



COMMISSION OF THE EUROPEAN COMMUNITIES

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98/0358 (SYN)

**PROPOSAL FOR A COUNCIL RECOMMENDATION PROVIDING FOR  
MINIMUM CRITERIA FOR ENVIRONMENTAL INSPECTIONS IN  
THE MEMBER STATES**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. JUSTIFICATION OF THE PROPOSAL

#### 1.1 General considerations

Concern about the state of implementation and enforcement of Community environmental legislation has grown in recent years as the *acquis communautaire* in this sector has developed. The Dublin European Council in June 1990 stressed that Community environmental legislation would only be effective if fully implemented and enforced by Member States. The European Parliament adopted a resolution in 1992 on the subject<sup>1</sup>. The Commission and the European Parliament held a joint public hearing in May 1996 entitled "Challenges to Environmental Protection: Making the Legislation Work". This activity and interest culminated in the adoption, by the Commission, of its Communication on Implementing Community Environmental Law<sup>2</sup> which was sent to the Council and the European Parliament on 5 November, 1996.

The Communication noted the wide disparity between Member States' environmental inspection activities, identified the *lacunae*, and recognised the necessity of ensuring that minimum inspection tasks were performed, in particular as regards the monitoring of industrial point source emissions. The Communication therefore recommended the "establishment of guidelines, thereby reducing the currently existing wide disparity among Member State inspections." The European Parliament and the Council endorsed this recommendation in Resolutions adopted in response to the Communication.<sup>3</sup>

The Commission's Communication and the Council's Resolution envisaged a role for IMPEL (The European Union Network for the Implementation and Enforcement of Environmental Law) in this context. The Council's Resolution considered that IMPEL should "*play... an important role during the different stages of the "regulatory chain" <sup>4</sup> and could, in particular, give advice - on request or on its own initiative - on general questions regarding implementation and enforcement as well as on new draft proposals for Community legislation, in particular where the input of practical experience is necessary.* In particular the Council Resolution asked "...the Commission,

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<sup>1</sup> OJ No C125, 18.5.1992, p. 122

<sup>2</sup> COM(96) 500 final 22.10.96

<sup>3</sup> PE 259.215/63 14.5.97 and OJ NoC321, 22.10.1997, p.1

<sup>4</sup> "Regulatory chain" is the whole process through which legislation is designed, conceived, drafted, adopted, implemented and enforced until its efficiency is assessed. It is a methodological tool allowing for a "holistic" approach to address instruments of environmental policy.

*taking into account the variety of existing systems, to propose for further consideration in Council, in particular on the basis of the work of IMPEL, minimum criteria and/or guidelines for inspection tasks carried out at Member State level and the possible ways in which their application in practice could be monitored by Member States in order to ensure an even practical application and enforcement of environmental legislation”.*

IMPEL, which was established in 1992 to promote the exchange of information and experience and the development of a greater consistency of approach in the implementation, application and enforcement of environmental legislation, has examined the question of minimum criteria for environmental inspections and adopted a paper on the subject in November 1997 which has formed the basis for this proposal. To this extent the Commission has been anxious to put into practice the intention set out in its Communication to involve those with implementation and enforcement responsibilities in the Member States at an early point in the legislative process.

## **1.2 Environmental objectives to be achieved**

Article 3(k) of the Treaty provides that the activities of the Community shall include a policy in the sphere of the environment. This is provided for further under Title XVI of the Treaty. In particular, Article 130s(4) provides that “*the Member States shall....implement the environment policy*” of the Community. Furthermore, Article 155 of the Treaty empowers the Commission to have its own power of decision and participate in the shaping of measures taken by the Council and the European Parliament in the manner provided for in the Treaty and Article 189 provides for the making of recommendations by, *inter alia*, the European Parliament acting jointly with the Council.

Given the development of a considerable *acquis* in the field of the environment since the mid 1970s, the importance of securing full and effective enforcement of those laws in terms of implementing the Community’s environment policy is self-evident. Providing, as a first stage, for guidelines for minimum criteria for the conduct of environmental inspections by Member States will further that process.

