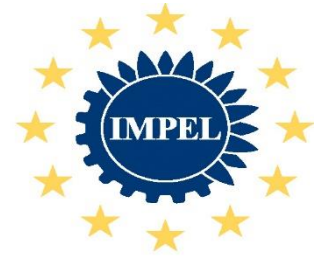




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European Union Network for
the Implementation and Enforcement
of Environmental Law

IMPEL MINI CONFERENCE COMPLIANCE ASSURANCE



**28-29 September 2022
Ghent, BELGIUM**

Member States must have appropriate mechanisms in place to ensure compliance with EU derived obligations (EU directives and regulations concerning environment). Non-compliance may occur for different reasons, including confusion, poor understanding or lack of acceptance of rules, lack of investment, opportunism and criminality. Its impacts on the environment, human health and the economy will depend on the nature, scale and persistence of breaches. In practice, mechanisms for securing compliance involve Member States using three broad classes of intervention (collectively referred to as ‘environmental compliance assurance’) as stated in COM(2018)10 of the Commission¹:

1. Compliance promotion helps duty-holders to comply through means such as guidance, ‘frequently asked questions’ and help-desks.
2. Compliance monitoring identifies and characterises duty-holder conduct and detects and assesses any non-compliance (specific cases of non-compliance or more broad compliance problems in an industrial sector or an area...), using environmental inspections and other checks.
3. Follow-up & enforcement draw on administrative, criminal and civil law to stop, deter, sanction and obtain redress for non-compliant conduct and encourage compliance.

IMPEL members, mostly inspection and enforcement organizations, often have their main focus on compliance monitoring and follow-up & enforcement as the main strategies for assuring compliance and they have a legal framework for implementation of both strategies. Compliance promotion is more in the grey zone, sometimes not being legally incorporated, sometimes the task of other organizations, sometimes neglected as a strategy for securing compliance, sometimes seen as too soft... It is also a bit

¹ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS EU actions to improve environmental compliance and governance

in the grey zone because it is usually reduced to tools as guidance and information... although compliance promotion could be understood more broadly as the set of actions to increase awareness, knowledge and understanding of legal obligations among the target group concerned, thus bringing about a lasting change in behaviour, in order to achieve voluntary and correct compliance with the regulations. Moreover, compliance promotion could be in some cases a more adequate strategy for tackling more broad compliance problems than mere inspections and enforcement.

A Flemish study on behalf of the Department of Environment and Spatial Development, executed by Professor Kurt Deketelaere (Faculty of Law, University of Leuven and University of Helsinki), made an inventory of ‘the instruments’ of compliance promotion, with the help of some IMPEL colleagues. Existing examples of broadly defined compliance promotion have been classified in 4 categories: information and training, technical assistance, transparent communication and compliance incentives. The mini conference aims to give an overview of the full potential of compliance promotion as a full-fledged strategy that stands and works together with the strategies of compliance monitoring and follow-up & enforcement.

AGENDA

Venue: Virginie Loveling gebouw (VAC Gent), Koningin Maria Hendrikaplein 70, Gent
room 21.04 Jacob van Artevelde

Hybrid: number of participants on site: approx.. 40
number of participants online: approx.. 40

International: participants from approx.. 25 countries

Wednesday 28/09/2022 – 9:00 - 17:30

9:00 – 9:15 Welcome

Welcome by Ana Garcia, Chair of IMPEL – online

9:15 – 10:00 Introduction

Introduction to the topic of the mini conference: Professor Kurt Deketelaere – Faculty of Law, University of Leuven and University of Helsinki – online

Agenda of the mini conference + practical arrangements: Martine Blondeel – Department of Environment & Spatial Development of the Flemish Government, Belgium – on site

Presentation 1: Marinus Jordaan - Netherlands/Association of Regional Environment Inspection Agencies, The Netherlands – on site

Investigation of drivers for compliance behaviour as a basis for choosing interventions. Why it is logical that lots of companies not automatically comply with the law. And how you could use this logic to achieve better compliance results. Some results after almost five years of trial and error experimenting with behavioural insights in the Netherlands.

