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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE  
EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**on the review of Recommendation 2001/331/EC providing for minimum criteria for  
environmental inspections in the Member States**

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**INTRODUCTION**

Inspections are an important instrument to ensure the implementation and enforcement of Community environmental legislation.

In 2001, recognising that there was a wide disparity between inspection systems in the Member States, the European Parliament and the Council adopted Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States<sup>1</sup>.

The Recommendation contains non-binding criteria for the planning, carrying out, following up and reporting on environmental inspections. Its objective is to strengthen compliance with Community environmental law and to contribute to its more consistent implementation and enforcement in all Member States.

Member States were requested to report on their implementation of the Recommendation and on their experiences with its application. On the basis of these reports and any other information available the Commission was invited to produce a report on the implementation of the Recommendation and a proposal for its further development, if necessary in the form of a directive.

The report summarising the available information on the implementation and application of the Recommendation is annexed to this Communication<sup>2</sup>.

Before making any concrete proposals the Commission intends to gather input from the other institutions, from the informal network of European enforcement authorities (IMPEL<sup>3</sup>) and from other stakeholders.

This Communication is consistent with the Better Regulation agenda as compliance and enforcement are essential components of the regulatory cycle.

This Communication is submitted to the European Parliament, Council, Economic and Social Committee and the Committee of the Regions. The purpose of the Communication is to set out the Commission's views on the further development of the Recommendation and to launch a broad discussion with the other institutions and interested parties.

The European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions are invited to give their views on the issues raised in this Communication.

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<sup>1</sup> OJ L 118, 27.4.2001, p. 41

<sup>2</sup> Commission Staff Working Paper SEC XXXX, Report on the implementation of Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States, Annex to the Communication of the Commission on the review of Recommendation 2001/331/EC

<sup>3</sup> European Network for the Implementation and Enforcement of Environmental Law, <http://ec.europa.eu/environment/impel/index.htm>

During 2007 the Commission will hold meetings with stakeholders and carry out an internet consultation.

Input from IMPEL will be obtained through the IMPEL project on the further development of the Recommendation that should be completed by the end of 2007.

Taking into account the outcome of these discussions the Commission will propose the appropriate way forward for the further development of the Recommendation in 2008.

## **1. IMPLEMENTATION OF THE RECOMMENDATION IN THE MEMBER STATES**

All Member States submitted a report on the implementation of the Recommendation and a report on their experiences with the application of the Recommendation.

In many cases the information submitted was incomplete or difficult to compare. For some Member States where responsibility for environmental inspections lies with the regions it was impossible to draw conclusions at national level. Also it must be noted that, while some Member States have sent updated information in 2006, most of the information relates to the situation in 2002-2003.

Despite these gaps in the available information, it can be seen that, although almost all Member States have partially implemented the Recommendation (to varying degrees), only a few have achieved full implementation. More detailed information on the implementation of the Recommendation can be found in the annexed report.

The available information indicates that there are still large disparities in the way environmental inspections are being carried out within the Community. Such disparities mean that the full implementation of environmental legislation in the Community can not be ensured. They also lead to distortions of competition for businesses.

This situation of incomplete implementation is partially due to differing interpretations by Member States of the definitions and criteria of the Recommendation and of the reporting requirements.

There also appear to be large differences in the political priority given to environmental inspections in Member States. Some Member States have pointed out that the limited resources available for inspecting authorities did not allow them to develop a fully effective system of environmental inspections.

## **2. AREAS FOR IMPROVEMENT OF THE RECOMMENDATION**

The available information shows that the following elements of the Recommendation need further discussion with a view to improving the effectiveness of the Recommendation.

### **2.1. Definition of the scope**

Currently the Recommendation covers environmental inspections of all industrial installations or other enterprises or facilities whose air emissions, water discharges or waste disposal or recovery activities are subject to authorisation, permit or licensing requirements under EC law. There appears to be a need to clarify this definition of the scope. The scope has been interpreted in different ways by Member States, which has resulted in large differences in the number of installations subject to environmental inspections and large differences between the percentages of installations inspected per year in the Member States. For instance, some Member States apply the Recommendation only to installations falling under the IPPC

Directive<sup>4</sup>, while others cover also other installations. This difference in interpretation is particularly relevant for the waste sector, where many non-IPPC installations are subject to inspection requirements.