The proposal is orientated to pollution to air, water and land from point sources which are regulated under Community law. It is intended that it should apply in the first stage to environmental inspections of industrial installations and other enterprises and facilities whose emissions and/or discharges to the environment or activities which may lead thereto, are subject to authorisation, permit or licence under Community law. It will, thus, cover environmental inspections falling under those sectors of Community law relating to integrated pollution prevention and control, water quality and waste and also nuclear installations, including those in the research and medical sectors. It does not extend at this stage to inspections for pollution from diffuse sources.

## **2. CHOICE AND JUSTIFICATION OF LEGAL BASE**

The proposal is based on Article 130s (co-operation procedure) of the Treaty which is the specific legal base for the Community's policy in the field of the environment. Article 100a can only be relied upon for measures which have as their objective the establishment and functioning of the internal market. Although aspects of the proposal, if implemented across the whole Community, would have effects in improving the equality of treatment of operators of industrial installations, these are not the principal intentions of the proposal.

## **3. SUBSIDIARITY AND PROPORTIONALITY**

### **3.1 Objectives of the proposed action in relation to the obligations of the Community**

The proposal has been drafted to secure the requirements of Article 130r and Article 130s(4) of the Treaty regarding the implementation of the Community policy on the environment.

### **3.2 What is the Community dimension of the problem?**

All Member States and the Commission are concerned by the question of implementation and enforcement of Community environmental law. Community environmental law obliges Member States to ensure that certain emissions and discharges, or activities which may lead thereto, are subject to prior authorisation, permit or licensing requirements. Industrial installations and other enterprises and facilities ("controlled installations") which are subject to these requirements are or should be inspected by the competent authorities and the establishment of guidelines on minimum criteria in respect of such environmental inspections will ensure that the first steps are being taken to achieve a level standard across the Community. The achievement of a more level standard of inspections would also have the advantage of avoiding distortion of competition.

### **3.3 Which is the most efficient solution, comparing Community with Member State action?**

The task of monitoring transposition, conformity and effective application of the Community's legislation falls to the Commission, using the powers under Articles 155, 169 and 171 in particular. The enforcement of individual requirements under Community legislation is the responsibility of the Member States. Activity in the field of inspections has been the preserve of Member States acting individually, and largely to their own discretionary criteria or standards. Evidence has shown that this has not led to a consistently even implementation and enforcement of Community environmental law.

Community action is needed in order to ensure that minimum standards of environmental inspection are applied across the Community to controlled installations. However, in recognition of the fact that there is a wide disparity in the inspections systems and mechanisms among Member States, the proposal is in the form of a non-binding instrument, namely a recommendation, and leaves to Member States the choice of the inspections administrative structure and systems and the level at which such structures and systems are established, whether national, regional or local level.

### **3.4 Which instruments does the Community have available?**

The even application of Community environmental law in this area is considered to be extremely important. However, in recognition of the fact that there is a great disparity in the inspections systems and mechanisms in the Member States, it is deemed sensible in the first instance merely to set out guidelines in the form of a non-binding instrument, namely a recommendation, rather than to have binding legislation in the form of a directive. Furthermore, as, it is assumed that some Member States may have concerns about their capacity to operate the minimum criteria effectively, Community co-financing could be envisaged for eligible areas or Member States under existing Community instruments such as those relating to the Cohesion Fund or the ERDF.

### **3.5 Proportionality**

Community action in the form of a Recommendation is proportionate in this area given the wide disparities which exist among Member States in relation to their environmental inspections systems and mechanisms in terms not only of their capacities for carrying out inspections tasks but also in the scope and contents of the inspections tasks undertaken and even in the very existence of inspections tasks in a few Member States. In view of these disparities, the Commission recognizes that the carrying out of the environmental inspections tasks according to the Recommendation may necessitate capacity building in certain Member States. In such cases, Community co-financing could be envisaged for eligible Member States under existing Community instruments such as those relating to the Cohesion Fund or European Regional Development Fund. The measure is also to be regarded as proportionate in that it only introduces minimum criteria and leaves it to the Member States' discretion as to how they apply the criteria within their own inspections systems. Furthermore, this is the first step in an ongoing programme in relation to inspections and enforcement. In the light of the experience gained in the operation of the Recommendation and on the basis of further consultations with interested parties, including IMPEL, consideration will be given to subsequent stages to broaden the nature, scope and application of the minimum requirements, in particular to move beyond the point source emissions controls for which these guidelines are tailored, so as to cover diffuse pollution sources and general inspections of environmental media. Consideration will also be given in subsequent stages to develop minimum

