

Consultation document

Revision of the EU legal framework on environmental inspections

1. Introduction

The purpose of this consultation is to collect the views of all relevant stakeholders, at national and EU level, and the public at large on the main concepts for the revision of the current EU framework on environmental inspections.

It builds on previous consultations and seeks to complement them with stakeholders views on ideas for the design of a new horizontal binding instrument on environmental inspections which the Commission, subject to the conduct of a full impact assessment, intends to propose later in 2013.

This consultation document:

- Explains the background to a possible future Commission legislative proposal
- Provides information to assist stakeholders who would wish to contribute to the latest public consultation on the initiative

It is divided into sections:

- Section 2 sets out the role of environmental inspections
- Section 3 describes the existing framework on environmental inspections
- Section 4 summarizes the outcome of previous consultations on the subject
- Section 5 explains the questionnaire which forms the basis of the latest public consultation.

The results of the latest public consultation will be considered in the ongoing process of preparing an impact assessment in relation to the proposed initiative.

2. Towards a more effective implementation of EU environment legislation: the role of inspections

Over the past decades, a comprehensive and detailed body of environment law has been developed at EU level. It is estimated that up to 80% of national environment legislation is based on this.

Adequate controls are necessary to ensure that abuses do not arise and that there is a **level playing field** (both between Member States and between members of the regulated community).

Supervision of compliance with environment legislation through inspections is **one tool among others, but it is a key one**.

Environmental inspections enable authorities to collect information on activities that affect the state of the environment, identify gaps in implementation and detect breaches of legal obligations. This allows the authorities to implement and enforce EU environment law more effectively, including through the use of a range of administrative and criminal sanctions as well as other follow-up measures.

EU sectoral environment legislation (notably water, waste, air, and nature legislation) require Member States to use a range of methods to safeguard the environment, including the following:

- **Permits, authorisations and general requirements** according to which activities must be carried out under certain conditions and having regard to certain restrictions.

- **Prohibitions** according to which particular activities or use of particular means or substances are forbidden.
- **Procedural requirements** according to which certain steps, such as, for instance, completion of an environmental impact assessment, need to be done before there is any physical intervention on the ground.
- The execution of certain **compensatory measures** to offset the harm caused by certain plans or projects.

Fulfilment of these requirements may necessitate the following actions:

- **Detection of the causes** of a breach of state-of-the-environment standards
- **Checks** to ensure that activities undertaken do not breach prohibitions, e.g. hunting outside the approved hunting season
- **Checks** to determine whether general requirements, conditions of permits, authorisations, derogations and similar decisions are respected, e.g. general standards regulating the functioning of an urban waste water treatment plant
- Where breaches are detected, appropriate **follow-up** to ensure required outcomes, such as cessation of illegal activities, execution of restoration measures, and imposition of administrative and criminal sanctions

Within this context, **inspections represent a key instrument** in terms of checking compliance, characterising non-compliance and establishing the factual basis for appropriate follow-up. The effectiveness of inspections will relate to the extent to which they identify and characterise non-compliance and the extent to which they prepare the way for efficient follow-up.

Inspections may represent a **follow-up to complaints** or take place under **inspection plans** and programmes.

3. The existing framework on environmental inspections in EU law and its limitations

In 2001, based on work by the European Union Network for the Implementation and Enforcement of Environment Law, "IMPEL"¹, during the 1990s and recognizing the importance of environmental inspections as well as the wide disparity between inspection systems and practices in the Member States, the European Parliament and the Council adopted **Recommendation 2001/331/EC**, which provides for minimum criteria for environmental inspections in the Member States (**RMCEI**).

Although non-binding, RMCEI has been influential. Its principal focus is in the area of industrial inspections and it has helped to build confidence in EU initiatives in this area.

Against this background, a number of **binding inspection provisions have been adopted within sectoral environment legislation** since 2001 based on RMCEI principles, notably the Industrial Emissions Directive², the Seveso III Directive³, the Landfill Directive⁴ and the Laboratory Animals Directive⁵.

¹ Information on the IMPEL work is available at: <http://impel.eu/>.

² Directive 2010/75/EU on industrial emissions, Article 23.

³ Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances, Article 20.

⁴ Directive 1999/31/EC on the landfill of waste, Articles 11 to 13.

⁵ Directive 2010/63/EU on the protection of animals used for scientific purposes, Articles 34 and 35.

The current EU legal framework on environmental inspections at national level is therefore a combination of fragmentary sectoral binding and the horizontal non-binding provisions of RMCEI.