The current scope focuses mainly on industrial and waste treatment installations and excludes many activities that are regulated under Community environmental legislation.

In particular, the Recommendation does not contain criteria for the inspection of waste shipments. Transboundary shipments of waste are regulated at EU level by the Waste Shipment Regulation<sup>5</sup>. The implementation of this Regulation is a high priority for the Commission. In joint inspections carried out in 30 EU ports by 13 Member States simultaneously in the framework of IMPEL around 50% of the waste shipments were found to be illegal. These findings as well as recent significant incidents of illegal waste shipments such as the dumping of waste in the Ivory Coast, which caused deaths and serious environmental pollution, have resulted in wide-spread calls from Member States, European institutions, NGOs and the general public to strengthen the enforcement of the Waste Shipment Regulation, in particular with regard to the inspections to be carried out. It is essential for the Community to work together in the fight against illegal waste shipments. The new Waste Shipment Regulation, which was adopted in 2006 and entered into force in July 2007, contains some provisions for an improved enforcement of the Regulation and for an increased cooperation between Member States. It does not, however, lay down criteria for inspections of waste shipments.

The Recommendation also does not include criteria for the inspection of Natura 2000 sites. EC legislation on nature protection (the Birds Directive<sup>6</sup> and the Habitats Directive<sup>7</sup>) aims to establish a European ecological network of Special Protection Areas and Special Areas of Conservation (Natura 2000) and ensure the protection and enhancement of the sites which constitute the network. The proper implementation of this legislation is of high importance for EU nature conservation. The Commission thus welcomes the creation of the Green Enforce Network, which aims at encouraging cooperation and exchange of experiences between Member States to facilitate the implementation of nature legislation. The Green Enforce Network is currently considering contributing to the further development of environmental inspections by developing criteria for the inspection of Natura 2000 sites.

Other environmental legislation to which the Recommendation is not applicable concerns the the registration and authorisation of chemicals (REACH<sup>8</sup>), the restriction of certain hazardous substances in products (eg the RoHS Directive<sup>9</sup>), trade in endangered species<sup>10</sup> as well as activities related to genetically modified organisms and producer responsibility systems.

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<sup>4</sup> Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, OJ L 257, 10.10.1996, p. 1

<sup>5</sup> Regulation (EC) No 1013/2006 on shipments of waste, OJ L 190, 12.7.2006, p.1, p

<sup>6</sup> Directive 79/409/EEC on the conservation of wild birds, OJ L 103, 25.4.1979, p.1 as last amended by Directive 91/244/EEC, OJ L 115, 8.5.1991, p. 41

<sup>7</sup> Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7

<sup>8</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EC) No 793/93 and Commission Regulation No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396, 30.12.2006, p. 1

<sup>9</sup> Directive 2002/95/EC of the European Parliament and the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment, OJ L 037, 13.2.2003, p. 19

## 2.2. Clarification of definitions

The reports have shown that some terms used in the Recommendation are interpreted in different ways by Member States. This has led to differences in the implementation of the Recommendation in Member States and in the information reported by the Member States.

Differing interpretations can be seen in particular for the following terms:

– Inspection, control, audit

Under the Recommendation the term inspection covers activities that entail checking and promoting compliance of controlled installations with relevant environmental requirements, the monitoring of the impact of installations. The Recommendation lists a number of such activities as examples. The terms control and audit are part of these listed inspection activities, but are not defined.

The definition of inspection in the Recommendation is thus very broad and should cover any activity that aims to promote compliance with environmental requirements by installations. It has, however, been interpreted differently by Member States, some having a very narrow interpretation covering for instance only direct controls at installations and others a much broader approach.

This difference in interpretation has an effect on the implementation of the Recommendation and in particular on the planning of inspections, as all activities concerned should be taken into account in the inspection plans. It also makes it difficult to compare the information provided by Member States on the inspections carried out and in particular the proportion of controlled installations that have been inspected.

– Inspection authority

Pursuant to the Recommendation an inspection authority is any public authority, which is established or designated by Member States and responsible for matters covered by the Recommendation and any legal person to whom these tasks have been delegated by these authorities to be accomplished under their authority and supervision, provided such person has no personal interest in the outcome of the inspections it undertakes. In some Member States where many different authorities could be directly or indirectly involved in inspection activities it was sometimes difficult to distinguish which authorities should be regarded as inspection authorities. This lack of clarity has implications for the implementation of the Recommendation, and in particular for the planning of inspections, as the plans should cover the activities of all inspection authorities.