10:00 – 10:30 Session 1: Information and training

'Information and training' focuses on proactively sharing information about policy and regulations in general or about a particular theme in a way that is targeted, meaningful and informative.

Presentation 2: Hugh Coughlan - Eastern-Midlands Regional Waste Management Planning Office, Ireland – on site

Ireland has seen an evolution in its waste enforcement strategy over the last 7 years. The establishment of shared service models at National & Regional level in enforcement, planning and regulation has led to a more holistic and integrated approach to compliance. These shared services working with and on behalf of local municipalities have also enabled greater speciality and expertise within resources and ensured a more systematic, consistent and indeed measurable level of engagement with all stakeholders. The overall assessment at this juncture on what still is an early stage on the journey is that Ireland now has a more engaged, informed and ultimately more compliant sector.

10:30 – 11:00 Coffee break

11:00 – 12:15 Session 2: Technical assistance

'Technical assistance' focuses on explaining to target groups what the intention of specific legal rules is by clarifying the requirements that are set for specific target groups, products or activities and by making a number of templates, toolkits, checklists and self-evaluation tools available for this purpose. Technical assistance distinguishes itself from information and training by its interactive, often real-time character and the focus on one activity, product or target group.

Presentation 3: Simon Bingham - Scottish Environmental Protection Agency (SEPA), United Kingdom – on site

NetRegs is a partnership between the Northern Ireland Environment Agency (NIEA) and the Scottish Environment Protection Agency (SEPA). NetRegs is a free to use website which aims to improve the compliance of small and medium-sized enterprises (SMEs) in Scotland and Northern Ireland by helping them understand environmental regulations. The website and tools provide guidance, written in simple, easy to understand language, on how to comply with environmental law as well as advice on best environmental practice. (www.netregs.org.uk)

Presentation 4: Sebastien Janssens – Flemish Land Agency (VLM), Belgium – on site

In 2007, the Flemish Land Agency (VLM) set up a “farm consultancy and sensitizing service” (BAS) to guide, advise and sensitize farmers about manure legislation under the Nitrates Directive and its practical consequences and application on the farm. In addition to providing individual advice to farmers, the advisors also took care of other tasks, such as providing information sessions and providing information sheets. This public service was phased out in 2017 and has since been discontinued. Meanwhile it had been replaced by a partnership of private and public organisations in a non-profit association, the “coordination center for education and guidance on sustainable fertilization” (CVBB). Recently, based on an evaluation, another approach was decided, with the new set up of the “counselling service towards a better soil and water quality” (B3W), with a clear bottom-up approach and more elaborated obligations of result. This presentation about technical assistance on achieving the goals of the Nitrates Directive, is also a presentation about evaluation and evolution.

12:15 – 13:30 Lunch time – resto VAC Gent – 3rd floor

13:30 – 15:15 Session 3: Transparent communication

'Transparent communication' means the disclosure of enforcement data and information by the government and of self-monitoring data by the business community. This very concrete and visible approach aims to inform and confront companies and citizens about their own compliance behaviour or that of others, so that they can learn the necessary lessons and adapt their own behaviour. By communicating transparently about compliance behaviour, enforcement authorities can deliberately build public support for compliance. The use of enforcement and compliance data can thus be the basis for citizen engagement. Through scoring systems, legal subjects can be ranked according to their compliance behavior and this score can be made public (praise & fame or name & shame). Transparent communication can also be used to individually draw up a score on compliance behavior so that an insight is obtained in the place of the score in the ranking of the target group, without these results being made public.