criteria for the training and qualifications of inspecting officials and for the frequency of inspections of industrial installations, enterprises and facilities based on the best available practice in the Member States. In due course, and in the light of all this experience, consideration will be given to the adoption of a framework directive relating to environmental inspections generally.

#### **4.COSTS OF IMPLEMENTING THE PROPOSAL FOR MEMBER STATES, THE COMMUNITY AND THE AFFECTED INSTALLATIONS**

##### **4.1 Costs to the Member States**

Numerous sectoral Community directives provide for the carrying out of some kind of environmental inspections by the Member States. Thus, Member States should already have in place systems and mechanisms for carrying out such inspections. Other directives which do not foresee inspections tasks, have to be fully implemented and thus, according to the case law of the European Court of Justice, have to be properly applied and enforced on the ground. Complying with such obligations implies a cost. However, to the extent that they should already be complying with Community law obligations, there should be very little additional cost involved for Member States in applying the Recommendation. The only identifiable extra cost could arise from the reporting requirements and making available to the public of certain reports, for example in relation to site visits. This cost will most probably be reflected in human resource needs, which could be met by redeployment, rather than infrastructure building. IMPEL could possibly provide assistance with any training needs in this respect. Furthermore, as the proposal is based upon regularly applied best practice across the Community, the costs of meeting the minimum criteria should be negligible or, at most, very limited in most Member States.

In any event, the resulting benefits to the environment should more than outweigh any costs which may be incurred.

For those Member States who do not have highly developed inspections systems, co-financing through existing Community financial instruments could be available in appropriate cases.

##### **4.2 Costs to the Community**

Those Member States who can demonstrate a financial need may be able to receive assistance in the form of Community funding from the Cohesion Fund or the Structural Funds (European Regional Development Fund) in order to enable them to build capacity and carry out the guidelines in the Recommendation. To the extent that such funds already exist, there will be no impact on the Community budget.

In certain respects the costs of effective compliance with Community requirements at an early stage through the proper use of environmental

inspections will be cost-beneficial in terms of avoiding later restoration costs and administrative costs associated with dealing with infringements of Community law caused by bad application, in practice, of the standards and requirements set in the Community instruments.

#### **4.3 Costs to the Controlled Installations**

So far as costs to the Controlled Installations are concerned, these will be negligible. Such installations must already comply with the relevant EC legal requirements applicable to them and this proposal will impose no further specific obligations on them. The only additional real cost which may be incurred would be if Member States were to decide to charge fees for the carrying out of inspections. To the extent that this does not already exist, this is a matter for the Member States themselves and one which can be seen as pure subsidiarity.

### **5. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES**

#### **5.1 Member States**

It was not considered necessary to formally consult the Member States on the proposal as the proposal is based essentially on the work of IMPEL which comprises inspectors and technical representatives from the relevant organisations in the Member States. Indeed, the IMPEL paper on minimum criteria for environmental inspections, adopted at the end of 1997, has formed the basis of the proposal. Thus, Member States can be said to have been consulted on the substance of the proposal as they are associated to IMPEL and IMPEL representatives undertook internal consultations with the authorities in their Member States in the course of their work on the paper.

#### **5.2 NGOs**

The following non-governmental organisations were invited to a meeting in January 1998:

Birdlife International  
European Environment Bureau (EEB)  
Friends of the Earth  
Greenpeace  
World Wildlife Fund (WWF)

**Birdlife International** made written comments to the Commission. They welcomed the parts of the proposal relating to the availability to the public of inspections/site reports and the national consolidated reports of the Member States. They considered it desirable that the work of IMPEL on other

environmental inspections, such as those relating to diffuse pollution, should be continued.