– Inspection plan, inspection programme

The terms inspection plan and inspection programmes are not defined in the Recommendation. A number of Member States seem to have different interpretations of what the term 'inspection plan' means. This is meant to be a strategic document for the prioritisation of environmental inspections. There was some confusion with the term 'inspection programme' which indicates the installations that are to be inspected in a certain period and which according to the Recommendation should be a part of the inspection plan. A consequence of this is that many Member States' inspection plans consist merely of list of installations or sectors that will be inspected in a certain time period. The difference between the two terms is also relevant for the implementation of the provisions on access to

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<sup>10</sup> Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, OJ L 61, 3.3.1997, p. 1

environmental information. Some Member States argue that they do not make inspection plans available to the public, as they want to avoid informing and warning operators of any imminent inspection planned. The distinction between plans and programmes could be useful in order to separate the policy aspect (plan) from the operational aspect (programme); the plans could then be published without fear of jeopardising individual inspections.

– Cross-border mechanism

Pursuant to the Recommendation Member States should encourage the coordination of inspections with regard to installations and activities that might have significant transboundary impacts. The information provided on this point in the reports of the Member States was incomplete and diverse. Some Member States provided some examples of administrative cooperation with neighbouring countries or districts. Some Member States referred to joint inspections of waste shipments carried out in IMPEL projects. Some Member States referred more generally to exchange of experiences between Member States in the framework of IMPEL projects. Due to these different interpretations, it could not be assessed whether Member States have implemented this part of the Recommendation.

– Routine, non-routine inspections

According to the Recommendation routine inspections are carried out as part of a planned inspection programme. Non-routine inspections are carried out in response to complaints, in connection with the issuance, renewal or modification of a permit or as part of the investigations of accidents, incidents and occurrences of non compliance.

In some Member States different categories of inspections have been established, e.g. reactive or non-reactive inspections, scheduled or unscheduled inspections etc. These can not always be clearly attributed to the categories routine or non-routine. Differences in interpretation of these terms made it difficult to assess the implementation of the Recommendation in some Member States. The distinction is particularly important for the planning of inspections, as the time and resources needed for both routine and non-routine inspections have to be considered in the plans.

### **2.3. Criteria for planning, carrying out, following up and reporting on inspections**

The objective of the Recommendation is to strengthen compliance of controlled installations with environmental legislation. Member States should also ensure that environmental inspections aim to achieve a high level of environmental protection. In order to achieve this, the Recommendation sets out criteria on how to plan, carry out, follow up and report on environmental inspections.

#### *2.3.1. Planning of inspections*

The Recommendation provides for the establishment of inspection plans and sets out general criteria for these plans describing the coverage of the plans, the basis on which they should be developed and their minimum content.

These criteria do not seem to have been fully implemented in all Member States. In many Member States inspection plans do not contain strategic elements but rather consist of lists of installations or sectors to be inspected in a certain time period.

In addition to the need to clarify some key terms related to inspection planning as mentioned above under point 2.2., there seems to be a potential for further improving the planning of inspections in the Member States. This would allow Member States to make the best possible use of their available resources by better targeting inspections of installations. Some Member States have already established advanced systems to plan inspections. The use of risk-based

management approaches to plan inspections has been suggested as a method for achieving good practice in inspections. This risk-based approach can be based on different criteria, such as environmental risk, environmental objectives and compliance history of the installation. One example of such an approach is the UK Operator and Pollution Risk Appraisal (OPRA) system, which is based on several criteria such as the complexity of the installations, its location and emissions as well as operator performance and history of the installation.

### *2.3.2. Carrying out of inspections*

The Recommendation states that site visits should be regularly carried out as part of the authorities' routine inspections and in the case of complaints, accidents, incidents or occurrences of non compliance and after issuing a permit and before reissue or renewal or modification of a permit. Criteria are set out describing how these site visits should be carried out. The findings of the site visits should be contained in reports, which should be communicated to the operator and be made publicly available. Serious accidents, incidents or occurrences of non-compliance should be investigated to clarify the causes and responsibilities, mitigate or remedy the environmental impacts, determine the action to be taken as well as potential sanctions or enforcement measures. The follow-up by the operator should be ensured. There are no criteria for other inspection activities.