Presentation 5: Michael Barrette - Enforcement Targeting and Data Division, US EPA – on site

ECHO, Enforcement and Compliance History Online, is a web tool developed and maintained by EPA's Office of Enforcement and Compliance Assurance for public use. The ECHO website provides environmental regulatory compliance and enforcement information for over one million regulated facilities nationwide. It also offers information about compliance and enforcement activities at the state level. ECHO was developed originally with the intent to ensure the public was aware of environmental violations, and US EPA hoped that by putting information online, that regulated entities would be incentivized to fix violations quickly and stay in compliance. Like other environmental databases in the US (e.g. TRI, Toxic Release Inventory), ECHO (like TRI before) has become an important means of pressure (in the hands of citizens, organisations, governments) on companies to comply with legislation. Like TRI, ECHO proves that "transparency leads to better compliance". Hard evidence is not available, but there is a lot of "anecdotal confirmation" that convinces the US EPA that ECHO does have a "compliance effect". This presentation will explain the content of what ECHO provides, the initial difficulties to making the information public, and the evolution of the project to bring more and more information to the public.

Presentation 6: Kealan Reynolds – Environmental Protection Agency, Ireland – online

The National Priority Sites system allows the EPA to identify which industrial and waste licensed sites should be prioritised for enforcement based on their environmental performance. The list is used to target the EPA's enforcement effort at the poorest performing sites in order to drive improvements in environmental compliance. Each site is given a score based on its licence compliance in the previous six months. The system has been in place in Ireland since mid-2017 and has become a key part of the EPA's enforcement toolbox. The National Priority Sites list is published at the end of each quarter and continues to drive compliance amongst the licensed community in Ireland.

Presentation 7: Bart Pannemans – Department of Environment & Spatial Development of the Flemish Government, Belgium – on site

Drilling activities, such as geothermal boreholes, groundwater wells or dewatering of construction sites, require an environmental permit and must comply with technical regulations. In addition, they can only be carried out by licensed drilling companies, who have a number of reporting obligations: drilling activities need to be announced in advance, so that inspections during the drilling can be organized, and afterwards activities need to be reported in the digital platform of Databank Ondergrond Vlaanderen (DOV), allowing the reuse of such data. However, compliance with the reporting obligation by the drilling companies is often insufficient (number of data, quality of data, etc.). Individual reports on reporting behavior are compiled by analysis of the reported data, and sent to each company. These 'school reports' should encourage the drilling companies to improve their compliance behavior.

15:15 – 15:45 Coffee break

Session 4: Compliance incentives

‘Compliance incentives’ are based on the use of advantages or disadvantages to elicit compliance. A first type of incentive is the adjustment of the inspection frequency based on past compliance or on the voluntary application of certified environmental management systems. The better the compliance behavior, the fewer inspections are necessary. Companies that subject their activities to an environmental management system, carry it out correctly and report on it (to the government and to the public) can be subjected to a lower frequency of inspection. In addition, economic, fiscal and financial incentives are also possible. Examples include: making support conditional on compliance behaviour, different forms of creative financial arrangements and the application of supervisory levies for specific inspections, in particular for the additional inspections needed to curb illegal behaviour. A third type of incentive is to enter into partnerships such as private assurance. In practical terms, this means that private parties themselves systematically check compliance, correct violations and take measures to prevent the recurrence of violations. In that case, the government can start monitoring at meta-level (meta-supervision). Partnerships between governments can also stimulate compliance, such as when following up on cross-compliance measures with other government agencies. Another type of stimulus is nudging. This is a behavioral psychological motivation technique in which people are subtly stimulated to behave in a desired way.

Presentation 8: David Pugh – Environment Agency (England), United Kingdom - online

The Environment Agency (England) Compliance Classification Scheme.

The compliance classification scheme is used by our Officers to score non-compliances with conditions in an operators permit. Criteria are used to determine the severity of the non-compliance and potential risk to human health and the environment, ranging from major to no impact. The output from this assessment is used in a number of ways: recording and sharing with the operator our assessment of any non-compliance with permit conditions; ranking and scoring these non-compliances; informing our risk-based approach to deployment of people and resources; setting a charge multiplier for annual subsistence charges based on performance, in line with the polluter pays principle with poor performers paying more than those who are compliant; annual reporting on business performance

Presentation 9: Samira Ghaznawi, Robbe Deleu and Aranka Vandesande – Flemish Waste Agency, Belgium – on site

