



Human Environment and Transport
Inspectorate
*Ministry of Infrastructure and the
Environment*

Inspection Management

EU policies and approaches

TAIEX-ECRAN workshop on
compliance with
environmental legislation

Tirana, September 2015



Inspectie Leefomgeving en Transport
Ministerie van Infrastructuur en Milieu

INTRODUCTION
CURRENT EU POLICIES
NEW DEVELOPMENTS



EC: Implementation is key priority

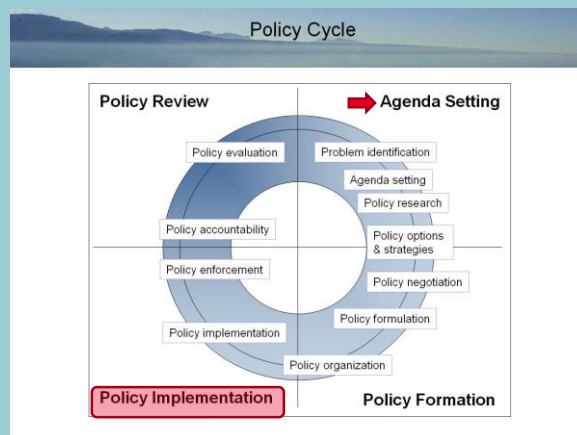
- Legislation without implementation is meaningless – a lame duck
- Implementation is essential factor for environmental outcome/result
 - Strongly underlined in the *7th Environment Action Programme of EU (7th EAP, november 2013)*
- Environmental policy and legislation: agreed on EU-level
- Implementation is responsibility at national/sub-national level:
 - Transposition of EU-legislation (directives) in domestic law
 - Issuing of permits, licenses
 - Monitoring of compliance
 - Inspections
 - Enforcement

Compliance assurance

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Implementation and the regulatory policy cycle



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EU policy on environmental inspections

- I. Recommendation of the European Parliament and of the Council of 4 April 2001 providing for Minimum Criteria for Environmental Inspections in the Member States (RMCEI - 2001/331/EC)
- II. specific requirements for environmental inspections in several sectoral EU Directives and Regulations

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Some key characteristics of RMCEI

- Minimum criteria present a general common basis for inspections, to address the wide disparity re. systems for and approaches to environmental inspections in the MS
- Based on resolutions of Council and Parliament of 1997, asking for guidelines for inspections
- Builds on the work and products of IMPEL-network
- Option to make a Directive on inspections kept open
- RMCEI assumes *complementary* specific requirements for inspections in sectoral environmental EU legislation

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Main elements of RMCEI

- I. Purpose
- II. Scope and definitions
- III. Organisation and carrying out of inspections
- IV. Plans for inspections
- V. Site visits
- VI. Reports and conclusions following site visits
- VII. Investigations of accidents and incidents
- VIII. Reporting on inspection activities in general

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Purpose of RMCEI

“Environmental inspection tasks should be carried out in the Member States, according to minimum criteria to be applied in the organising, carrying out, following up and publicising of the results of such tasks, thereby strengthening compliance with, and contributing to a more consistent implementation and enforcement of Community environmental law in all Member States.”

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Specific requirements in sectoral EU legislation

- ❑ To serve the specific need of a particular legislation
- ❑ Overall picture is rather scattered, showing directives/regulations with and without inspection requirements
- ❑ No requirements in e.g.:
 - Ambient air directives
 - Most of Water legislation
 - Landfill directive
 - Nature directives (birds, habitats)

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Aspects addressed in sectoral requirements

Definition	Risk-based approach	Other MS to request support
Inspection planning	Intelligence-led approach	Operators required to co-operate
Inspection programmes	Targeting inspections	Commission to assist inspection
What to inspect	Incident response	Reporting on controls
Scope of inspections	Details of competent authorities	Co-ordination with other EU law
Where to inspect	Capacity of competent authorities	Co-operation between MS
When to inspect	Authorities to co-operate	Exchange between MS
Minimum frequency	Follow-up requirements	Forum for exchange on inspection

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Sectoral legislation with inspections requirements

CHEMICALS	INDUSTRY
REACH Regulation (EC) No 1907/2006	Directive on Carbon Capture and Storage 2009/31/EC
CLP Regulation (EC) No 1272/2008	Industrial Emissions Directive 2010/75/EU
Regulation (EC) No 1005/2009 on substances that deplete the ozone layer	Seveso III Directive 2012/18/EU
Biocides Regulation (EU) No 528/2012	
Regulation (EU) No 649/2012 concerning the export and import of hazardous chemicals	

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Sectoral legislation with inspections requirements