### *2.3.3. Evaluation of inspection plans*

Although the Recommendation does not expressly state that the implementation of inspection plans should be evaluated, point VIII of the Recommendation requests Member States to report on the evaluation of the success or failure of their inspection plans.

Evaluating the success of inspection plans has been recognised as an important tool to improve the planning of inspections. Some Member States have put in place sophisticated systems to evaluate the success of their inspection plans. These systems have helped them to define their future plans.

## **2.4. Reporting**

The first reporting exercise has produced a large amount of information showing how the Recommendation is implemented and applied in the Member States. The information is, however, not always comparable and does not always allow clear conclusions on the efficiency of the inspection systems in the Member States. It has been suggested that a simpler reporting system more targeted to measuring the success of inspection systems should be developed. A very clear uniform format for such a reporting system would need to be developed to ensure comparability of the data.

## **2.5. Access to information**

The Recommendation states that the inspection plans and the inspection reports should be made available to the public in accordance with Directive 90/313/EEC. This Directive has in the meantime been replaced by Directive 2003/4/EC. The new directive specifies in more detail than the previous one the concept of environmental information, the grounds for refusing access to information and the obligation to actively make information available to the public, e.g. via the internet.

The reports have shown that several Member States do not make the inspection plans and reports available. Member States have given several reasons for this. Often the inspection plans are lists of installations that are to be inspected in a certain time period. The release of this information could jeopardise the success of the inspections. Inspection reports are also often not made public because they could contain confidential commercial information.

Information related to environmental inspections is covered by the requirements of Directive 2003/4/EC, so the legal obligation to make the information available exists already. The Directive also gives sufficient grounds for exemptions to refuse access to this information where other overriding interests need to be protected.

It seems that in many cases the underlying cause for the lack of implementation of these provisions is the difficulty for authorities to find practical ways of separating the confidential information from the information that should be made accessible to the public. For example ways need to be found to make the strategic part of the inspection plan public, without also making public the part that contains the list of installations that will be inspected in a certain time period.

### **3. PROPOSED WAY FORWARD**

Before the Recommendation was adopted there was a discussion on whether the criteria for environmental inspections should be legally binding or not. The outcome of the discussion was the adoption of a non binding Recommendation and the request to the Commission to review the Recommendation in the light of the experiences made with the implementation of the Recommendation and where necessary present a proposal for a directive.

In the opinion of the Commission the lack of full implementation of the Recommendation makes it necessary to consider establishing legally binding requirements for environmental inspections. In addition there is a need to clarify the general criteria for environmental inspections and to provide further guidance and exchange of information on their implementation. Accordingly, the following actions are proposed:

#### **3.1. Revision of the Recommendation**

The Recommendation should be seen as a general framework for environmental inspection systems in Member States. Its criteria are of a general nature, describing how environmental inspections should be planned, carried out and followed up. Due to this very general and descriptive nature of the criteria, it does not seem appropriate to transform them into legally binding requirements.

However, in order to improve its implementation and strengthen its effectiveness, the Recommendation should be amended. In particular it should be considered to broaden its scope so that it covers as far as possible all environmentally significant activities. The definitions relevant to inspections should be clarified. The further development of criteria for the planning of inspections should be considered. A reporting system that is as simple and clear as possible should be established to provide comparable information on how inspection systems are working and whether they achieve the objective of improving compliance with environmental legislation.

#### **3.2. Sectoral inspection requirements**

In addition to the general criteria for environmental inspections set out in the Recommendation, specific legally binding requirements for the inspection of certain installations or activities should be included in sectoral pieces of legislation. Legally binding requirements are necessary to ensure that a higher political priority is given to inspections and that environmental legislation is better enforced throughout the Community. Defining the inspection requirements in each legislative act has the advantage that the requirements can be adapted to the specific nature and risks of the installations or activities covered and can be more precise and better targeted than general criteria. These sectoral inspection requirements



can be complementary to the Recommendation or they can concern installations or activities that are not covered by the Recommendation.