The Flemish Waste Agency works closely with the private sector to monitor compliance with environmental regulations. After all, many companies are involved in 'waste', which is disproportionate to the number of inspectors. A known compliance problem concerns the sorting behaviour of companies and the collection of industrial residual waste, whereby too much waste is admitted that does not belong there. The inspectors carry out checks on companies in this respect. Recently, new regulations came into force whereby, in addition to public supervision, residual waste collectors are also deployed to check their customers for sorting errors, keep records of non-conformities and, in the case of certain collections, possibly also carry out post-sorting. These collectors are in turn administratively checked by OVAM. This new arrangement of public-private cooperation allows supervisors to achieve greater coverage (more inspections, because also by the collectors) and more targeted enforcement (use of the data in the registers for risk analysis and targeting). For the inspection of the extended producer responsibility under the WEEE directive and the battery directive, the public-private cooperation goes one step further: 'flow followers', paid by the private sector, are employed in the inspection service. There, they take on a role of assisting companies and at the same time, they form an intermediary for public supervision.

17:00 – 17:30 Conclusion of the day

Concluding discussion with the participants: conclusions on the use of the strategy of compliance promotion - some topics for further discussion – other examples of compliance promotion – further work done in Flanders

Conclusion of the day + practical arrangements: Martine Blondeel – Department of Environment & Spatial Development of the Flemish Government, Belgium – on site

19:30 – 22:00: Social Dinner Mini Conference – Sgol, Emile Braunplein 40, Gent

Thursday 29/09/2022 – 9:00 - 12:00

Venue: Virginie Loveling gebouw (VAC Gent), Koningin Maria Hendrikaplein 70, Gent
room 00.01 Karel Waeri

9:00 – 10: 15 Focus on Compliance Strategies US EPA

Presentation 10: Michael Barrette - Enforcement Targeting and Data Division, US EPA – on site

Enforcement and Compliance History Online (ECHO) – Demonstration and Deeper Dive into key features, reports, and new directions

Presentation 11: Amy Porter - Office of Enforcement and Compliance Assurance, US EPA - online

US EPA Enforcement and Compliance Assurance Tools.

This presentation includes an overview of US EPA enforcement and compliance assurance tool categories including assistance, incentives, monitoring, transparency and communication, and informal and formal enforcement. Covers tool categories as well as specific tools and discussion about policies and guidance, case specific determinations, and the strategic use and sequencing of tools with examples. Touches on basic principles of deterrence, escalation and theories of compliance behavior.

10:15 – 10:45 Coffee break

10:45 – 11:50 In depth discussion on compliance assurance strategies and further work

10:45 – 11:50 In depth discussion on:

- topics defined in the conclusions of the mini conference first day
- topics resulting from the presentations of US EPA
- the connection with other work on compliance strategies:
 - link with the new proposal by the EU Commission for the Environmental Crime Directive
 - link with the Regulatory Framework Subproject of Climate Change Emergency Programme of the Cross Cutting expert team of IMPEL

Presentation 12: Simon Bingham - Scottish Environmental Protection Agency (SEPA), United Kingdom – on site

The movement from a carbon-based economy to a green economy is not a simple process. It will require careful navigation by many regulators to enable activities that can transition to do so whilst managing those activities that cannot to a successful closure without leaving lasting legacy issues. This will require regulators to use new tools and techniques and work in an extremely sensitive and potentially locally charged atmosphere. Regulatory strategy needs to be developed to include strategic alignment. The regulatory strategies needed to carry out this work are different from those employed during traditional regulation. We also all know that the climate is changing rapidly and bringing with it different weather patterns. Our regulatory framework has, however, not changed. This is a big piece of work potentially.

11:50 – 11:55 Conclusion of the mini conference and further work to do in this field for IMPEL

Martine Blondeel – Department of Environment & Spatial Development of the Flemish Government, Belgium – on site

11:55 – 12:00 Closure of the Mini Conference

Closure by Kristina Rabe, vice Chair of IMPEL – online