**European Environmental Bureau (EEB)** attended the meeting and also submitted comments in writing. They welcomed the principle of setting out minimum criteria for environmental inspections but felt the proposal could be strengthened in relation to the publicising of inspection reports and the frequency of inspections; additionally, they considered that the proposal should deal with minimum requirements as regards the qualifications of inspectors.

No response has been received from the other NGOs.

### **5.3 Consultation with industry**

Given that the proposal is directed towards inspections, there should be no real consequences for industry in that they are already having to comply with the relevant legislation requiring inspections which has been adopted at various times in the past. Industry would have been consulted formally when those pieces of legislation requiring inspections were first proposed by the Commission.

## **6. DETAILED EXPLANATION OF THE PROPOSAL**

### **Point I - Purpose**

The purpose of the Recommendation is to establish guidelines on environmental inspections carried out in the Member States according to minimum criteria relating to the organising, carrying out, following up and publicising of the results of such tasks in order to strengthen compliance with and bring about an even implementation of Community environmental law in all Member States.

### **Point II – Scope and Definitions**

The scope of the Recommendation is the application to environmental inspections of all industrial installations and other enterprises and facilities whose emissions or discharges to the environment or activities which may lead thereto are subject to authorisation, permit or licence requirements under Community law and inspections of nuclear installations, including those in the research and medical sectors (“Controlled Installations”).

This Point also contains the definitions of “environmental inspections”, “operator of a Controlled Installation”, and “inspecting authorities”. It also states that a Member State may provide for inspections to be carried out by a state authority at national, regional or local level or that such tasks may be delegated to any other legal person under certain conditions. This is in



recognition of the growing trend towards privatisation of such tasks in the Member States.

### **Point III - Organising and carrying out of environmental inspections**

This Point recommends that the Member States should organise and carry out environmental inspections in accordance with the guidelines in the Recommendation. It also provides for Member States to assist each other administratively in exchanging relevant information and, where appropriate, officials.

### **Point IV - Plans for Environmental Inspections**

This Point deals with Plans for Environmental Inspections which should be drawn up in advance by Member States, covering all their territory and the Controlled Installations within it. The Plans should be available to the public in accordance with the provisions of Directive 90/313/EEC on the freedom of access to information on the environment. The Plans may be established at national, regional or local level and competent authorities must be designated to carry out environmental inspections.

The Point sets out the basis upon which the Plans should be produced and the details of the items which should appear in the Plans.

### **Point V - Site visits**

This Point gives details of the criteria which should be applied by Member States in respect of site visits to Controlled Installations. Site visits should be carried out regularly as part of the routine environmental inspections of Controlled Installations. It also gives details of the circumstances in which non-routine site visits should be carried out, for example in the investigation of serious complaints or accidents and when issuing a first authorisation, permit or licence or re-issuing, renewing or modifying such authorisations, permits or licences.

### **Point VI - Reports and Conclusions following site visits**

This Point recommends that Member States should ensure that the inspecting authorities draw up a report after every site visit containing their findings as to compliance of the Controlled Installation with EC Legal Requirements, an evaluation thereof and a conclusion as to further action to be taken. The reports should be readily accessible and available to the public in accordance with the provisions of Directive 90/313/EEC.

### **Point VII - Investigations of serious accidents, incidents and occurrences of non-compliance**

This Point deals with the investigation of serious accidents, incidents and non-compliance with EC law. The investigation should clarify the causes of the event, set out the appropriate actions to be taken to mitigate the environmental impact of it, including any remedial action, recommend the action to be taken to avoid such an event in the future and enable enforcement action or sanctions to proceed, if appropriate.

**Point VIII - Reporting on Environmental Inspection Activities in general**

This Point encourages the Member States to report to the Commission on their experience of the operation of the Recommendation two years after the date referred to in Point X.

**Point IX- Review of operation of criteria by the Commission**

This states that the Commission will review the operation and effectiveness of the Recommendation as soon as possible after the receipt of the national reports referred to in Point VIII, with the intention of developing the minimum criteria further in the light of the experience gained and taking into account any further contributions received from interested parties, including IMPEL.

