

**European Union Network for the Implementation
and Enforcement of Environmental Law**

(IMPEL)

Minimum Criteria for Inspections



**IMPEL
NETWORK**

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and Enforcement of Environmental Law

Foreword

The European Union network for the Implementation and Enforcement of Environmental Law is an informal Network of the environmental authorities of the Member States of the European Union. The European Commission is also a member of IMPEL and shares the chairmanship of management meetings.

The network is commonly known as the IMPEL Network.

The expertise and experience of the participants within IMPEL makes the network uniquely qualified to work on certain of the technical and regulatory aspects of EU environmental legislation. Its objectives are to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. The Network promotes the exchange of information and experience and the development of a greater consistency of approach in the implementation, application and enforcement of environmental legislation, with a special emphasis on Community environmental legislation. It provides a framework for policy makers, environmental inspectors and enforcement officers to exchange ideas, and encourages the development of enforcement structures and best practices.

Although its focus is on practical implementation issues, IMPEL has an interest at all stages in the 'regulatory chain'.

The regulatory chain can be defined as the process through which legislation is designed, conceived, drafted, adopted, implemented and enforced until its efficiency is assessed.

Environmental inspections are a key activity in the implementation and enforcement of environmental law and essential to secure a high level of environmental protection. IMPEL attaches great importance to environmental inspections and the following paper on Minimum Criteria for Inspections was presented to the Commission at the end of 1997 in response to the invitation contained in the Commission Communication on Implementing Community Environmental Law. IMPEL is developing further the work in this area by considering in more detail different aspects of inspections following the recommendations at the end of this paper.

The contributors to this paper are listed on the final page of this document.

EUROPEAN NETWORK FOR THE IMPLEMENTATION AND ENFORCEMENT OF ENVIRONMENTAL LAW (IMPEL).

MINIMUM CRITERIA FOR INSPECTIONS

November 1997

1 INTRODUCTION

This paper has been prepared by the IMPEL Ad-hoc Working Group on Minimum Standards. Its purpose is to report the conclusions of the Working Group in defining minimum criteria for inspections and to set out terms of reference for future related work by IMPEL. The paper is based on the work undertaken in late 1996 and 1997, during which period there has also been some discussion on minimum criteria for inspecting bodies and inspectors.

This work has been undertaken in the context of the Commission "Communication on the Implementation of Community of Environmental Law" (November 1996) and the subsequent European Parliament report on "Implementing Environmental Law" (March 1997). In particular the Council of Minister's "Resolution on Community Environmental Law" (June 1997):

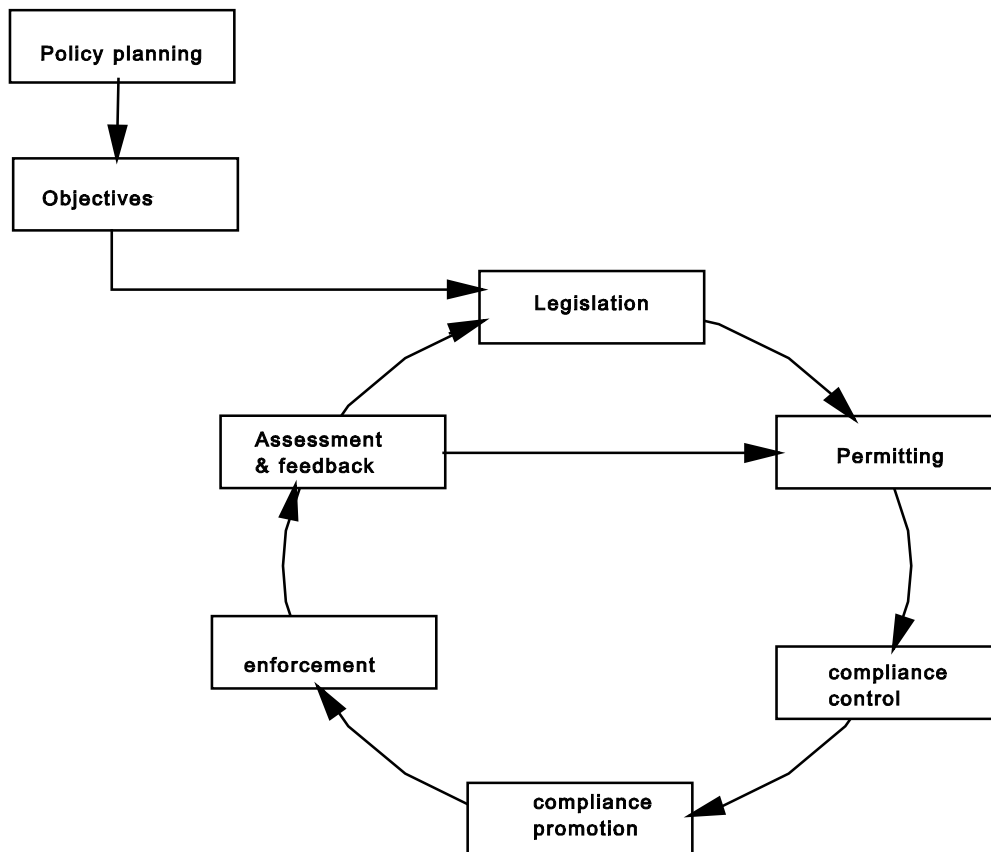
"Asks the Commission, taking into account the variety of existing systems, to propose for further consideration in Council, in particular on the basis of the work of IMPEL, minimum criteria and / or guidelines for inspection tasks carried out at Member State level and the possible ways in which their application in practice could be monitored by Member States in order to ensure an even practical application and enforcement of environmental legislation."

