in how to apply it were common answers throughout the survey. Individuals often do not have adequate

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time to spend on understanding and disseminating the key information required while they do their day-to-day work.

- Staff capacity was highlighted in all areas of work as a barrier to compliance. Staff in many organisations have had increasing workloads and are being asked to do more work in the same amount of time with the same resources. This is not a sustainable scenario and will result in further compliance issues, as well as low morale in staff.

- A number of respondents indicated a lack of inspections, knowledge for inspections, or equipment for inspections was a barrier in reaching compliance in their work. Fewer inspections, or a lack of an appropriate inspection schedule can result in both major and minor non-compliance. In addition to this, if staff aren't trained and given appropriate equipment, they cannot carry out inspections.

- Miscommunication of responsibilities with other authorities, miscommunication or lack of positive communication with the regulated community or the public can worsen already difficult relationships and lead to non-compliance and negative outcomes.

- Legislation relating to climate change; the complex nature of legislation and the time-consuming process of updating legislation to effectively protect against the impacts of climate change.

## Barriers to enforcement

Trends observed in barriers to enforcement responses:

- Inadequate levels of sanctions and fines was a consistently high answer across the topic areas. The lack of issuing fines, notices, warning letters, acceleration of cases to prosecution and further actions to deter illegality hinders the process of deterring non-compliance. If there are no appropriate punishments that are scaled in accordance with the seriousness of the crime, then the pattern of non-compliance will continue indefinitely.

- Lack of resources for inspections also ranked high. there isn't enough resourcing dedicated to doing inspections, then actively non-complaint parties are detected at a much lower rate. Parties which are heading towards non-compliance will also be missed more frequently. Having a general lack of staff capacity simply prevents more work from being achieved, as staff are spread too thinly and are not getting the appropriate levels of support that are needed to practice effective enforcement.

## Capacity Building, Peer knowledge exchange and Training

Throughout nearly all of the sections of the survey, training, or lack of training was highlighted as the underlying reason behind many of the implementation challenges experienced. While job specific training and guidance is the responsibility of an organisation, the IMPEL network can facilitate best practice exchange, work to develop guidance that is

beneficial to network members and focus on topics that members have indicated are challenging.

Almost a third of participants had attended training delivered by either IMPEL or a member of the IMPEL network, including their own organisation, highlighting the awareness of the benefits of this type of training.

It's clear that exchanging information on day-to-day good practice, specific advice on challenging issues and new legislation or requirements is helpful to members of the network. Further comments indicated the most effective methods of knowledge exchange to be:

- Collaborative projects
- Expert exchanges
- Webinars
- National communication networks
- Joint inspections with other regulatory bodies
- Use of case studies

The main barriers to accessing appropriate training delivered by IMPEL were identified as:

- Language barrier. If materials were written in more than one language, or if there was the ability to translate materials into the target language, they would be more useful.
- Competing priorities, from organisation or from national government. It was also noted that often national requirements or frameworks do not align with training material, so there is not a clear link between the two.
- Financial barriers. Most organisations are balancing requirement for training with increasing workloads and reducing budgets.
- Time barriers. Both the lack of time due to workload, and the time required to undertake training (for example 3 or 5 day long courses) were cited as problems in accessing training.

### Responses per topic

The survey was designed in a way to allow participants to answer only the questions that were relevant to their own working remit and knowledge.

In the topics where specialist knowledge was not required to provide answers as they could be answered by anyone working within environmental regulation, for example question on climate change. These topics ranged in response totals, but it is worth noting that just over half of participants answered on the topic of climate change and even less answered on non-regulatory goals/agreements/partnerships. Given these are new approaches and topics, we would want to see these responses increase over time.

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## COVID 19

Experiences of environmental regulation during the COVID-19 pandemic varied, with most impacts affecting access to sites for inspections, access to offices or equipment and ability to communicate with colleagues, and external partners/bodies.

Most organisations developed strategies or new ways of working to accommodate the changes brought about by the pandemic. This included working from home, use of new technology, increased guidance and support for staff and the use of temporary regulatory positions.

The response to the pandemic has in some ways made positive impacts to the work of regulators and shown the resilience and adaptability of organisations. Some of the changes made will continue in the longer term for the workplaces of some of those who responded, for example the advantages of online application platforms and the use of technology to communicate are likely to remain after the pandemic, and the changes to regular ways of working have increased innovation in standard working practices.

It's likely some organisations may continue to change either in structure, or approach to work in the future, with a small number of participants expecting some kind of change to their role. The experience from working during Covid-19 has shown that flexible ways of working can be possible, and in many cases can lead to more efficient processes and increased staff well-being.