**Point X -Implementation**

This Point invites the Member States to implement the Recommendation at the latest twelve months after its publication in the Official Journal of the European Communities.

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**PROPOSAL FOR A COUNCIL RECOMMENDATION PROVIDING FOR  
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THE MEMBER STATES**

**THE COUNCIL OF THE EUROPEAN UNION**

Having regard to the Treaty establishing the European Community and in particular Article 130s (1) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>

Having regard to the opinions of the Economic and Social Committee<sup>3</sup> and the Committee of the Regions<sup>4</sup>,

Acting in accordance with the procedure laid down in Article 189c of the Treaty<sup>5</sup>,

1. Whereas the Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council, of 1 February 1993 on a Community Programme of policy and action in relation to the environment and sustainable development<sup>6</sup> and the Decision of the European Parliament and the Council on its review<sup>7</sup> emphasised the importance of implementation of Community environmental law through the concept of shared responsibility;

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6 OJ No. C 138, 17.5.1993, p.1

7 OJ No L 275, 10.10.1998, p.1

2. Whereas the Commission Communication to the Council of the European Union and the European Parliament on Implementing Community Environmental Law<sup>8</sup> of 5 November 1996, in particular paragraph 29 thereof, proposed the establishment of guidelines at a Community level in order to assist Member States in carrying out inspection tasks, thereby reducing the currently existing wide disparity among Member States' inspections;
3. Whereas the Council by its Resolution of 7 October 1997 on the Drafting, Implementation and Enforcement of Community Environmental Law<sup>9</sup> invited the Commission to propose, for further consideration in Council, in particular on the basis of the work of the European Union Network for the Implementation and Enforcement of Environmental Law ("IMPEL"), minimum criteria and/or guidelines for inspection tasks carried out at Member State level and the possible ways in which their application in practice could be monitored by Member States, in order to ensure an even practical application and enforcement of environmental legislation, and whereas the Commission's proposal has taken into account a paper produced by IMPEL entitled "Minimum Criteria for Inspections"<sup>10</sup>;
4. Whereas the Parliament by its Resolution of 14 May 1997<sup>11</sup> on the Commission's Communication called for Community legislation on environmental inspections, and whereas the Economic and Social Committee<sup>12</sup> and the Committee of the Regions<sup>13</sup> gave favourable opinions on the Commission's Communication and stressed the importance of environmental inspections;
5. Whereas the existence of inspection systems and the effective carrying out of inspections is a deterrent to environmental violations since it enables authorities to identify breaches and enforce environmental laws through sanctions or other means, and thus inspections are an indispensable link in the regulatory chain and an efficient instrument to ensure the even compliance and enforcement of Community environmental legislation across the Community and to avoid distortions of competition;

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8 COM(96) 500 final of 22.10.1996

9 OJ No. C 321, 22.10.1997, p.1

10 November 1997

11 PE 259.215/63

12 CES 479/97 ENV/439 29 April 1997

13 CdR 437/96 final 11-12 June 1997

6. Whereas there is currently a wide disparity in the inspection systems and mechanisms among Member States in terms not only of their capacities for carrying out inspections tasks but also in the scope and contents of the inspections tasks undertaken and even in the very existence of inspection tasks in a few Member States, and this is a situation which cannot be considered as satisfactory with reference to the objective of an effective and even implementation, practical application and enforcement of Community legislation on environmental protection;
7. Whereas it is necessary, therefore, to provide, as a first stage, in a programme of measures relating to environmental inspections, guidelines in the form of minimum criteria to be applied as a common basis for the performance of inspection tasks within the Member States;
8. Whereas Community environmental legislation obliges Member States to apply requirements in relation to certain emissions and discharges, or activities which may lead thereto; whereas, minimum criteria on the organisation and carrying out of inspections should be met in the Member States, as a first stage, for industrial installations and other enterprises and facilities which under Community environmental law are subject to authorisation, permit or licence requirements in respect of their emissions or discharges, or activities which may lead thereto; whereas it is also desirable that such minimum criteria should cover inspections of nuclear installations, including installations in the research and medical sectors, carried out by the radiation protection inspectorates which have been established by Member States by virtue of Community nuclear safety law adopted under the Treaty establishing the European Atomic Energy Community;
9. Whereas, in order to make this system of inspections efficient, environmental inspections activities should be planned in advance in the Member States;
10. Whereas site visits form an important part of environmental inspections activities;
11. Whereas the data and documentation provided by industrial operators registered under the Community eco-management and audit scheme<sup>14</sup>; could be a useful source of information in the context of environmental inspections;
12. Whereas, in order to draw conclusions from site visits, regular reports should be established;
13. Whereas reporting on inspections activities, and public access to information thereon, are important means to ensure through transparency the involvement of citizens, non-governmental organisations and other interested actors in the implementation of