One example of an existing well functioning sectoral inspection system is the one established by the Seveso II Directive for the control of major-accident hazards<sup>11</sup>. Pursuant to this directive authorities must organise a system of inspections or other measures of control appropriate to the type of establishment concerned. The Directive defines a minimum frequency of on-site inspections of one per year and obliges Member States to ensure that inspection programmes are drawn up for all establishments, that reports are prepared after inspections and that, where necessary, inspections are followed up with the management of the establishment within a reasonable period.

As part of the review of the IPPC Directive<sup>12</sup>, which is on the 2007 Commission Legislative Work Programme, and based on the analysis of the implementation of this legislation, the Commission will consider ways to secure a better compliance framework to ensure more consistency and confidence in Member States' inspection of IPPC installations.

The Commission is considering proposing specific legally binding rules for inspections of waste shipments. Unlike inspections of installations, inspections of waste shipments are carried out in different spots, such as sea ports, roads or border crossings and they usually involve many different authorities, such as customs, police and environmental authorities. Specific criteria should be defined to ensure sufficient quality and frequency of inspections and provide for appropriate training and co-operation among authorities.

In the case of product related legislation such as Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment<sup>13</sup> compliance is checked through a system of market surveillance and conformity assessment procedures. It should be examined whether there is a need to strengthen this system on the occasion of the current review of this Directive.

Other pieces of environmental legislation that are currently under review or under preparation, and in which the necessity of establishing or reinforcing inspection requirements will be looked at, are:

- Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC<sup>14</sup>
- Regulation (EC) No 2037/2000 on substances that deplete the ozone layer<sup>15</sup>
- Directive 98/83/EC on the quality of water intended for human consumption<sup>16</sup>
- Directive 86/609/EEC on the approximation of laws, regulation and administrative provisions regarding the protection of animals used for experimental and other scientific purposes<sup>17</sup>
- Directive 2002/96/EC on waste electrical and electronic equipment<sup>18</sup>

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<sup>11</sup> Directive 96/82/EC on the control of major-accidents hazards involving dangerous substances, OJ L 10, 14.1.1997, p. 13, as last amended by Directive 2003/105/EC, OJ L 345, 31.12.2003, p. 97

<sup>12</sup> Directive 96/61/EC on the prevention and control of pollution

<sup>13</sup> OJ L 37, 13.2.2003, p. 19

<sup>14</sup> OJ L 275, 25.10.2003, p. 32

<sup>15</sup> OJ L 244, 29.9.2000, p. 1

<sup>16</sup> OJ L 330, 5.12.1998, p. 32

<sup>17</sup> OJ L 358, 18.12.1986, p. 1

<sup>18</sup> OJ L 37, 13.2.2003, p. 24

- Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein<sup>19</sup>
- Future directive on the injection and sub-surface storage of carbon

The issue of inspections should also be considered in future reviews of legislation.

### **3.3. Development of guidance and cooperation between Member States**

IMPEL has carried out a long list of projects which aim to strengthen the cooperation and encourage the exchange of information between Member States on environmental inspections<sup>20</sup>. The Commission has actively supported and participated in these projects.

In particular the following projects should be mentioned:

The IMPEL Review Initiative (IRI) consists of sending a team of senior inspectors from different countries to explore the regulatory system of the candidate inspectorate by comparing practice in the candidate inspectorate with the arrangements in the inspectorates of the review team members. IRI projects have been carried out in 8 volunteer EU Member States – Germany (Mannheim), Ireland (Wexford), Belgium (Brussels), France (Douai), The Netherlands (Zwolle), Spain (Santiago de Compostela), Sweden (Stockholm and Södertälje) and the United Kingdom (Scotland) as well as in Norway- between 2001 and 2007.

The IMPEL Cluster Transfrontier Shipments of Waste has carried out several projects concerning the prevention of illegal shipments of waste, including the organisation of joint inspection activities.

Numerous guidance documents have been developed by IMPEL on how to plan and carry out inspections. Exchanges of information and experiences between inspectors have been organised.

All these initiatives have had a positive impact on the strengthening of inspections in the Community and IMPEL should be encouraged to continue such projects.

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<sup>19</sup> OJ L 61, 3.3.1997, p. 1

<sup>20</sup> For detailed information see IMPEL website: <http://ec.europa.eu/environment/impel/index.htm>