



Revised on 11 September 2015

Explanatory note on Commission inspections pursuant to 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 European Commission's powers of investigation.

1. Undertakings¹ 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 ('the Inspectors'). The Inspectors will each provide a proof of identity.
2. The Inspectors cannot be required to expand upon the subject matter as set out in the decision or to justify the decision in any way. They may however explain procedural matters, particularly with regard to 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 the decision serves only to certify delivery and its signature by the recipient does not imply submission to the inspection.
4. The Inspectors 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, 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 of the inspection and to record the answers.
5. The officials and other accompanying persons authorised or appointed by the competition authority of the Member State of the territory on which the inspection is conducted are entitled to actively assist the Inspectors 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 Inspectors (see paragraph 4 above). They shall prove their identity in accordance with the relevant national rules.

¹ In this note the term "undertaking" includes both undertakings and associations of undertakings.

6. The undertaking may consult an external legal counsel during the inspection. However, the presence of such a legal counsel is not a legal condition for the validity of the inspection. The Inspectors may enter the premises, notify the decision ordering the inspection and occupy the offices of their choice without waiting for the undertaking to consult its legal counsel. The Inspectors will, in any case, accept only a short delay pending consultation of the legal counsel before starting to examine the books and other records related to the business, taking copies or extracts of those documents, sealing business premises and books or records if need be 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 of the inspection at the request of the Inspectors, 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 European 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 sets 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 which then shall be added to the explanations as recorded during the inspection.
9. The Inspectors 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 the examination of electronic information and the taking of electronic or paper copies of such information.
10. The Inspectors may search the IT-environment (e.g. servers, desktop computers, laptops, tablets and other mobile devices) and all storage media (e.g. CD-ROMs, DVDs, USB-keys, external hard disks, backup tapes, cloud services) of the undertaking. This applies also to private devices and media that are used for professional reasons (Bring Your Own Device -BYOD) when they are found on the premises. For this purpose, the Inspectors may not only use any built-in (keyword) search tool, but may also make use of their own dedicated software and/or hardware ("Forensic IT tools"). These Forensic IT tools allow the Commission to copy, search and recover data whilst respecting the integrity of the undertakings' systems and data.
11. The undertaking has the obligation to cooperate fully and actively with the inspection. This means that the undertaking may be required to provide appropriate representatives or members of staff to assist the Inspectors, not only for explanations on the organisation of the undertaking and its IT-environment, but also for specific tasks such as temporary blocking of individual email accounts, temporarily disconnecting running computers from the network, removing and re-installing hard drives from computers and providing 'administrator access rights'-support. When such actions are taken, the undertaking must not interfere in any way with these measures and it is the undertaking's responsibility to inform the employees affected accordingly. The Inspectors may ask to use hardware (e.g. hard disks, CD-ROMs, DVDs, USB-keys, connection cables, scanners, printers) provided by the undertaking, but cannot be obliged to use the undertaking's hardware.

12. Storage media selected for examination may be kept under the Inspectors' control until the end of the inspection on the spot. They may be returned earlier, for instance after a forensic copy of the data under investigation has been made. Such a forensic copy is an authentic duplicate of (part or all of) the data stored on the original medium. The examination of the authentic duplicate is equal to the examination of the original storage medium.
13. At the end of the inspection the Inspectors completely wipe² all Forensic IT tools on which company data have been stored. Hardware provided by the undertaking will not be wiped by the Inspectors, but returned to the undertaking.
14. If the selection of documents relevant for the investigation is not yet finished at the envisaged end of the on-site inspection at the undertaking's premises, the copy of the data set still to be searched may be collected to continue the inspection at a later time. This copy will be secured by placing it in a sealed envelope. The undertaking may request a duplicate. The Commission will invite the undertaking to be present when the sealed envelope is opened and during the continued inspection process at the Commission's premises. Alternatively, the Commission may decide to return the sealed envelope to the undertaking without opening it. The Commission may also ask the undertaking to keep the sealed envelope in a safe place to allow the Commission to continue the search process at the premises of the undertaking in the course of a further announced visit.
15. As regards the final data selected by the Inspectors during the inspection on the spot (or following a continued inspection) which are added to the Commission's case file, the undertaking will receive a data carrier (e.g. a DVD) on which all these data are stored. The undertaking will be requested to sign the printed list(s) of data items selected. Two identical copies of these data stored on data carriers will be taken along by the Inspectors.
16. Note that each evidence item selected during the course of the inspection may be collected and on-site listed in its technical entirety (if e.g. only one attachment to an email is selected, then the final export will consist of the cover email, along with all attachments that belong to that particular message). In the course of final processing into the case file at Commission premises each evidence item may be taken apart into its individual components (e.g. cover e-mail, attachments and/or other embedded data items) and these may then be listed individually and accordingly receive individual reference numbers.
17. Where the undertaking makes available material for making copies at the request of the Inspectors, the Commission shall, at the request of the undertaking, reimburse the cost of the material used to produce copies for the Commission.
18. The documents / 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 / data, the undertaking will be asked to identify any business secrets or other confidential information contained in the documents / data, to justify its claims and to provide non-confidential copies for the purpose of granting access to the file.

² The technical term for this wiping is 'sanitize'. The goal of sanitizing is to completely remove the data from a storage device in a way that the data cannot be reconstructed by any known technique.

19. Where the Inspectors decide to seal business premises, books or records, a minute will be made. The undertaking has to ensure that affixed seals are not broken until removed again by the Inspectors. A separate minute will be prepared at the time of the seals' removal which will record their state at that time.
20. The EU Data Protection rules (Regulation No. 45/2001) apply to all personal data collected by the Commission during anti-trust investigations. As EU antitrust rules apply only to undertakings, personal data of individuals as such are not the target of anti-trust investigations and inspections conducted by the Commission. Personal data of individual staff members of undertakings (such as their names, telephone numbers, email addresses) may, however, be contained in business documents / data related to such investigations and may therefore be copied or obtained during an inspection and may become part of the Commission file.
21. All personal data on Commission anti-trust files may only be used for the purpose for which they were collected (the enforcement of Articles 101 and/or 102 TFEU) and will be processed in compliance with Regulation 45/2001.