Environment: implementation of the Community law, minimal criteria for inspections

1998/0358(COD) - 14/11/2007 - Follow-up document

To recall, the 2001 Recommendation providing for minimum criteria for environmental inspections in the Member States, contains non-binding criteria for the planning, carrying out, follow-up and reporting on environmental inspections. Its main objective is to strengthen compliance with Community environmental law and to contribute to a more consistent implementation/enforcement of EU environmental legislation in all of the Member States. Under the terms and conditions of this Recommendation, the Member States were asked to report on their implementation of the Recommendation and on their experiences with its application. These reports were then forwarded to the Commission for further analysis. A thorough and complete report describing the implementation and application of the Recommendation is annexed to this Communication.

The purpose of this Communication is to set out the Commission's views on the further development of the Recommendation and to launch a broad-based discussion with stakeholders on its future direction. In the course of 2007, the Commission will hold meetings with interested parties as well as carrying out an internet consultation exercise with interested parties.

Implementation of the Recommendation in the Member States:

All of the EU Member States submitted a report to the Commission regarding the Recommendation's implementation. However, in many cases the information submitted was either incomplete or difficult to compare. In some cases, where the environmental responsibility lies with the regions, it was impossible for the Commission to draw any conclusions at a national level. Most information relates to 2002-2003. In spite of these gaps, the report notes that almost all Member State have, partially, implemented the Recommendation. All but a few have managed to implement it in full. Large disparities still exist in the way environmental inspections are being carried out within the Community – meaning that the full implementation of Community wide environmental legislation can not be guaranteed. This trend could lead to competitive distortion at a business level. There also appear to be large differences in the political priority being given to environmental inspections in the Member States.

Areas for improvements:

- **Scope**: Based on the reports received, the Commission feels that the scope of the Recommendation needs to be improved. The scope has been interpreted in different ways by the Member States, resulting in large differences in the number of installations subject to environmental inspections and large difference between the percentages of installations inspected per year. The difference in interpretation is particularly relevant for the waste sector. A further challenge concerns the number of environmental activities that are subject to Community-wide legislation but which are not covered by the scope of the Recommendation.
- **Definitions:** Similarly, many definitions set out in the Recommendation are being interpreted in different ways by the Member States. They refer, specifically, to the following terms: inspection, control, audit; Inspection authority; Inspection plan; Inspection programme; cross border mechanism; and routine/non-routine inspections.
- **Planning inspections:** None of the planning inspection criteria have been fully implemented in all of the Member States, with many of the "inspection plans" failing to include strategic elements. In many cases a planning inspection plan consists of mere lists of installation or sectors to be inspected. Some Member States have, however, established advanced systems to plan inspections

and the use of risk based management approaches to plan inspections has been proposed as a useful method for achieving good practice in inspections.

- **Evaluation of inspection plans:** Evaluating the success of inspection plans has been recognised as an important tool to improve the planning of inspections. Some Member States have sophisticated systems into place with which to evaluate their inspections plans, which in turn has helped them to define their future plans.
- **Reporting:** The first reporting exercise has produced a large amount of information showing how the Recommendation is implemented and applied in the Member States. The information is not, however, always comparable and does not allow clear conclusions on the efficiency of the inspection systems to be drawn. One possibility would be the drafting of simpler, more targeted, reporting systems.
- **Access to information:** Information forwarded to the Commission by the Member States indicates that several do not make the inspection plans and reports available to the public in spite of obligations to do so. Several reasons are given for this. The release of information, prior to an inspection, could jeopardise their success. Also, many reports contain confidential commercial information and the obligation to provide environmental information already exists under Directive 2003/4/EC. Ways, therefore, need to be found to make the strategic part of the inspection plan public, without making public the information on the list of installations to be inspected.

Proposed way forward:

In the Commission's view, the lack of full implementation requires the establishment of legally binding requirements for environmental inspections. The following actions are, as a result, being proposed:

- **Revision of the Recommendation**: The Recommendation should be amended. Attention should be given to broadening its scope so that it covers, as far as possible, all environmentally significant activities. Definitions relating to inspections should be reconsidered as should the criteria for the planning of inspections. A simple reporting system that is as clear as possible should be established in order to provide for comparable information on how inspection systems are working and whether they achieve the Recommendations core objective: improved environmental legislation compliance.
- **Sectoral inspection requirements:** Specific, legally binding requirements, for the inspection of certain installations and activities should be included in sectoral legislation. This would have the advantage that requirements can be adapted to the specific nature and risks of the installations or activities covered and be more precise as well as better targeted than general criteria. Sectoral inspection requirements can be either complementary to the Recommendation or concern themselves with installations or activities that are not covered by the Recommendation. The report gives the example of the Seveso II Directive for the control of major-accident hazards. Further, the Commission is considering proposals that would specially target rules for the inspection of waste shipments. Other pieces of environmental legislation that are currently under review/preparation include: a scheme for greenhouse gas emission allowance trading within the Community; substances that deplete the ozone layer; the quality of water intended for human consumption; the approximation of laws, regulation and administrative provisions regarding the protection of animals used for experimental and other scientific purposes; waste electrical and electronic equipment; the protection of species of wild fauna and flora by regulating trade therein; and a possible future Directive on the injection and sub-surface storage of carbon.

Cooperation between the Member States:

The Commission has actively participated in, and supported, projects that encourage Member State cooperation including:

- The IMPEL Review Initiative (IRI), which sends teams of senior inspectors from different countries to explore the regulatory system of the candidate inspectorate.

- The IMPEL Cluster Transfrontier Shipments of Waste, which has carried out several projects concerning the prevention of illegal shipments of waste.

Numerous guidance documents have been developed by IMPEL on how to plan and carry out inspections. Exchanges of information and experiences between inspectors have been organised. All initiatives have had a positive impact on the strengthening of inspections in the Community. IMPEL should receive continuous support for such projects.