



European Ombudsman

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Mr Jean-Claude Juncker
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Strategic initiative SI/7/2017/JN concerning the implementation of Article 28 (governing inspections) of Regulation 1005/2009 on substances that deplete the ozone layer

Dear Mr President,

The European Union is a world leader in policies to combat climate change. It is committed to putting the Paris agreement into practice. A cornerstone in achieving what the EU pledges therefore is the implementation of our environmental legislation. The General Union Environment Action Programme to 2020, 'Living well, within the limits of our planet', has as its objective to maximise the benefits of EU environment legislation by improving implementation (Article 2(1)(d)).

The protection of the ozone layer has been an issue of international concern for several decades. The elimination of substances depleting the ozone layer is crucial both for the protection of the ozone layer and for tackling climate change more generally. Regulation 1005/2009¹ on substances that deplete the ozone layer (the "Regulation") sets out the European Commission and Member States' responsibilities in the area of inspections.² A well-

¹ OJ L 286, 31.10. 2009, p.1.

² Article 28 reads as follows: "1. Member States shall conduct inspections on the compliance of undertakings with this Regulation, following a risk-based approach, including inspections on imports and exports of controlled substances as well as of products and equipment containing or relying on those substances. The competent authorities of the Member States shall carry out the investigations which the Commission considers necessary under this Regulation.

2. Subject to the agreement of the Commission and of the competent authority of the Member State within the territory of which the investigations are to be made, the officials of the Commission shall assist the officials of that authority in the performance of their duties.



functioning inspection regime is undoubtedly vital in ensuring compliance with the requirements of the Regulation.

I have decided to look into the effectiveness of the inspections regime that is currently in place, specifically the Commission's involvement in the implementation of Article 28 of Regulation 1005/2009. At the same time, I am inviting my colleagues in the European Network of Ombudsmen to look into how national or regional administrations implement Article 28 in their respective Member States. In this context I note that in its 2007 Communication³, the Commission found weaknesses in the inspection system. I have not been able to identify any detailed follow-up report dealing with these issues.

For the purposes of my initiative, I would appreciate if the Commission would, to the extent that the information is available, answer the following questions:

1) How do the Commission and the competent Member State authorities implement Article 28 of the Regulation?

2) The Regulation says that in deciding on inspections, the competent authorities should follow a "risk-based approach". When, on what grounds and under what circumstances do Member States carry out inspections? When, on what grounds and under what circumstances does the Commission use its power to request Member States to carry out inspections?

3) Has the Commission used the option for its officials to attend inspections and to assist Member State authorities in their duties? If so, please provide details.

4) What has the Commission done so far to discharge its duty to "take appropriate action to promote an adequate exchange of information and cooperation between national authorities and between national authorities and the Commission"? How does the exchange of information function in practice?

5) As regards how the inspections are conducted:

- How do the Commission and Member State authorities ensure that the inspections are thorough and effective?

3. In carrying out the tasks assigned to it by this Regulation, the Commission may obtain all necessary information from the governments and competent authorities of the Member States and from undertakings. When requesting information from an undertaking the Commission shall at the same time forward a copy of the request to the competent authority of the Member State within the territory of which the undertaking's seat is situated.

4. The Commission shall take appropriate action to promote an adequate exchange of information and cooperation between national authorities and between national authorities and the Commission. The Commission shall take appropriate steps to protect the confidentiality of information obtained under this Article.

5. At the request of another Member State, a Member State may conduct inspections of undertakings or investigations of undertakings suspected of being engaged in the illegal movement of controlled substances and which are operating on the territory of that Member State."

³ See Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the review of Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States, COM(2007) 707 final.



- How do they ensure that undertakings' fundamental rights set out in the EU Charter of Fundamental Rights⁴ are respected?

6) How do the Commission and Member State authorities ensure an adequate follow up to inspections?

7) How do the Commission and Member States ensure the transparency of inspections and specifically of their planning and reporting as proposed in Recommendation 2001/331⁵?

I would be grateful to receive the Commission's reply within three months of the date of this letter. I may publish the Commission's reply on my website and also give interested third parties the opportunity to make observations.

I hope that this initiative will contribute to making the inspections regime, for which the EU and Member State administrations are jointly responsible, more effective in practice. While this initiative is limited to Regulation 1005/2009, the findings may also be relevant for other areas of environmental law.

Yours sincerely,

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⁴ Mainly the protection of business premises and communications (Article 7), the protection of property (Article 17), equality and non-discrimination (Articles 20-21), procedural rights (Article 41 and Articles 47-48).

⁵ Recommendation 2001/331 of Parliament and the Council providing for minimum criteria for environmental inspections in the Member States, OJ L 118, 27. 4. 2001. p. 41