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(Acts whose publication is not obligatory)

EUROPEAN PARLIAMENT AND COUNCIL

RECOMMENDATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 4 April 2001

providing for minimum criteria for environmental inspections in the Member States

(2001/331/EC)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾, and in the light of the joint text approved by the Conciliation Committee on 8 January 2001,

Whereas:

- (1) The resolution of the Council and of 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 ⁽⁴⁾ and the Decision of the European Parliament and the Council on its review ⁽⁵⁾ emphasised the importance of implementation of Community environmental law through the concept of shared responsibility.
- (2) The Commission Communication of 5 November 1996 to the Council of the European Union and the European Parliament on implementing Community environmental law, in particular paragraph 29 thereof, proposed the

establishment of guidelines at 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) The Council in its resolution of 7 October 1997 on the drafting, implementation and enforcement of Community environmental law ⁽⁶⁾ invited the Commission to propose, for further consideration by the 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 the Commission's proposal has taken into account a paper produced by IMPEL in November 1997 and entitled 'Minimum Criteria for Inspections'.
- (4) The European Parliament by its resolution of 14 May 1997 on the Commission's Communication called for Community legislation on environmental inspections, and the Economic and Social Committee and the Committee of the Regions gave favourable opinions on the Commission's Communication and stressed the importance of environmental inspections.
- (5) Different systems and practices of inspection already exist in Member States and should not be replaced by a system of inspection at Community level, as was considered in the Council resolution of 7 October 1997, and Member States should retain responsibility for environmental inspection tasks.

⁽¹⁾ OJ C 169, 16.6.1999, p. 12.

⁽²⁾ OJ C 374, 23.12.1999, p. 48.

⁽³⁾ Opinion of the European Parliament of 16 September 1999 (OJ C 54, 25.2.2000, p. 92), Council Common Position of 30 March 2000 (OJ C 137, 16.5.2000, p. 1) and Decision of the European Parliament of 6 July 2000 (not yet published in the Official Journal). Decision of the European Parliament of 1 February 2001 and Council Decision of 26 February 2001.

⁽⁴⁾ OJ C 138, 17.5.1993, p. 1.

⁽⁵⁾ OJ L 275, 10.10.1998, p. 1.

⁽⁶⁾ OJ C 321, 22.10.1997, p. 1.

- (6) The European Environment Agency can advise the Member States on developing, setting up and extending their systems for monitoring environmental provisions and can assist the Commission and the Member States in monitoring environmental provisions by giving support in respect of the reporting process, so that reporting is coordinated.
- (7) 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; thus inspections are an indispensable link in the regulatory chain and an efficient instrument to contribute to a more consistent implementation and enforcement of Community environmental legislation across the Community and to avoid distortions of competition.
- (8) 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 inspection tasks but also of the scope and contents of the inspection 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 satisfactory with reference to the objective of an effective and more consistent implementation, practical application and enforcement of Community legislation on environmental protection.
- (9) It is necessary, therefore, to provide, at this stage, guidelines in the form of minimum criteria to be applied as a common basis for the performance of environmental inspection tasks within the Member States.
- (10) Community environmental legislation obliges Member States to apply requirements in relation to certain emissions, discharges and activities; minimum criteria on the organisation and carrying out of inspections should be met in the Member States, as a first stage, for all industrial installations and other enterprises and facilities whose air emissions and/or water discharges and/or waste disposal or recovery activities are subject to authorisation, permit or licensing requirements under Community law.
- (11) Inspections should take place taking into account the division of responsibilities in the Member States between authorisation and inspection services.
- (12) In order to make this system of inspections efficient, Member States should ensure that environmental inspections activities are planned in advance.
- (13) Site visits form an important part of environmental inspection activities.
- (14) The data and documentation provided by industrial operators registered under the Community eco-management and audit scheme could be a useful source of information in the context of environmental inspections.
- (15) In order to draw conclusions from site visits, regular reports should be established.
- (16) Reporting on inspection 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; access to such information should be in line with the provisions of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment ⁽¹⁾.
- (17) Member States should assist each other administratively in operating this recommendation. The establishment by Member States in cooperation with IMPEL of reporting and advice schemes relating to inspectorates and inspection procedures would help to promote best practice across the Community.
- (18) Member States should report to the Council and the Commission on their experience in operating this recommendation and the Commission should regularly inform the European Parliament.
- (19) The Commission should keep the operation and effectiveness of this recommendation under review and report thereon to the European Parliament and the Council as soon as possible after the receipt of the Member States' reports.
- (20) Further work by IMPEL and Member States, in cooperation with the Commission, should be encouraged in respect of best practices concerning the qualifications and training of environmental inspectors.
- (21) In accordance with the principles of subsidiarity and proportionality as set out in Article 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.
- (22) In the light of the experience gained in the operation of this recommendation and taking account of IMPEL's further work, as well as of the results of any schemes provided for in this recommendation, the Commission should, upon receipt of Member States' reports, give consideration to developing the minimum criteria in terms of their scope and substance and to making further proposals which might include a proposal for a directive, if appropriate,

⁽¹⁾ OJ L 158, 23.6.1990, p. 56.

