

Manual of European Environmental Policy

The following pages are a section from the Manual of European Environmental Policy written by the Institute for European Environmental Policy.

The Manual was published by Earthscan/Routledge from 2010 to 2012. It was designed as an on-line interactive reference work and annual printed versions were also produced.

This section is the text of the Manual as published in 2012. It is therefore important to note the following:

- The contents have not been updated since 2012 and no guarantee is given of the accuracy of the contents given potential subsequent developments.
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The Manual should be cited as follows:

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Environmental inspections

Formal references	
2001/331/EC (OJ L 118 27.4.2001)	Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States
Proposed 16.12.1998 – COM/98/772 (SYN 98/0358)	
Legal base	Article 192 TFEU (originally Article 175 TEC)
Binding dates	
Formal compliance	Not applicable
Member States to inform the Commission of the implementation of the Recommendation together with details of environmental inspection mechanisms already existing or foreseen	27 April 2002
Member States to report to the Commission on their experience of the operation of the Recommendation	27 April 2003
The Commission to review the operation and effectiveness of the Recommendation	As soon as possible after receipt of Member State reports

Purpose of the Recommendation

The enforcement of much European Union (EU) environmental law requires effective inspection of specified activities, installations, processes, etc. Concern over the capacity of Member State authorities to meet this challenge led to the development of criteria for adequate inspection, addressing planning, conducting an inspection and reporting. These are set out in a non-binding Recommendation.

Summary of the Recommendation

The Recommendation is not legally binding on the Member States. However, it is an important horizontal measure helping to guide the Member States to improve the effectiveness of their enforcement of EU environmental law. The 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 authorization, permit or licensing requirements under Community law, without prejudice to specific inspection provisions in existing Community legislation’. The Recommendation does not contain criteria for some important areas of enforcement such as waste shipments, nature protection or chemicals.

The Recommendation defines ‘environmental inspection’ as checking and promoting the compliance of controlled installations and monitoring the impact of controlled installations on the environment to determine whether further inspection or enforcement action is required. Environmental inspections, including site visits, may be routine (carried out as part of a planned inspections programme) or non-routine (carried out in such cases in response to

complaints, incidents, etc.). Member States should ensure that environmental inspections aim to achieve a high level of environmental protection. The activities that may be included in an inspection are:

- Site visits.
- Monitoring achievement of environmental quality standards.
- Consideration of environmental audit reports and statements.
- Consideration and verification of any self-monitoring carried out.
- Assessing the activities and operations carried out at the controlled installation.
- Checking the premises and the relevant equipment and the adequacy of the environmental management at the site.
- Checking the relevant records kept by the operators.

Environmental inspections may be carried out by any public authority at national, regional or local level, which is established or designated by the Member State. They may delegate the tasks to any legal person provided such person has no personal interest in the outcome of the inspections it undertakes. Member States should assist each other administratively in carrying out the guidelines of the Recommendation by the exchange of relevant information and, where appropriate, inspecting officials, including cooperation through The EU Network for the Implementation and Enforcement of Environmental Law (IMPEL) (see section on [Networking to Support Implementation](#)).

The Recommendation sets criteria for plans for environmental inspections. 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 all controlled installations within it. Such a plan or plans should be available to the public. Such plan or plans may be established at national, regional or local levels. Plans should be based on the register of controlled activities, EU legal requirements, assessment of environmental issues, monitoring information and compliance history. Each plan for environmental inspections should as a minimum:

- Define the geographical area which it covers, for example all or part of the territory of a Member State.
- Cover a defined time period, for example one year.
- Include specific provisions for its revision.
- Identify the specific sites or types of controlled installations covered.
- Prescribe the programmes for routine and non-routine environmental inspections, taking into account environmental risks; these programmes should include the frequency of site visits.
- Provide for coordination between the different inspecting authorities.

For the site visits the Recommendation states that Member States should ensure that the following criteria are applied in respect of all site visits:

- An appropriate check is made of compliance with the EC legal requirements.
- If site visits are to be carried out by more than one environmental inspecting authority, they should exchange information on each others' activities and coordinate site visits, etc.
- That the findings of site visits are contained in reports and exchanged, as necessary, between relevant inspection, enforcement and other authorities.