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<sup>14</sup> Council Regulation (EEC) No 1836/93 of 29 June 1993 allowing voluntary participation by companies in the industrial sector in a Community eco-management and audit scheme - OJ No L168. 10.7.1993, p.1

Community environmental legislation; whereas access to such information shall be in line with the provisions of Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment<sup>15</sup>;

14. Whereas Member States should assist each other administratively in operating this Recommendation;

15 Whereas the Commission should keep the application and effectiveness of the operation of this Recommendation under review and report thereon to the Council and European Parliament as soon as possible after the receipt of the Member States' reports;

16 Whereas, in accordance with the subsidiarity and proportionality principles as set out in Article 3b of the Treaty, and given the differences in inspection systems and mechanisms in the Member States, the objectives of the proposed action, can best be achieved by guidance set out at Community level

RECOMMENDS THAT:

## I

### Purpose

Environmental inspections tasks should be carried out in the Member States, according to minimum criteria to be applied in the organising, carrying out, following up and publicising of the results of such tasks, thereby strengthening the compliance with, and contributing to an even implementation and enforcement of Community environmental law in all Member States.

## II

### Scope and Definitions

1. This Recommendation applies to environmental inspections of all industrial installations and other enterprises and facilities whose emissions and/or discharges to the environment, or activities which may lead thereto, are subject to authorisation, permit or licence requirements under European Community law. It also applies to inspections of nuclear installations, including installations in the research and medical sectors. These are all referred to hereafter as "Controlled Installations".

2. For the purpose of this Recommendation, "environmental inspection" is an activity which entails, as appropriate:

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<sup>15</sup> OJ No L158, 23.6.1990, p.56

a) checking and promoting the compliance of Controlled Installations with environmental requirements set out in European Community legislation and in the Member State's laws, regulations, ordinances, directives, prohibitions, authorisations, permits and/or licences which implement or apply such environmental requirements (referred to hereafter as "EC Legal Requirements");

b) monitoring the impact of Controlled Installations on the environment to determine whether further inspection or enforcement action (including modification or revocation of any authorisation, permit or licence) is required to secure compliance with EC Legal Requirements;

c) the carrying out of activities for the above purposes including:

- site visits
- environmental quality monitoring
- consideration of environmental audit reports and statements
- consideration and verification of any self monitoring carried out by or on behalf of operators of Controlled Installations
- assessing the activities and operations carried out at the Controlled Installation
- checking the relevant infrastructure, maintenance of equipment and adequacy of site management
- checking the relevant records kept by the operators of Controlled Installations.

3. Environmental inspections, including site visits, may be

- routine, that is, carried out as part of a planned inspections programme, or
- non-routine, that is, carried out in such cases as response to complaints, in connection with the issuing, renewal or modification of an authorisation, permit or licence, or in the investigation of accidents, incidents and occurrences of non-compliance.

4.a) Environmental inspections may be carried out by any state authority either at national, regional or local level, which is established or designated by the Member State and responsible for the matters covered by this Recommendation.

b) The bodies referred to in paragraph (a) may, in accordance with their national legislation, delegate the tasks provided for in this Recommendation to be accomplished, under their authority and supervision, to any legal person whether governed by public or private law provided such person has no personal interest in the outcome of the inspections it undertakes.

c) The bodies referred to in paragraphs (a) and (b) above are defined as "inspecting authorities".