The following are the **limitations** of the current framework:

- The **scope of this framework** covers mainly industrial installations, and excludes many activities that are otherwise regulated by EU environment legislation. Not covered, for example, are inspections of protected nature conservation sites, trans-boundary transport of waste, trade in endangered species, use of hazardous substances in products, chemicals, and certain activities, such as water abstraction, that are relevant to protection of water resources. As a result, beyond the area of industrial/point-source inspections, less progress has been made on the methodology and practice of inspections. Many obligations are implied rather than explicit. For example, the Birds Directive prohibits illegal exploitation of and trade in wild birds. There are no explicit enforcement provisions although control and enforcement is clearly necessary to make the prohibition meaningful in situations of illegal activities such as bird-trapping in certain regions.
- Even within its current scope RMCEI has been identified as **in need of improvement in terms of the detail and precision of its current content**⁶.
- The current framework is to a large extent **non-binding** in a context where there are **still large disparities** in the way environmental inspections are organised and carried out in individual Member States.
- The current framework **does not take account of the full compliance promotion and enforcement chain**.
- The current framework lacks appropriate provisions for **co-ordination of inspection activities across different environmental sectors within individual Member States**. Some implementation problems cut across different pieces of environment legislation – for example, illegal landfilling within protected nature sites involves both waste and nature conservation legislation. Without provisions on co-ordination, inspections and monitoring activities may not be guaranteed to cover all relevant problems in the most effective way.
- There is a lack of appropriate provisions for **trans-boundary co-operation** between Member States, something important in relation to problems such as illegal trade in wildlife and waste.
- The current framework has been **overtaken by best practice** as is evident in the work of IMPEL, OECD and others.
- In contrast to many other policy areas, such as food safety, fisheries and aviation safety, the existing framework lacks provisions on a **capacity at EU level** to ensure that national inspection systems are broadly consistent, coherent and effective in order to guarantee a uniform application of EU environment law and a level playing field for businesses in the internal market.

As it stands, EU environment law is therefore not the subject of a coherent, consistent and up-to-date set of criteria on environmental inspections and surveillance to detect and prevent breaches of environment law on the ground across all environmental sectors.

4. The outcome of previous consultations

On the basis of a review clause in RMCEI, the Commission published a Communication in 2007⁷ and carried out a public consultation in 2008.

⁶ Communication on the RMCEI implementation, COM (2007) 707 final.

⁷ Communication on the RMCEI implementation, COM (2007) 707 final.

The **public consultation to the 2008 review of the RMCEI**⁸ clearly showed that the majority of stakeholders favour the introduction of binding instrument on inspections with wider scope, while the RMCEI criteria were found in general to be adequate though incomplete.

Both **Council and European Parliament (EP)** seek improvements in relation to environmental inspections.

In its **Resolution of 20 November 2008** on the review of RMCEI⁹, the **European Parliament** stressed that the incomplete and uneven implementation of environmental legislation could lead to continuing damage to the environment and to distortions of competition. The European Parliament considered it essential to strengthen IMPEL and urged the Commission to report on possible ways of doing so, including the feasibility of establishing an EU environmental inspection force, and to present a proposal for a directive on environmental inspections¹⁰. Furthermore, in its Resolution on "Our life insurance, our natural capital: an EU biodiversity strategy to 2020" of 20 April 2012, the EP calls on the Commission to enhance the implementation of the Birds (2009/147/EC) and Habitats (92/43/EEC) Directives, by strengthening the compliance control mechanisms, including inspections¹¹.

The Council Conclusions of 11 June 2012 also called for improving inspections regimes on the basis of experience with existing provisions and avoiding unnecessary administrative burdens¹².

The Commission has been carefully considering measures for strengthening the EU framework on environmental inspections at national level and for enhancing the EU capacity regarding inspections. The **Commission Communication** on Improving the Delivery of Benefits from EU Environment Measures: Building Confidence through Better Knowledge and Responsiveness, COM(2012)95, and again raised the subject of inspections.

The **stakeholder consultations for the proposal for the 7th EAP** confirmed once again the need to upgrade the EU legal framework on environmental inspections through more extensive criteria on how Member States should undertake inspections and through complementing national inspection systems with enhanced capacity at EU level to ensure consistency and effectiveness of implementation of EU environment legislation¹³.

The **adopted 7th EAP proposal** recognises that reinforcement in respect of EU environment law at all administrative levels and guarantee of level playing field requires extending the inspection requirements to the wider environment acquis and complementing these with an EU level capacity that can address situations where there is due reason for concern¹⁴.

In its Opinion to the Commission proposal for the 7th EAP (2013/C 17/07)¹⁵, the **Committee of the Regions** stressed that an EU-wide framework for national inspections can reduce unfair competition between EU regions and municipalities due to different or lacking inspection regimes, ensure a level playing field in legal action, and improve trans-frontier cooperation and consistency across the EU. The form and content of inspections should be regulated nationally and developed at local and regional level but on the basis of general principles set by the EU framework, including a streamlined and risk-based, approach. It also stresses the value of a well-defined inspection related role of the Commission.