HEREBY RECOMMEND:

I

Purpose

Environmental inspection 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 compliance with, and contributing to a more consistent implementation and enforcement of Community environmental law in all Member States.

II

Scope and definitions

1. (a) This recommendation applies to environmental inspections of all industrial installations and other enterprises and facilities, whose air emissions and/or water discharges and/or waste disposal or recovery activities are subject to authorisation, permit or licensing requirements under Community law, without prejudice to specific inspection provisions in existing Community legislation.
- (b) For the purposes of this recommendation, all the installations and other enterprises and facilities referred to in point (a) are 'controlled installations'.
2. For the purposes of this recommendation, 'environmental inspection' is an activity which entails, as appropriate:
 - (a) checking and promoting the compliance of controlled installations with relevant environmental requirements set out in Community legislation as transposed into national legislation or applied in the national legal order (referred to hereinafter as 'EC legal requirements');
 - (b) monitoring the impact of controlled installations on the environment to determine whether further inspection or enforcement action (including issuing, 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,
 - monitoring achievement of environmental quality standards,
 - 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 premises and the relevant equipment (including the adequacy with which it is maintained) and the adequacy of the environmental management at the site,
- checking the relevant records kept by the operators of controlled installations.

3. Environmental inspections, including site visits, may be:
 - (a) routine, that is, carried out as part of a planned inspections programme; or
 - (b) non-routine, that is, carried out in such cases in 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 public authority at either 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 point (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 points (a) and (b) 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 to VIII of this recommendation.
2. Member States should assist each other administratively in carrying out the guidelines of this recommendation by the exchange of relevant information and, where appropriate, inspecting officials.
3. To prevent illegal cross-border environmental practices, Member States should encourage, in cooperation with IMPEL, the coordination of inspections with regard to installations and activities which might have significant transboundary impact.

4. In order to promote best practice across the Community, Member States may, in cooperation with IMPEL, consider the establishment of a scheme, under which Member States report and offer advice on inspectorates and inspection procedures in Member States, paying due regard to the different systems and contexts in which they operate, and report to the Member States concerned on their findings.

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 Directive 90/313/EEC.

2. Such plan or plans may be established at national, regional or local levels, but Member States should ensure that the 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 inspection activities, if any.

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 made 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 (EMAS), 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, for example 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, taking into account environmental risks; these programmes should include, 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 in response to complaints, accidents, incidents and occurrences of non-compliance and for purposes of granting permission;
- (g) provide for coordination between the different inspecting authorities, where relevant.

V

Site visits

1. Member States should ensure that the following criteria are applied in respect of all site visits:

- (a) that an appropriate 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, coordinate 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 the full range of relevant environmental impacts is examined, in conformity with the applicable EC legal requirements, the environmental inspection 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 licensing 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) where appropriate, 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 or to ensure the compliance with the requirements of authorisation, permit or licence after it has been issued and before the start of activity;
 - (d) where appropriate, before the reissue, renewal or modification of authorisations, permits or licences.

VI

Reports and conclusions following site visits

1. Member States should ensure that after every site visit the inspecting authorities process or store, in identifiable form and in data files, the inspection data and 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. Reports should be finalised as soon as possible.
2. Member States should ensure that such reports are properly recorded in writing and maintained in a readily accessible database. The full reports, and wherever this is not practicable the conclusions of such reports, should be communicated to the operator of the controlled installation in question according to Directive 90/313/EEC; these reports should be publicly available within two months of the inspection taking place.

VII

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

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 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 from 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;
- (d) enable enforcement action or sanctions to proceed, if appropriate; and
- (e) ensure that the operator takes appropriate follow-up actions.

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 of its publication in the *Official Journal of the European Communities*, 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) 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 have been inspected;
 - (d) brief data on the degree of compliance by controlled installations with EC legal requirements as appears from inspections carried out;
 - (e) a summary, including numbers, of the actions taken as a result of serious complaints, accidents, incidents and occurrences of non-compliance;
 - (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 and development of the recommendation

1. The Commission should review the operation and effectiveness of this recommendation, as soon as possible after receipt of the Member States' reports mentioned in point VIII above, with the intention of developing the minimum criteria further in terms of 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. The Commission should then submit to the European Parliament and the Council a report accompanied, if appropriate, by a proposal for a directive. The European Parliament and the Council will consider such a proposal without delay.

2. The Commission is invited to draw up, as quickly as possible, in cooperation with IMPEL and other interested parties, minimum criteria concerning the qualifications of environmental inspectors who are authorised to carry out inspections for or under the authority or supervision of inspecting authorities.

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

X

Implementation

Member States should inform the Commission of the implementation of this recommendation together with details of environmental inspection mechanisms already existing or foreseen not later than twelve months after its publication in the *Official Journal of the European Communities*.

Done at Luxembourg, 4 April 2001.

For the European Parliament

The President

N. FONTAINE

For the Council

The President

B. ROSENGREN