



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.12.1999
COM(1999) 652 final

1998/0358 (COD)

Amended Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL RECOMMENDATION

**PROVIDING FOR MINIMUM CRITERIA FOR ENVIRONMENTAL INSPECTIONS
IN THE MEMBER STATES**

(presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

EXPLANATORY MEMORANDUM

Pursuant to Article 250(2) of the EC Treaty, the Commission submits an amended proposal for a European Parliament and Council Recommendation providing for Minimum Criteria for Environmental Inspections in the Member States¹. The amended proposal takes account of some of the amendments as to substance adopted by the European Parliament at its Plenary Session which took place from 13-17 September, 1999. The amended proposal does not, however, take into account the Parliament's proposed amendments concerning the change of form of the proposal from a recommendation to a directive. The amended proposal also takes account of the Opinion of the Economic and Social Committee, delivered on 28 April 1999.

Amendments of the European Parliament accepted by the Commission

The Commission can accept in full **amendments nos 1 and 10 (para 2a)**, provided that the form of a recommendation is retained. The Commission can accept in principle amendments nos **16** (without the reference to the European Environment Agency (EEA)), **17 and 24**, provided that the form of a recommendation is retained. Commentary on these amendments follows.

Amendment no 1 introduces a new recital (3a) concerning the involvement of the EEA in advising the Member States on their systems for monitoring environmental provisions and giving support in respect of the co-ordination of reporting. **Amendment no 10 (para 2a)** inserts a new paragraph in Point III exhorting the Member States, in co-operation with IMPEL and the Commission, to encourage the co-ordination of inspections and inspection services in order to prevent illegal cross-border environmental practices. These amendments are both largely consistent with the philosophy of the Commission's Communication on the Implementation of Community Environmental Law (COM (96)500final) which foresaw a role for the EEA and IMPEL in this area and can thus be accepted.

Amendments nos 16 and 17 also concern the involvement of the EEA and IMPEL. Amendment no 16 introduces a new Point VIIIa. The first paragraph seeks to encourage the Commission in co-operation with IMPEL, the EEA and other interested parties to draw up minimum criteria in relation to the qualification and accreditation of inspectors. The Commission can accept this in principle provided the reference to the EEA is removed, as this sort of activity does not form part of their functions. The second paragraph of Amendment no 16 relating to training programmes for inspectors can also be accepted in principle. Indeed, IMPEL has already carried out some work in this area. (A similar amendment to Amendment 16 was suggested by the Economic and Social Committee in its Opinion (point 2.7)). Amendment no 17 provides for the EEA to contribute, with others, to the evaluation of the operation of the recommendation in due course, which is acceptable.

Amendment no 24 relating to reports being made publicly available within 2 months of the inspection taking place, can be accepted in principle provided it is understood that such reports must be finalised within 2 months of the site visit and any request by the public for such reports, once finalised, must comply with Directive 90/313/EEC which provides that such information shall be available as soon as possible after a request, in the first instance, and at the latest within two months.

¹ The original proposal bore the number COM(98)772 final

Amendments of the European Parliament rejected by the Commission

Amendment no 21 changes the title and form of the proposal from a recommendation to a directive. The Commission cannot accept **amendments nos 2, 6, 7 and 18 to 21** which all relate to changing the form of the proposal from a recommendation to a directive. Similarly the Commission cannot accept **amendments nos 3, 13 and 15** which are amendments of substance rather than form. Commentary on these amendments follows.

Amendments nos 2, 6, 7 and 18 to 21 all concern changing the form of the proposal from a recommendation to a directive. Considerable thought was given by the Commission in conjunction with IMPEL and the Member States to the form which the proposal should take. The form of a recommendation was eventually decided upon as being appropriate for the following reasons:

- Given the wide disparity in Member States' environmental inspection activities, it was desirable to ensure that minimum inspection tasks were performed, as a first step, with a view to a framework directive on inspections generally (minimum criteria, frequency of inspections, training etc.) possibly being proposed in due course in the light of experience of the operation of the recommendation.
- Member States without highly developed inspection systems may have had difficulty in complying immediately with a directive. It was preferable to provide for capacity building and development of the less developed systems as a first step.
- There was strong resistance from the Member States and IMPEL to a directive.