⁸ <http://ec.europa.eu/environment/legal/law/inspections.htm>

⁹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0568+0+DOC+XML+V0//EN>

¹⁰ The EP reiterated this position in its Resolution of 20 April 2012 on the review of the 6th EAP and the setting of priorities for the 7th EAP (2011/2194/INI); <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-147>

¹¹ 2011/2307 (INI) <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-146>

¹² http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/envir/130788.pdf

¹³ <http://ec.europa.eu/environment/newprg/results.htm>

¹⁴ See COM(2012) 710 final, paragraph 63 (c).

¹⁵ Opinion of the Committee of the Regions on 'Towards a 7th Environment Action Programme: better implementation of EU environment law'; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:017:0030:0036:EN:PDF>

5. This stakeholder consultation

The stakeholder consultation is based on a questionnaire with made up of 28 questions organised in the following clusters:

- **Level playing field – the overall role of enforcement, in particular inspections**
- **Role of compliance promotion**
- **Co-ordination and streamlining of enforcement and, where appropriate, compliance promotion within Member States**
- **Criteria for organising, planning, carrying-out and follow-up environmental inspections within Member States**
- **Co-operation on trans-boundary inspection work**
- **EU level capacity on environmental inspections**
- **Data, assessment of effectiveness and transparency**

Within the questionnaire, each cluster provides guidance on the intended meaning of the different terms and the objective of the specific questions. Most of the questions invite the respondents to indicate how necessary or useful a specific inspection related type of work would be. A number of questions invite the respondents to provide information and/or comments, including web-links that the respondents think are relevant and useful.

The questions are designed to help the Commission to address the following challenges:

- **Enhancing mutual trust in implementation**, and ensuring a fair competition in the internal market and the **level playing field** that business is asking for.
- Making the **wider environment *acquis* subject to explicit provisions on inspection**, thus tackling more effectively, for instance, illegal landfilling, illegal water abstraction or illegal persecution of birds of prey.
- **Reflecting advances in best practice** on inspections that have arisen over the past decade, for example in relation to
 - **contextualising inspection work** by underlining its place within **the compliance promotion and enforcement chain**
 - use of **risk-based approaches** to better target inspection activities and maximise the effectiveness of available resources, and
 - use of **complementary compliance promotion techniques** such as awareness raising.
- **Setting out a structured approach** to inspections, using established approaches such as inspection plans, leaving Member States to target inspections on the basis of risks and complement inspections with compliance promotion activities appropriate to the risks the Member States identify.

- **Allowing for a range of mechanisms for co-ordination between competent authorities within individual Member State** to ensure that inspection work is joined-up and that **regional and local authorities** are both supported and involved.
- Helping Member States to **streamline scarce inspection resources** in the most effective way in the confidence that they will be doing so within a common EU framework.
- **Improving arrangements for trans-boundary co-operation** between Member States on environment inspections. Work by IMPEL has shown both the need for and the added value of good co-operation on issues such as illegal movements of environmentally sensitive goods.
- **Establishing a limited well-defined role for the Commission** in order to address cases of serious shortcomings in the functioning of national inspection systems and of trans-border co-operation.

6. Useful documents and links

Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:118:0041:0046:EN:PDF>

2007 Commission Communication on the review of Recommendation 2001/331/EC (COM(2007) 707 final)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0707:FIN:EN:PDF>

Commission Staff Working Paper "Report to the Implementation of Recommendation 2001/331/EC" (SEC (2007) 1493)

http://ec.europa.eu/environment/legal/law/pdf/sec_2007_1493_en.pdf

Summary of stakeholder replies to the online consultation took place in 2008 on the review of implementation of Recommendation 2001/331/EC

http://ec.europa.eu/environment/legal/law/pdf/statistics_consultation.pdf

Commission proposal for the 7 EAP (COM(2012) 710 final)

http://ec.europa.eu/environment/newprg/pdf/7EAP_Proposal/en.pdf

Details of the responses to the stakeholder consultation to the 7 EAP

http://ec.europa.eu/environment/newprg/pdf/ia_annexes/Annex%201%20-%20Details%20of%20public%20consultation.pdf

Study on possible options for strengthening the EU level role in environmental inspections and strengthening the Commission's capacity to undertake effective investigations of alleged breaches in EU environment law

<http://ec.europa.eu/environment/legal/law/pdf/Environmental%20Inspections.pdf>

Directive on industrial emissions 75/2010/EU, in particular Article 23:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:334:0017:0119:EN:PDF>