- 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.

Following inspections, Member States should ensure that, after every site visit, the inspecting authorities process or store the inspection data and their findings, an evaluation thereof and a conclusion on whether any further action should follow. Member States should ensure that such reports are properly recorded in writing and maintained in a readily accessible database, communicated to the operator of the controlled installation in question and be publicly available within two months of the inspection taking place.

In investigations of serious accidents, incidents and occurrences of non-compliance, Member States should ensure that these are carried out by the relevant authority in order to:

- 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.
- Mitigate and, where possible, remedy the environmental impacts of the event through a determination of the appropriate actions to be taken by the operator and the authorities.
- Determine action to be taken to prevent further accidents, incidents and occurrences of non-compliance.
- Enable enforcement action or sanctions to proceed, if appropriate.
- Ensure that the operator takes appropriate follow-up actions.

Member States should report to the Commission on their experience of the operation of the Recommendation, with information on:

- Data about the staffing and other resources of the inspecting authorities.
- Details of the inspecting authority's role and performance in the establishment and implementation of relevant plans for inspections.
- Summaries 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.
- Brief data on the degree of compliance by controlled installations with EC legal requirements as appears from inspections carried out.
- A summary, including numbers, of the actions taken as a result of serious complaints, accidents, incidents and occurrences of non-compliance.
- An evaluation of the success or failure of the plans for inspections as applicable to the inspecting body, with any recommendations for future plans.

The Commission should review the operation and effectiveness of the Recommendation, with the intention of developing the minimum criteria further based on experience gained and contributions from interested parties, including IMPEL and the European Environment Agency (see section on the [EU Agencies](#)). The Commission is also 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 authorized to carry out inspections for or under the authority or supervision of inspecting authorities. 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.

Development of the Recommendation

The Recommendation arose from two foundations. In 1997 The EU Network for the Implementation and Enforcement of Environmental Law (IMPEL) (see section on [Networking to Support Implementation](#)) produced a report on the Minimum Criteria for Environmental Inspections which examined the nature of different types of inspections that regulators in the Member States undertake and set out basic criteria for how these should be conducted. This subsequently formed the basis for the Recommendation.

However, the European Commission's proposal predates the work of IMPEL. In a Commission Communication of 5 November 1996, it proposed the establishment of guidelines at Community level in order to assist Member States in carrying out inspection tasks and reduce the disparity between Member State inspections. In May 1997 the European Parliament called for Community legislation on environmental inspections and the Council (OJ C 321 22.10.1997) subsequently (7 October 1997) invited the European Commission to take this forward based on the IMPEL work.

The European Commission proposed a Recommendation rather than a Directive. The European Parliament argued, during the adoption process, for a Directive, but this was not accepted by the Commission or Council. However, the Council (20.3.2000) acknowledged that a later Directive could be needed (if improvements in inspection in the Member States did not take place). The Council also stated that the different systems for inspections in the Member States should not be replaced. However, Community guidelines for minimum standards should be adopted to improve performance. This approach formed the foundation of the Recommendation.

Implementation of the Recommendation

In 2007 the European Commission ([COM\(2007\)707](#)) published a review of the implementation of the Recommendation. All Member States submitted a report on the implementation of the Recommendation and a report on their experiences with the application of the Recommendation (although much dated back to 2002–2003 and, therefore, before the Recommendation could have had much influence). However, the Commission stated that in many cases the information submitted was incomplete or difficult to compare. For some Member States where responsibility for environmental inspections lies with the regions, it was impossible to draw conclusions at national level.

The Commission concluded that almost all Member States had partially implemented the Recommendation, but only a few had achieved full implementation. Implementation problems were partially due to differing interpretations by Member States of the definitions and criteria of the Recommendation and of the reporting requirements and differences in the political priority given to inspections, so that some inspectorates are under-resourced. As a result, the Commission concluded ‘there are still large disparities in the way environmental inspections are being carried out within the Community. Such disparities mean that the full implementation of environmental legislation in the Community can not be ensured. They also lead to distortions of competition for businesses’.