Para.18, Council Resolution on Community Environmental Law.

This minimum criteria for inspections aims to promote common principles for the inspection of industrial installations which arise from the obligations on industry to respect the implementation of environmental law and to protect the environment.

The Ad Hoc Working Group recognises the importance of the interconnection between minimum standards for inspection, the organisational framework for inspecting bodies and the qualifications for inspectors. Training of inspectors is also an important factor in the quality of inspections. However, this paper deals only with the question of minimum criteria for inspections.

The conceptual framework for the Working Group's deliberations is that of the regulatory cycle (figure 1). This paper on minimum criteria for inspection focuses, in particular, on inspection and site visit based approaches to the compliance control and compliance promotion steps in the cycle.



The Working Group has also discussed various approaches to compliance checking - in particular, self monitoring based approaches. It is noted that site specific information available to inspectors, in addition to information provided by site visits, may include reports to the authorities by operators; monitoring data; consultant's reports; audit reports; EMAS related reports; data requested by the authorities from operators; complaints etc. The Working Group has not yet wholly adapted the minimum criteria for such approaches (or developed parallel minimum criteria) although the planning and analysis, follow up and report activities outlined in this paper also apply to these approaches. (See Terms of Reference for future work).

The minimum criteria set out below apply to industrial installations. The Working Group recognises that environmental inspections are carried out in the Member States for different and wider sets of installations but considered that the core competence of members of the Ad Hoc Working Group concerns industrial installations.

2 **MINIMUM CRITERIA FOR INSPECTIONS**

Scope:

These minimum criteria apply to the inspection of industrial installations, including power stations and waste treatment/disposal facilities.

The minimum criteria apply to all kinds of environmental inspection performed by the authorities regardless of organisational structure or the level of authority.

2.1 **Definitions**

Inspection: Inspection is an activity which, in the broadest sense, entails:

- checking and promoting the compliance of industrial installations within requirements stated in laws, regulations, ordinances, directives, prohibitions and/or permits etc.
- monitoring the general impacts of specific industrial installations on the environment that might lead to enforcement action or further inspection.

2.2 **Key elements**

The key elements of a system for the inspection of industrial installations for which minimum criteria are set down are:

- Planning - setting out a clear framework for inspection activities at the appropriate geographical or organisational level.
- Collection of site specific information - from visits, site surveys etc.
- Analysis of results and follow up at the site/company level.
- Regular evaluation and reporting of inspection activities.

2.3 **Planning**

1) It is a minimum criterion for inspections that there should be a '*plan for inspection*' covering a defined period (eg annual) for a defined area or organisation and with fixed terms for revision and specifying which types of installation are covered.

2) A plan for inspection should be *based* on the following.

- A database/register of industrial installations.
- A survey of the regulations and conditions to be complied with.
- A general survey of major environmental problems and a general survey of the state of compliance by industrial facilities with regulatory and other requirements.
- Performance indicators and data on previous inspections eg frequency of inspections; resources used; non-compliances etc.

- 3) Plans for inspections should reflect the industrial installations covered and should prescribe for the planning period:
 - the precise scope and extent of the programmatic and systematic compliance checking to be carried out, eg. in the form of inspection frequencies for a priority list of installations and for each type of installation;
 - the procedure for ad hoc inspection eg. inspection in reaction to accidents, complaints, non-compliance situations and permitting processes.
- 4) Plans for inspection must be appropriate to the inspection tasks of the body and resources available in the context of the tasks to be completed.
- 5) In relation to specific sites, the preparation of plans for inspection should take into account relevant available information eg. reports by operators of industrial installations to the authorities; self monitoring data, audit and EMAS reports; results of previous inspections; reports of environmental quality monitoring.

2.4 Site Visits

Site visits play a greater or a lesser role in compliance checking depending on the reliance that is placed on self monitoring and other forms of site assessment. The Inspector shall have a right of access for inspection and monitoring of the environmental legislation.

The following minimum criteria apply to all site visits.

- 1) As a minimum criterion, on-site visits should be carried out through an *integrated approach* which examines the full range of environmental impacts, as far as organisational arrangements allow. If site visits are carried out by more than one inspectorate, co-ordination between the authorities should be assured by mutual knowledge of each other's plan for site inspections. The findings of site visits should be exchanged between the relevant authorities.
- 2) A minimum criterion for site visits is that every site visit should be recorded, and the record filed.