Amendments nos 3, 13 and 15 are amendments of substance. **Amendment no 3** which inserts a new recital 7b, relates to matters of transposition for which Member States, not the Commission, are responsible. **Amendment no 13** relates to the processing and storing of data following site visits instead of "reports" as such and detracts from the accuracy and strength of the Commission's proposal. **Amendment 15** refers to "brief data" rather than detailed reporting on compliance with particular EC legal requirements which cannot be accepted as the inspection should reveal which particular legal requirements have not been met.

Within the text of the amended proposal, deleted parts are struck through and added parts are in bold and underlined.

Amended Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL RECOMMENDATION

**PROVIDING FOR MINIMUM CRITERIA FOR ENVIRONMENTAL INSPECTIONS
IN THE MEMBER STATES**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article ~~130s~~ **175(1)** thereof,

Having regard to the proposal from the Commission²,

~~Having regard to the opinion of the European Parliament,~~³

Having regard to the opinion of the Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Acting in accordance with the procedure laid down in Article ~~189e~~ **251** of the Treaty,

- (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 development⁶ and the Decision of the European Parliament and the Council on its review⁷ emphasised the importance of implementation of Community environmental law through the concept of shared responsibility;
- (2) Whereas the Commission Communication to the Council of the European Union and the European Parliament on Implementing Community Environmental Law⁸ 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 Law⁹ invited the Commission to propose, for further consideration in Council, in particular on the basis

² COM (1998)772 final - 16.12.1998.

³ ~~16.9.1999~~

⁴ 28.4.1999 (**footnote to be numbered 3, as well as in text**)

⁵ 16.9.1999 (**footnote to be numbered 4, as well as in text**)

⁶ OJ C 138, 17.5.1993, p. 1 (**footnote to be numbered 5, as well as in text**)

⁷ OJ L 275, 10.10.1998, p. 1 (**footnote to be numbered 6, as well as in text**)

⁸ COM(96) 500 final of 22.10.1996 (**footnote to be numbered 7, as well as in text**)

⁹ OJ C 321, 22.10.1997, p. 1 (**footnote to be numbered 8, as well as in text**)

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"¹⁰;

3a. Whereas the European Environment Agency can advise the Member States on developing, setting up and extending their systems for monitoring environmental provisions and whereas the European Environment Agency can assist the Commission and Member States in monitoring environmental provisions by giving support in respect of the reporting process, so that reporting is co-ordinated.

- (4) Whereas the Parliament by its Resolution of 14 May 1997¹¹ on the Commission's Communication called for Community legislation on environmental inspections, and whereas the Economic and Social Committee¹² and the Committee of the Regions¹³ 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;
- (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

¹⁰ November 1997 (**footnote to be numbered 9, as well as in text**)

¹¹ PE 259.215/63 (**footnote to be numbered 10, as well as in text**)

¹² CES 479/97 ENV/439 29 April 1997 (**footnote to be numbered 11, as well as in text**)

¹³ CdR 437/96 final 11-12 June 1997 (**footnote to be numbered 12, as well as in text**)

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 scheme¹⁴; 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 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 environment¹⁵;
- (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 5 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

HEREBY RECOMMEND:

¹⁴ 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 L 168. 10.7.1993, p. 1 (**footnote to be numbered 13, as well as in text**)

¹⁵ OJ L 158, 23.6.1990, p. 56 (**footnote to be numbered 14, as well as in text**)

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:

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.
- 3. In order to prevent illegal cross-border environmental practices, the Member States should, in co-operation with IMPEL and the Commission, encourage the co-ordination of inspections and inspection services between the Member States.**

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. **Reports should be finalised within two months of the site visit.**

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.

VIIIa

1. IMPEL (The European Union Network for the Implementation and Enforcement of Environmental Law) should, as quickly as possible, in co-operation with the Commission and other interested parties, draw up minimum criteria concerning the qualifications and accreditation of environmental inspectors who are authorised to carry out inspections for or under the authority or supervision of inspecting authorities.

2. Member States should, as quickly as possible, in co-operation with IMPEL, the Commission and other interested parties, develop training programmes in order to meet the demand for qualified environmental inspectors.

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 and the European Environment Agency.

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 European Parliament
The President

For the Council
The President

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