A considerable amount of the work of IMPEL has focused on the Recommendation. It has produced a Guidance Document to assist Member States in reporting under the Recommendation in a consistent manner. IMPEL has finalized work on Best Practices concerning Training and Qualification for Environmental Inspectors and also published a Management Reference Book for Environmental Inspectorates, as well as Benchmarking on Quality Parameters for Environmental Inspectorates. It also undertakes peer-reviewed studies of the regulatory authorities in individual Member States. These and other related studies are available on the IMPEL website (<http://impel.eu/>).

Enforcement and court cases

As the Recommendation is not legally binding, no cases have been concluded by the European Court of Justice.

Further developments

The 2007 Commission review of the Recommendation also considered possible future changes to it. It concluded that, as the Recommendation is a general framework for environmental inspection systems in Member States and its criteria are of a general nature ‘it does not seem appropriate to transform them into legally binding requirements’. However, the Commission concluded that it should be amended ‘in order to improve its implementation and strengthen its effectiveness’. The Commission concluded that consideration should be given ‘to broaden its scope so that it covers as far as possible all environmentally significant activities’ as well as clarification of definitions, further development of criteria for inspection planning and improved reporting requirements.

The Commission also concluded that ‘specific legally binding requirements for the inspection of certain installations or activities should be included in sectoral pieces of legislation’. It argued that this is ‘necessary to ensure that a higher political priority is given to inspections and that environmental legislation is better enforced throughout the Community’. Furthermore, ‘defining the inspection requirements in each legislative act has the advantage that the requirements can be adapted to the specific nature and risks of the installations or activities covered and can be more precise and better targeted than general criteria’ and that they ‘can be complementary to the Recommendation or they can concern installations or activities that are not covered by the Recommendation’. This, in part, has been taken forward in the proposal to recast the integrated pollution prevention and control Directive 2008/1/EC (see section on [integrated pollution prevention and control](#)).

In June 2010 the European Parliament and the Council reached agreement on the final text, which includes an article dedicated to environmental inspections. This Article 23 states among others that Member States shall set up a system of environmental inspections of installations addressing the full range of relevant environmental effects. All installations will have to be covered by an environmental inspection plan that is to be reviewed regularly and updated where appropriate. The Article also stipulates the required contents of the inspection plans, such as procedures for both routine and non-routine inspections.

The competent authorities will be required to draw up regularly programmes for routine environmental inspections. These programmes will have to include the frequency of visits for different categories of installations. The period between two site visits will need to be based

on a systematic appraisal of environmental risks of the installations concerned and will not exceed one year for installations posing the highest risks and three years for installations posing the lowest risks. If an inspection has identified an important case of non-compliance with the permit conditions, an additional visit shall be carried out within six months.

The new Directive furthermore requires Member States to carry out non-routine environmental inspections to investigate serious environmental complaints, serious environmental accidents, incidents and occurrences of non-compliance as soon as possible.

Competent authorities are required to draft a report following each site visit. The report needs to describe the findings with respect to compliance of the installation with the permit conditions and conclusions on whether any further action by the operator is needed. The report shall be notified to the operator within two months and be made publicly available by the competent authority within four months after the site visit.

The Commission stated that it was ‘considering proposing specific legally binding rules for inspections of waste shipments’ (see section on [shipment of waste](#)). This noted the different nature of waste shipment inspections (such as not being focused on stationary installations and involving different authorities) and concluded, therefore, that ‘specific criteria should be defined to ensure sufficient quality and frequency of inspections and provide for appropriate training and co-operation among authorities’. Subsequently, the Commission published a report exploring potential criteria for waste shipment inspections¹. From 25 January to 30 March 2011 the Commission held a consultation on possible EU legislative criteria and requirements for waste shipment inspections². The Commission might use the information gathered through this consultation to prepare an impact assessment and a legislative proposal on criteria and requirements for waste shipment inspections.