5. For the purposes of this Recommendation, an "operator of a Controlled Installation" is any natural or legal person who operates or controls the Controlled Installation or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of the Controlled Installation has been delegated.

### **III**

#### **Organisation and carrying out of environmental inspections**

1. Member States should ensure that environmental inspections aim to achieve a high level of environmental protection and to this end should take the necessary measures to ensure that environmental inspections of Controlled Installations are organised and carried out in accordance with Points IV, V, VI, VII and VIII of this Recommendation.

2. Member States should assist each other administratively in the carrying out of the guidelines of this Recommendation by the exchange of relevant information and, where appropriate, inspecting officials.

### **IV**

#### **Plans for Environmental Inspections**

1. Member States should ensure that environmental inspection activities are planned in advance, by having at all times a Plan or Plans for Environmental Inspections providing coverage of all the territory of the Member State and of the Controlled Installations within it. Such a Plan or Plans should be available to the public according to the provisions of Directive 90/313/EEC on the freedom of access to information on the environment.

2. Such Plan or Plans may be established at national, regional or local levels, but Member States should ensure that their Plan or Plans apply to all environmental inspections of Controlled Installations within their territory and that the authorities mentioned in Point II (4) are designated to carry out such inspections.

3. Plans for Environmental Inspections should be produced on the basis of the following:



- a) the EC Legal Requirements to be complied with;
  - b) a register of Controlled Installations within the Plan area;
  - c) a general assessment of major environmental issues within the Plan area and a general appraisal of the state of compliance by the Controlled Installations with EC Legal Requirements;
  - d) data on and from previous inspections activities.
4. Plans for Environmental Inspections should:
- (a) be appropriate to the inspection tasks of the relevant authorities, and should take account of the Controlled Installations concerned and the risks and environmental impacts of emissions and discharges from them.
  - (b) take into account relevant available information in relation to specific sites or types of Controlled Installations, such as reports by operators of Controlled Installations to the authorities, self monitoring data, environmental audit information and environmental statements, in particular those produced by Controlled Installations registered according to the Community eco-management and audit scheme, results of previous inspections and reports of environmental quality monitoring.
5. Each Plan for Environmental Inspections should as a minimum
- a) define the geographical area which it covers which may be for all or part of the territory of a Member State;
  - b) cover a defined time period, not exceeding one year;
  - c) include specific provisions for its revision;
  - d) identify the specific sites or types of Controlled Installations covered;
  - e) prescribe the programmes for routine environmental inspections, including, where appropriate, the frequency of site visits for different types of or specified Controlled Installations;
  - f) provide for and outline the procedures for non-routine environmental inspections, in such cases as response to complaints, accidents, incidents and non-compliance situations and for permitting purposes.

## V

### Site Visits

1. Member States should ensure that the following criteria are applied in respect of all site visits:
  - a) that a thorough check is made of compliance with the EC Legal Requirements relevant to the particular inspection;

- b) that if site visits are to be carried out by more than one environmental inspecting authority, they exchange information on each others' activities, and as far as possible, co-ordinate site visits and other environmental inspection work;
- c) that the findings of site visits are contained in reports made in accordance with Point VI and exchanged, as necessary, between relevant inspection, enforcement and other authorities, whether national, regional or local;
- d) that inspectors or other officials entitled to carry out site visits have a legal right of access to sites and information, for the purposes of environmental inspection.

2. Member States should ensure that site visits are regularly carried out by inspecting authorities as part of their routine environmental inspections and that the following additional criteria are applied for such site visits:

- a) that an integrated approach which examines the full range of environmental impacts is followed, in conformity with the applicable EC Legal Requirements, the environmental inspections programmes and the inspecting bodies' organisational arrangements;
- b) that such site visits should aim to promote and reinforce operators' knowledge and understanding of relevant EC Legal Requirements and environmental sensitivities, and of the environmental impacts of their activities;
- c) that the risks to and impact on the environment of the Controlled Installation are considered in order to evaluate the effectiveness of existing authorisation, permit or licence requirements and to assess whether improvements or other changes to such requirements are necessary.