WASTE	AIR
Mining Waste Directive 2006/21/EC	VOC from Petrol Directive 94/63/EC
Waste Shipment Regulation (EC) No 1013/2006	Sulphur Content of Fuels Directive 1999/32/EC
Waste Framework Directive 2008/98/EC	
ROHS Directive 2011/65/EU	
WEEE Directive 2012/19/EU	
Regulation (EU) No 1257/2013 on ship recycling	

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Examples of sectoral inspection requirements

Definition of inspection (1)

RMCEI - 2001/331/EC:

Art. 2. For the purposes of this recommendation, "environmental inspection" is an activity which entails, as appropriate:

- a) checking and promoting the compliance of controlled installations with relevant environmental requirements set out in Community legislation as transposed into national legislation or applied in the national legal order (referred to hereinafter as "EC legal requirements");
- b) monitoring the impact of controlled installations on the environment to determine whether further inspection or enforcement action (including issuing, modification or revocation of any authorisation, permit or licence) is required to secure compliance with EC legal requirements;

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Examples of sectoral inspection requirements

Definition of inspection (2)

RMCEI - 2001/331/EC:

- c) the carrying out of activities for the above purposes including:
 - o site visits,
 - o monitoring achievement of environmental quality standards,
 - o consideration of environmental audit reports and statements,
 - o consideration and verification of any self monitoring carried out by or on behalf of operators of controlled installations,
 - o assessing the activities and operations carried out at the controlled installation,
 - o checking the premises and the relevant equipment (including the adequacy with which it is maintained) and the adequacy of the environmental management at the site,
 - o checking the relevant records kept by the operators of controlled installations.

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Examples of sectoral inspection requirements

Definition of inspection (3)

Seveso III Directive 2012/18/EU, Art. 20.3:

Article 3 (19) 'inspection' means all actions, including site visits, checks of internal measures, systems and reports and follow-up documents, and any necessary follow-up, undertaken by or on behalf of the competent authority to check and promote compliance of establishments with the requirements of this Directive.

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Examples of sectoral inspection requirements

Definition of inspection (4)

Industrial Emissions Directive 2010/75/EU:

Article 3 (22) 'environmental inspection' means all actions, including site visits, monitoring of emissions and checks of internal reports and follow-up documents, verification of self-monitoring, checking of the techniques used and adequacy of the environment management of the installation, undertaken by or on behalf of the competent authority to check and promote compliance of installations with their permit conditions and, where necessary, to monitor their environmental impact;

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Examples of sectoral inspection requirements

Inspection plans (1)

Seveso III Directive 2012/18/EU, Art. 20.3:

MS shall ensure that all establishments are covered by an inspection plan at national, regional or local level and shall ensure that this plan is regularly reviewed and, where appropriate, updated.

Each inspection plan shall include the following:

- a) a general assessment of relevant safety issues;
- b) the geographical area covered by the inspection plan;
- c) a list of the establishments covered by the plan;
- d) a list of groups of establishments with possible domino effects;
- e) a list of establishments where particular external risks or hazard sources could increase the risk or consequences of a major accident;
- f) procedures and programmes for routine inspections;
- g) procedures for non-routine inspections;
- h) provisions on the co-operation between different inspection authorities;

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Examples of sectoral inspection requirements

Inspection plans (2)

Industrial Emissions Directive 2010/75/EU, Art. 23:

1. MS shall set up a system of environmental inspections of installations addressing the examination of the full range of relevant environmental effects from the installations concerned. MS shall ensure that operators afford the competent authorities all necessary assistance to enable those authorities to carry out any site visits, to take samples and to gather any information necessary for the performance of their duties for the purposes of this Directive.
2. Member States shall ensure that all installations are covered by an environmental inspection plan at national, regional or local level and shall ensure that this plan is regularly reviewed and, where appropriate, updated.

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Examples of sectoral inspection requirements

Inspection plans (3)

Industrial Emissions Directive 2010/75/EU, Art. 23:

3. Each environmental inspection plan shall include the following:
 - a) a general assessment of relevant significant environmental issues;
 - b) the geographical area covered by the inspection plan;
 - c) a register of the installations covered by the plan;
 - d) procedures for drawing up programmes for routine environmental inspections;
 - e) procedures for non-routine environmental inspections;
 - f) where necessary, provisions on the cooperation between different inspection authorities.

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Examples of sectoral inspection requirements

Inspection programmes (1)

REACH Regulation (EC) No 1907/2006:

- Art. 125. Member States shall maintain a system of official controls and other activities as appropriate to the circumstances.

CLP Regulation (EC) No 1272/2008:

- Art. 46.1. Member States shall take all necessary measures, including maintaining a system of official controls, to ensure that substances and mixtures are not placed on the market, unless they have been classified, labelled, notified and packaged in accordance with this Regulation.

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Examples of sectoral inspection requirements

Inspection programmes (2)

Industrial Emissions Directive 2010/75/EU:

- Art. 23.4. Based on the inspection plans, the competent authority shall regularly draw up programmes for routine environmental inspections, including the frequency of site visits for different types of installations.