Other environmental legislation ‘in which the necessity of establishing or reinforcing inspection requirements will be looked at’ included:

- Directive 2003/87/EC (see section on [emissions trading](#)) establishing a scheme for greenhouse gas emission allowance trading within the Community.
- Regulation (EC) No 2037/2000 on substances that deplete the ozone layer (see section on [substances depleting the ozone layer](#)).
- Directive 98/83/EC on the quality of water intended for human consumption (see section on [drinking water](#)).
- Directive 2002/96/EC on waste electrical and electronic equipment (see section on [waste electrical and electronic equipment](#)).
- Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (see section on [trade in endangered species](#)).
- Directive 2009/31/EC on the geological storage of carbon dioxide (see section on [carbon capture and storage](#)).

For instance Directive 2009/31/EC, adopted in April 2009, establishes inspection requirements for carbon storage complexes. Article 15 requires Member States to set up a system of routine and non-routine inspections of all storage complexes. Routine inspections need to be carried out at least once a year. Non-routine inspections need to be carried out among others if the competent authority has been notified of leakages or significant irregularities or to investigate serious complaints in relation to the environment or human health. Competent authorities are required to draft a report following each inspection.

On 20 November 2008 the European Parliament adopted a non-legislation resolution on environmental inspections reacting to Commission Communication. The Parliament stated that it was concerned that the full implementation of environmental legislation in the Community cannot be ensured, since this leads not only to continuing damage to the environment but also to distortions of competition. Parliament opposed the Commission's intention of dealing with the problem only through a non-binding Recommendation and through the insertion of specific legally binding requirements in sectoral legislation. It also urged the Commission to come forward, before the end of 2009, with a proposal for a Directive on environmental inspections, clarifying the definitions and criteria and extending the scope.

In late 2010 the Commission was finalising the review of the Recommendation and analysing several options on what to do with the Recommendation (such as amending the Recommendation, turning it into a Directive, introducing binding requirements in sectoral legislation or a combination of these options). The Commission is expected to come up with a proposal in 2011.

The debate over the future of the Recommendation has also been addressed in other regulatory regimes, such as the enforcement of the REACH Regulation for chemicals. Forum of the European Chemicals Agency (see section on the [EU Agencies](#)), which consists of representatives of Member States enforcement authorities, concluded that some of the Forum members 'were not convinced that including REACH under the scope of the RMCEI is feasible as there are many differences between the enforcement of REACH and enforcement of environmental legislation and separate criteria should be developed'. However, it was noted that the Recommendation may have useful elements for the Forum and the suitable parts could be taken over for its own recommendations³.

On 7 March 2012 the Commission published a Communication ([COM\(2012\)95](#)) exploring options to improve inspection and surveillance of EU environmental law. These options include better inspections and surveillance, criteria for how Member States should deal with citizen complaints, more access to justice in environmental matters, and support for European networks of environmental professionals.

Related legislation

The Recommendation is concerned with environmental inspections of installations and similar activities. This includes those concerned with the enforcement of the following EU legislation:

- Integrated pollution prevention and control Directive 2006/11/EC (see section on [integrated pollution prevention and control](#)).
- Large combustion plant Directive 2001/80/EC (see section on [large combustion plants](#)).
- Waste incineration Directive 2000/76/EC (see section on [waste incineration](#)).
- Solvents emissions Directive 1999/13/EC (see section on [Volatile organic compounds from industry](#)).
- Landfill Directive 1999/31/EC (see section on [landfill](#)).
- Three Directives relating to emissions from the titanium dioxide industry (78/176/EEC, 82/883/EEC and 92/112/EEC) (see section on [titanium dioxide](#)).

- Urban waste water treatment Directive (91/271/EEC) (see section on [urban waste water treatment](#)).

Revision of the Recommendation may lead to interaction with a wider range of EU legislation (see 'Further developments' above).

References

1 IEEP, Bio and Ecologic (2009) *Study on Inspection Requirements for Waste Shipments*, http://ec.europa.eu/environment/waste/shipments/pdf/report_august09.pdf

2 European Commission (2011) Consultation on possible EU legislative criteria and requirements for waste shipment inspections, January-March 2011, http://ec.europa.eu/environment/consultations/waste_shipment.htm

3 Forum of the European Chemicals Agency (2007) Minutes of the 1st Meeting of the Forum for Exchange of Information on Enforcement, 11–12 December 2007.