

COM4-024

Brussels, 21 September 1999

OPINION

of

the Committee of the Regions

of 16 September 1999

on

The Proposal for a Council recommendation providing for minimum criteria for environmental inspections in the Member States

(COM(1998) 772 final - 98/0358(COD))

The Committee of the Regions,

HAVING REGARD TO the proposal for a Council recommendation providing for minimum criteria for environmental inspections in the Member States (COM(1998) 772 final - 98/0358 (COD) - formerly 98/0358 (SYN))

HAVING REGARD TO the decision taken by the Council on 16 July 1999, under the first paragraph of Article 265 and 175, first paragraph, of the Treaty establishing the European Community, to consult the Committee of the Regions on the matter

HAVING REGARD TO the list of Commission proposals pending as at May 1999 for which the entry into force of the treaty of Amsterdam entails a change of legal basis and/or procedure (SEC (1999) 580 final)

HAVING REGARD TO Commission 4 working programme for 1998, which was adopted by the Bureau on 15 July 1998, and which directs Commission 4 - Spatial Planning, Urban Issues, Energy and Environment - to draw up the relevant opinion

HAVING REGARD TO the draft opinion CdR 179/99 rev 1 adopted by Commission 4 on 28 June 1999 by majority (rapporteur: **Margaret Eaton, UK, EPP**),

adopted the following opinion at its 30th plenary session on 15 and 16 September 1999 (meeting of 16 September).

1. Introduction

1. The Committee of the Regions recognises the concern about the state of implementation and enforcement of Community legislation which has grown in recent years, and recognises the necessity of ensuring minimum criteria for inspections of industrial premises. It is important that practical improvements are made to the existing inspection regime.

2. Scope of the opinion

1. The opinion is orientated towards 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 which are subject to authorisation, permit or licence under Community 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 minimum criteria in respect of such environmental inspections will ensure that steps are taken towards achieving a level standard of inspections which would have the added effect of avoiding distortion of competition.
2. The COR agrees the details set out as to the scope and definitions for environmental inspections and supports the ambition that environmental inspections shall aim to achieve a high level of environmental protection. The COR also supports the details relating to:

- the development of an inspection plan or plans available to the public according to the provisions of Directive 90/313/EEC;
- the investigation of accidents, incidents and occurrences of non-compliance when they are of a serious nature.

2.3 The Committee considers that detailed criteria for site visits should not be introduced and the reports and conclusions following site visits should not be drawn up until action has been taken, wherever possible in conjunction with the IMPEL network, to establish:

- the exact data the Commission wishes to receive and the purpose these could serve;
- the practical consequences of such a move, not only for the Commission but also for the inspection organisations in the Member States;
- the effects in terms of manpower required, both for the Commission and the Member States;
- the alternatives available for accessing the desired data.

In this context the Committee can well imagine the Commission working with the IMPEL on an internationally practicable format for environmental licences. This could establish an important

basis for the requisite reports. A transitional period should be laid down for the introduction of such a format.