Seveso III Directive 2012/18/EU:

- Art. 20.4. Based on the inspection plans, the competent authority shall regularly draw up programmes for routine inspections for all establishments including the frequency of site visits for different types of establishments.

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Examples of sectoral inspection requirements

Risk-based approach (1)

Seveso III Directive 2012/18/EU:

Art. 20.5. The systematic appraisal of the hazards of the establishments concerned shall be based on at least the following criteria:

- a) the potential impacts of the establishments concerned on human health and the environment;
- b) the record of compliance with the requirements of this Directive.

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Examples of sectoral inspection requirements

Risk-based approach (2)

Industrial Emissions Directive 2010/75/EU:

Art. 23.4....The systematic appraisal of the environmental risks shall be based on at least the following criteria:

- a) the potential and actual impacts of the installations concerned on human health and the environment taking into account the levels and types of emissions, the sensitivity of the local environment and the risk of accidents;
- b) the record of compliance with permit conditions;
- c) the participation of the operator in the Union eco-management and audit scheme (EMAS)....

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EU policy on environmental inspections

Some concerns and considerations re. current set of EU inspection requirements:

RMCEI requirements [see also COM(2007) 707 final, for review by EC]

- 'Just' a recommendation → low, non-binding status
- Substantially interpretation divergences between MS
- Rather poor implementation in many MS
- Reflecting state-of-the-art in 2001 and before
 - Risk based approach not very strongly in RMCEI
- Predominantly meant for industrial (static) installations
 - Not for waste shipments, REACH, Natura 2000, etc
- Insufficient to establish EU Level Playing Field w.r.t. inspections for fair competition on the single EU market

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EU policy on environmental inspections

Some concerns and considerations re. current set of EU inspection requirements:

Sectoral inspection requirements:

- Wide spectrum of inspection-related topics addressed
- Subtle, obvious and often confusing differences in sect. requirements
- Differences not all justifiable and/or unavoidable
- Implementation could gain by more coherence and consistence
- Better regulation for better implementation:
 - **Clear requirements for effective and efficient inspections across the environmental acquis**

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Towards more binding criteria for inspections?

EC in 7th EAP (nov. 2013):

In order to maximise the benefits of Union environment legislation by improving implementation, the 7th EAP shall ensure that by 2020:

- the public has access to clear information showing how Union environment law is being implemented consistent with the Aarhus Convention;
- **compliance with specific environment legislation has increased;**
- **Union environment law is enforced at all administrative levels and a level-playing field in the internal market is guaranteed;**
- citizens' trust and confidence in Union environment law and its enforcement is enhanced;
- the principle of effective legal protection for citizens and their organisations is facilitated.

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Towards more binding criteria for inspections?

EC in 7th EAP (nov. 2013): (ctnd)

This requires, in particular:

- (i)
- (ii) ...
- (iii) extending binding criteria for effective Member State inspections and surveillance to the wider body of Union environment law, and further developing inspection support capacity at Union level, drawing on existing structures, backed up by support for networks of professionals such as IMPEL, and by the reinforcement of peer reviews and best practice sharing, with a view to increasing the efficiency and effectiveness of inspections;
- (iv)....
- (v) ...

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What has happened since 7th EAP?

- Technical discussions and consultations re. a **Horizontal Inspection Directive (HID)**;
- Basic characteristics of intended HID:
 - ❖ HID is largely building on RMCEI and existing sectoral requirements, but improved, modernised and harmonised where feasible;
 - ❖ HID Scope: industrial installations, water, waste, nature;
 - ❖ Replacing sectoral inspection requirements as much as possible;

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What has happened since 7th EAP?

- Preliminary Commission ideas/proposals for components of such HID:
 - **Objective and definitions**
 - **Competent authorities**
(designation, cooperation and coordination within Member States)
 - **Global risk assessment and prioritisation strategy**
 - **Compliance monitoring**
(surveillance, inspection system/plans/programmes, follow-up duties)
 - **Governance**
(complaints, public participation, records, active information, evaluation)
 - **EU level**
(transboundary cooperation, peer review, Commission involvement)
 - **Final provisions**

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What has happened since 7th EAP?

- Barosso Commission planned to table a HID proposal;
- Topic 'inspections' is a politically sensitive matter, however;
(Policy development at EU level, implementation by MS, subsidiarity)
- Hence, issue was parked for further decision by Juncker Commission;
- Currently: element of further internal deliberation; status quo...;
- Way forward will be defined in perspective of 'Better Regulation' agenda, and sentiments regarding less EU legislation, cutting of Red Tape etc.

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How to proceed from here?

- Continue to exchange experiences and expertise
- Work on international good practices together
 - Act in networks to stay connected
- **?? Questions, remarks, discussion.... ??**