The following minimum criteria apply to site visits within a planned compliance checking system.

- 3) Programmed, systematic site visits should cover:
 - *Compliance checking*: checking compliance with laws, regulations and/or permits etc.
 - *Encouragement and understanding*: promote and improve the understanding by operators (of industrial installations) of the relevant environmental requirements and of the environmental impacts of their activities in order to secure compliance with the underlying objectives of environmental legislation.
 - *Examination*: consider the impact on the environment of the installation in order to evaluate

impacts, current control requirements and the need for improvement in either or both. In relation to ad-hoc site visits, the following minimum criterion applies.

- 4) Ad-hoc site visits in response to complaints, incidents and non-compliances should occur for:
 - the investigation of serious complaints, where appropriate;
 - the issue or renewal or modification etc of permits, which is particularly important at the start of the permitting process;
 - the investigation of significant accidents and incidents and non-compliances.

2.5 *Analysis, follow up and reporting at the site/company level.*

- 1) The findings from each site visit should be evaluated and the evaluation should lead to a conclusion regarding further action eg. enforcement action, a new or renewed permit, follow up visit, or that no further action is needed. Reports of site visits must be properly recorded in a database for easy retrieval.
- 2) Incidents, accidents or non-compliances should in every case be followed up on the part of the inspecting body by:
 - clarification of the cause(s) and liability for the event and the impact on the environment, with conclusions forwarded to the enforcement authority as required;
 - mitigation - determine the actions to be taken by the operators and the authorities as appropriate for mitigation of the environmental impacts of the event;
 - prevention - determine the action(s) to be taken to prevent further accidents, incidents and non-compliance's.
- 3) It is the function of the inspecting body, in following up inspections, to check that the operator takes responsibility for making the appropriate investigation and changes in response to an incident.

2.6 *Evaluation and reporting of inspection activities*

It is the responsibility of each Member State to demonstrate that the minimum criteria have been implemented. This may be achieved through regular (e.g. annual) evaluation and reporting of the inspection activities as a whole.

It is a minimum criterion to ensure that such reporting is carried out. It is the task of the inspecting body/bodies responsible for environmental inspections in each Member State to produce a report on a predetermined and regular frequency.

An important purpose of the report will be to demonstrate to the public the implementation of the minimum criteria for inspection.

Reports should describe and evaluate the work done and relate this to planned activities. In particular reports could include the following:

- quantitative data about the financial and human resources of the inspection body;
- details of the overall plan;
- the number of inspections carried out;
- the level of compliance with permit or legislative requirements;
- the actions taken as a result of non-compliances;
- a description and evaluation the success or failure of the plan , relating this to the recommendations for future planned activities;
- the date of the next report.

Such reports may be published by the regional and local regulatory organisations within each Member State and in future should be coordinated on a national basis. Since the reports will be public documents these should be made available to the Commission. These reports may be in the host language of the region or Member State concerned.

3 TERMS OF REFERENCE FOR FURTHER INVESTIGATIONS TO BE UNDERTAKEN BY IMPEL IN RELATION TO MINIMUM CRITERIA

The Ad Hoc Working Group identified a number of further tasks in relation to minimum criteria for which outline terms of reference are suggested below for further elaboration and consideration by IMPEL insofar as the tasks are not being addressed by the work of the current Working Groups.

3.1 Planning

'It is a minimum criterion for inspections that there should be a plan for inspection covering a defined period (eg annual) for a defined area or organisation and with fixed terms for revision and specifying which types of installation are covered.'

A task following from the minimum criteria is to set up guidelines for this planning activity.

3.2 Frequencies of Inspection

The task should be to investigate existing practices concerning defined groups of industries (eg. for IPPC plants) with regard to inspection frequencies in order to set up recommendations on the factors to be taken into account when determining the frequency of inspection, for example, factors to be taken into account might include the complexity of facilities; previous environmental performance of the operator; the extent of self monitoring etc.

3.3 Reporting

'Inspection activities as a whole should be regularly (eg annually) evaluated and reported on by the inspecting bodies. Reports should describe and evaluate the work done and relate this to planned activities. Reports could include quantitative data about the financial and human resources of the inspecting body and adequate quantitative information on inspection activities'.

The task should be to set up guidelines for this reporting including guidelines for quantification.

3.4 Self Monitoring

The problem of applying these minimum criteria to inspection systems based to a degree on self monitoring should be further explored to make the minimum criteria applicable in those circumstances or to set up parallel minimum criteria for inspection systems based on self monitoring and assessment.

3.5 Inspecting bodies

The task is to establish the minimum criteria for inspecting bodies resulting from the minimum criteria for inspections.

3.6 Inspectors – qualifications and training

The task is to establish minimum criteria for inspectors resulting from the minimum criteria for inspections.

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