



EUROPEAN COMMISSION

**Explanatory note to an authorisation to conduct an inspection in execution of a Commission decision under Article 20(4) of Council Regulation No 1/2003**

This note is for information only and is without prejudice to any formal interpretation of the Commission's powers of investigation.

1. Undertakings<sup>1</sup> are legally obliged to submit to an inspection ordered by decision of the Commission under Article 20(4) of Council Regulation No 1/2003. Written authorisations serve to name the officials and other accompanying persons authorised by the Commission to conduct the inspection. They prove their identity by means of their staff card.
2. Officials and other accompanying persons authorised by the Commission to conduct the inspection cannot be required to enlarge upon the subject matter as set out in the decision or to justify in any way the taking of the decision. They may however explain procedural matters, particularly confidentiality, and the possible consequences of a refusal to submit to the inspection.
3. A **certified copy of the decision** is to be handed to the undertaking. The minute of notification of service serves only to certify delivery and its signature by the recipient does not imply submission.
4. The officials and other accompanying persons are empowered, pursuant to Article 20(2) of Regulation No. 1/2003:
  - a) to enter any premises, land and means of transport of undertakings and associations of undertakings;
  - b) to examine the books and other records related to the business, irrespective of the medium on which they are stored;
  - c) to take or obtain in any form copies of or extracts from such books or records;
  - d) to seal any business premises and books or records for the period and to the extent necessary for the inspection;
  - e) to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers.
5. Officials of and those authorised or appointed by the competition authority of the Member State in whose territory the inspection is conducted are entitled to actively assist the officials and other accompanying persons authorised by the Commission in carrying out their duties. To this end, they enjoy the same powers under Article 20(2) of Council Regulation No 1/2003 as the officials and other

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<sup>1</sup> In this note the term “undertaking” includes both undertakings and associations of undertakings.

accompanying persons authorised by the Commission (see paragraph 4 above). They shall prove their identity in accordance with the relevant national rules.

6. The undertaking **may consult a legal adviser** during the inspection. This consultation of the lawyer can be carried out by telephone. However, the presence of a lawyer is not a legal condition for the validity of the inspection. The officials or other accompanying persons authorised by the Commission can enter the premises, notify the decision ordering the inspection and occupy the offices of their choice without waiting for the undertaking to consult its lawyer. The officials and other accompanying persons authorised by the Commission will accept only a short delay pending consultation of the lawyer before starting examining the books and other records related to the business, taking copies or extracts of those documents, sealing business premises and books or records if needed or asking for oral explanations. Any such delay must be kept to the strict minimum.
7. Where any representative or member of staff of the undertaking gives pursuant to Article 4(1) of the Commission Regulation No 773/2004 **oral explanations** on the spot on facts or documents relating to the subject-matter and purpose of the inspection at the request of the officials or other accompanying persons authorised by the Commission, the explanations may be recorded in any form. A copy of any such recording will be made available to the undertaking concerned after the inspection pursuant to Article 4(2) of the Commission Regulation No 773/2004.
8. In cases where a member of staff of an undertaking who is not or was not authorised by the undertaking to provide explanations on behalf of the undertaking has been asked for explanations, the Commission shall set a time-limit within which the undertaking may communicate to the Commission any rectification, amendment or supplement to the explanations given by such member of staff. The rectification, amendment or supplement shall be added to the explanations as recorded during the inspection.
9. The officials and other accompanying persons authorised by the Commission are entitled to examine any books and records related to the business, irrespective of the medium on which they are stored, and to **take or obtain in any form copies** of or extracts from such books or records. This includes also the examination of electronic information and taking digital or paper copies of such information.
10. As part of its investigation, the Commission can search the IT environment, storage media and hardware of the undertaking. The officials and other accompanying persons authorised by the Commission may use the search tools built in the storage media investigated. The investigation may also include searches based on keywords and the use of dedicated software and/or hardware brought by the officials and other accompanying persons authorised by the Commission. The dedicated software allows the Commission to search and recover data whilst respecting the integrity of the undertakings' systems and data.
11. If the officials or other accompanying persons authorised by the Commission consider it appropriate, an integral copy of a digital storage medium, such as a forensic image, can be taken as well. This may occur, by way of example, where the Commission's selection of documents and data is not finished in situ, or when the officials or other accompanying persons authorised by the Commission find it

necessary for the preservation of information that otherwise could be lost or when the access to the selected data or documents is not possible in situ. If the selection of the relevant documents for the investigation is not finished during the inspection the digital copy (DVD, Hard Disk, ...) of the data still to be searched is put in an envelop which will be sealed in situ and carried off by the officials. A replicate of the digital copy is given to the undertaking. The undertaking will then be invited by the Commission to attend the opening of the sealed envelop and the selection process in the Commission's premises.

12. The undertaking will receive a copy of all the documents and the data copied by the Commission services and may request a signed **list of the copies** and extracts taken by the Commission officials during the inspection.

Where the undertaking makes available photocopies of documents at the request of the Commission officials, the Commission shall, at the request of the undertaking, reimburse the cost of the photocopies.

13. The documents and the data copied during an inspection will be covered by the provisions of Article 28 of Council Regulation No 1/2003 concerning **professional secrecy**. If, at a later stage of the procedure, it becomes necessary to grant other parties access to those documents and data, the undertakings will be asked to identify any business secrets or other confidential information contained in the documents or data, to justify those claims and to provide non-confidential copies for the purpose of granting access to the file.
14. In addition to the documents and the data requested and inspected by the officials, other accompanying persons authorised by the Commission and officials of and those authorised or appointed by the competition authority of the Member State, the undertaking is entitled to draw attention to other documents, data or information where it considers this necessary for the purpose of protecting its legitimate interest in a complete and objective clarification of the matters raised, provided that the inspection is not thereby unduly delayed.
15. Where the officials and other accompanying persons authorised by the Commission decide to **seal** business premises and books or records, a minute will be made. The undertaking has to ensure that seals that have been affixed as well as the immediate environment of the place where they have been affixed (e.g. door, doorframe, cupboard) remain untouched until the seals are removed by the Commission's representative. The officials and other accompanying persons authorised by the Commission will also record any changes in the seals following their affixation and, if such changes are found, the time when the seal is removed, in a separate minute.
16. Any personal data, as defined in Regulation No. 45/2001 in documents copied or obtained during the inspection will be processed in compliance with that Regulation.