3. General comments

1. Having acknowledged the need for such minimum criteria for environmental inspections, the COR believes that the ambition of achieving consistency in standards across Member States is critical and is in accord with the Commission's Communication and the Council's resolution both of which envisaged a role for IMPEL [The European Union Network for the Implementation and Enforcement of Environmental Law] in this context. The regions will participate and collaborate in the IMPEL network in drawing up minimum criteria for environmental inspections, and in their implementation.
2. The COR acknowledges that EC Directive 96/61 on Integrated Pollution Prevention and Control will result in the framing of indicative performance standards and more uniform regulation of those enterprises which cause most pollution.
3. The COR recognises that in some Member States authorisation and control are traditionally carried out by regional and local authorities in addition to the state authority. The draft recommendation should allow these existing tried and tested arrangements to be continued.
4. The competence of the inspection is a fundamental plank for the whole consideration. The use of secondments and other measures to ensure exchange of experience between the different enforcing agencies and between Member States would assist the efforts needed to achieve conformity of standards. An effective training regime throughout the Member States is essential if conformity of standards is to be achieved. This carries with it additional resource implications.
5. The COR considers that the Community eco-management and audit scheme not only provides a useful source of information in the context of environmental inspections, it also provides a framework to enable the controlled installation to address their significant environmental aspects in a systematic way which supports the ambition of striving for a conformity of approach across Member States. The eco-management and audit scheme can never replace environmental inspections. Rules must be established governing the objectivity of delegated inspections as well as the way in which the authorities would supervise the inspection.
6. The COR considers that there should be an inspection plan for each controlled activity and type of installation and this plan should contain both a minimum frequency of visit as well as a maximum period between thorough process reviews. Over-prescription should rightly be avoided but, at the same time, every authorised process must be subject to a thorough, regular review or the authorisation and conditions would be meaningless [as both the process and the standards to be achieved change over time]. The maximum review periods should be considered as a backstop because the review of the conditions associated with authorisation by regulators is needed to be ongoing.
7. The COR believes that maximum review period between thorough process reviews should also be established for different industrial sectors. The COR envisages a role for the European Environment Agency in this regard - perhaps IMPEL could also advise. The following criteria could be used for setting maximum review periods for a particular sector:

- the expected rate of technological change;
- the likelihood of operators in a sector undertaking improvements on their own initiative;
- the risk and level of environmental impacts associated with the sector;
- the cost to the regulators and regulated industry of undertaking the review;
- the need for the combination of different review periods for different sectors to fit together in such a way as to avoid unmanageable peaks in terms of workload;
- the ongoing review of the BAT reference documents;
- sectoral investment cycles;
- whether or not the operator has in place an environmental management system such as EMAS or ISO 14001.

8. At present, there is no requirement to make information from inspections publicly available, although the Freedom of Access to Information on the Environment, Directive 90/313/EEC of 7 June 1990 does allow for it. The COR welcomes the proposal to make available to the public details of the inspection and acknowledges this would greatly increase public confidence in the regulatory regime. It is recognised that some inspections will result in information being gathered which is regarded as either commercially sensitive or that which, if disclosed, would cause potential problems in relation to national security. In the cases where businesses wish to exercise their right to privacy they would be expected to provide evidence to the regulator to support their position. Appeals against decisions would need to be considered through independent arbitration, perhaps through a judicial system.

9. The COR acknowledges that it is local authorities that are the first point of contact for members of the public seeking information about industrial installations. Where it is the case that there is more than one enforcement agency carrying out inspections, arrangements are needed to be made between those agencies to ensure that local authorities can respond to all reasonable requests for environmental information as set out in Directive 90/313/EEC, irrespective of whether that local authority is the enforcing agency or not.

3.10 Member States should ensure that the investigation of accidents, incidents and occurrences of non-compliance with EC legislation, when they are of a serious nature, 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.

4. Costs to local authorities

1. The COR considers that even the adoption of these minimum standards will result in additional costs for responsible authorities. It supports the suggestion for the Commission to review the matter of financial support when the reports from the Member States are considered for appropriate action. The COR suggests that the polluter-pays principle should be considered in the range of possible funding options at this time.

5. Final comments

The COR acknowledges that these controlled installations are important "wealth creators" for the Member States and the introduction of agreed standards for inspections should be considered as a positive measure to ensure fair compliance with Community-wide legislation. A further consideration of installation visits should be to persuade operators to use EMAS or a similar system.

1. The COR applauds the Commission's determination to achieve continual improvement in the standards for environmental inspections and offers its future support in this ongoing and important area of work.
2. The COR invites the European Commission to present future recommendation(s) applicable to other areas of economic and administrative activity which impact on the environment.

Brussels, 16 September 1999.

The President

Acting Secretary-General

of the

of the

Committee of the Regions

Committee of the Regions

Manfred Dammeyer

Vincenzo Falcone

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