3. Member States should also ensure that non-routine site visits are carried out in the following circumstances:

- a) in the investigation by the relevant inspecting authorities of serious environmental complaints, and as soon as possible after such complaints are received by the authorities;
- b) in the investigation of serious environmental accidents, incidents and occurrences of non-compliance, and as soon as possible after these come to the notice of the relevant inspecting authorities;
- c) as part of the determination as to whether and on what terms to issue a first authorisation, permit or licence for a process or activity at a Controlled Installation or the proposed site thereof;

d) as appropriate, before the re-issue, renewal or modification of authorisations, permits or licences.

## **VI**

### **Reports and Conclusions following site visits**

1. Member States should ensure that the inspecting authorities draw up a report after every site visit containing their findings as to compliance with EC Legal Requirements, an evaluation thereof and a conclusion on whether any further action should follow, such as enforcement proceedings, including sanctions, the issuing of a new or revised authorisation, permit or licence or follow-up inspection activities, including further site visits.
2. Member States should ensure that such reports are properly recorded in writing and maintained in a readily accessible database, are communicated to the operator of the Controlled Installation in question and are available to the public according to the provisions of Directive 90/313/EEC on the freedom of access to information on the environment.

## **VII**

### **Investigations of serious accidents, incidents and occurrences of non-compliance**

1. Member States should ensure that the investigation of serious accidents, incidents and occurrences of non-compliance with EC legislation, whether these come to the attention of the authorities through a complaint or otherwise, is carried out by the relevant inspecting authority in order to:
  - a) clarify the causes of the event and its impact on the environment, and as appropriate, the responsibilities and possible liabilities for the event and its consequences, and to forward conclusions to the authority responsible for enforcement, if different to the inspecting authority;
  - b) mitigate and, where possible, remedy the environmental impacts of the event through a determination of the appropriate actions to be taken by the operator(s) and the authorities;
  - c) determine action to be taken to prevent further accidents, incidents and occurrences of non-compliance; and
  - d) enable enforcement action or sanctions to proceed, if appropriate.
2. Member States should take the necessary measures to ensure that the relevant inspecting authority follows up such environmental inspections by checking that the operator takes the appropriate steps in response to an accident, incident or occurrence of non-compliance and the inspecting authority's investigation thereof.

## VIII

### **Reporting on environmental inspection activities in general**

1. Member States should report to the Commission on their experience of the operation of this Recommendation two years after the date referred to in Point X, using, to the extent possible, any data available from regional and local inspecting authorities.
2. Such reports should be available to the public and should include in particular the following information:

- a) quantitative data about the staffing and other resources of the inspecting authorities;
- b) details of the inspecting authority's role and performance in the establishment and implementation of relevant Plan(s) for Inspections;
- c) summary details of the environmental inspections carried out, including the number of site visits made, the proportion of Controlled Installations inspected (by type) and estimated length of time before all Controlled Installations of that type will have been inspected;
- d) the level of compliance by Controlled Installations with EC Legal Requirements, as appears from inspections carried out and from any other information the competent authority may have, with reference to the location and type of Controlled Installations, to any particular EC legal requirement not complied with and the degree of such non-compliance;
- e) a summary of the actions taken as a result of complaints, accidents, incidents and occurrences of non-compliance including numbers dealt with;
- f) an evaluation of the success or failure of the Plans for Inspections as applicable to the inspecting body, with any recommendations for future Plans.

## IX

### **Review of operation of minimum criteria by the Commission**

The Commission should review the operation and effectiveness of this Recommendation, as soon as possible after the receipt of the Member States' reports mentioned in Point VIII above, with the intention of developing the minimum criteria further in their scope in the light of the experience gained from their application, and taking into account any further contributions from interested parties, including IMPEL.

## X

### **Implementation**

Member States are invited to implement this Recommendation at the latest twelve months after its publication in the Official Journal of the European Communities and forthwith inform the Commission thereof together with details of environmental inspections mechanisms already existing or foreseen.

Done at Brussels, .....

For the Council,

The President

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