



Revised in March 2024

**Explanatory note on Commission inspections pursuant to Article 20(4) of Council Regulation (EC) 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. Undertakings<sup>1</sup> are legally obliged to submit to an inspection ordered by a decision of the Commission pursuant to Article 20(4) of Council Regulation (EC) 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, for example with regard to confidentiality or personal data, 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 (EC) No 1/2003:
  - a) to enter any premises, land and means of transport 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 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 Regulation (EC) No 1/2003 as the Inspectors (see paragraph 4 above).

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

6. The undertaking may consult external legal counsel during the inspection. However, the presence of such a legal counsel on the inspected site is not a condition for the legality 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 (EC) 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 Regulation (EC) 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 will then 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. Representatives of the undertaking are entitled to observe the actions taken by the Inspectors without interfering with the Inspectors' work.
10. The Inspectors may search the IT-environment (e.g. cloud services, servers, desktop computers, laptops, tablets and other mobile devices) and all storage media (e.g. external storage devices, backup tapes, USB-keys, CD-ROMs, DVDs) 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 use any built-in system functionalities in the undertaking's information systems and infrastructure. They may also make use of their own dedicated software and/or hardware ("Forensic IT tools"). These Forensic IT tools allow the Commission, in accordance with Article 20(2)(b) of Regulation (EC) No 1/2003, to inspect the systems and data of the undertaking, in particular by creating authentic duplicates of data, including recovered data, and to search such duplicates whilst respecting the integrity of the undertakings' systems and data.
11. The undertaking is obliged to cooperate fully and actively with the Inspectors. This means that the undertaking may be required to provide representatives or members of staff to effectively assist the Inspectors. This covers not only the obligation to give explanations on the organisation of the undertaking and its IT-environment, but also to execute specific tasks such as running specific commands on the IT systems to gather information, making use of built-in litigation hold functionalities, temporarily blocking individual user accounts, temporarily disconnecting running computers from the network, removing and

re-installing 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. storage media, USB-keys, connection cables, scanners, printers, screens) provided by the undertaking, but cannot be obliged to use the undertaking's hardware. The inspected undertaking shall, if requested, inform the Inspectors on how their requests are executed by providing log files or keeping the Inspectors informed of the instructions given to the undertaking's employees tasked with executing the Inspectors' requests.

12. Storage media selected for examination may be kept under the Inspectors' control until the end of the inspection at the undertaking's premises. They may be returned earlier, for instance after a readable forensic authentic duplicate of the data under investigation has been made. This forensic authentic duplicate replicates (all or part of) the data stored on the original medium. The examination of the authentic duplicate is equivalent to the examination of the original storage medium.
13. The undertaking shall, as from the notification of the inspection decision, act with particular diligence and take all appropriate measures in order to preserve the evidence available to it. It is the undertaking's responsibility to inform its staff and representatives accordingly. The deletion of (or tampering with) business records, whether intentional or by negligence, may constitute an obstruction of the Commission's inspection. In the event of an obstruction, the Commission may impose on the undertaking a fine up to 1 % of its total turnover in the preceding business year.
14. The duty to preserve evidence extends beyond the mere duration of the on-site inspection.<sup>2</sup>
15. At the end of the inspection the Inspectors will completely wipe<sup>3</sup> all of the Commission's Forensic IT storage media on which company data have been stored. Hardware provided by the undertaking will not be wiped by the Inspectors, but returned to the undertaking.
16. 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, there may be legitimate reasons for the Commission to decide, also in the interest of the undertaking concerned, to continue, at its premises in Brussels, the inspection of the data which it has collected from the undertaking. In such case, the copy of the data set still to be searched may be collected, together with the data set already searched, to continue the inspection at a later time. This copy will be secured by placing it in a sealed envelope that will be taken to the Commission's premises in Brussels. The Commission will invite the undertaking to be present i) when the sealed envelope is opened and ii) during the continued inspection process at the Commission's premises. If such a continued inspection gives rise to additional costs for the inspected undertaking solely as a result of that continuation, the undertaking can claim the reimbursement of those costs through a duly reasoned request

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<sup>2</sup> See, to that effect, judgment of 9 April 2019 in case T-371/17, *Qualcomm and Qualcomm Europe v Commission*, EU:T:2019:232, paragraph 136, upheld on appeal in case C-466/19 P, *Qualcomm and Qualcomm Europe v Commission*, EU:C:2021:76, paragraph 114.

<sup>3</sup> The technical term for this wiping is 'sanitize' (also referred to as "secure erasing"). 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.

to that effect. 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.

17. The undertaking will be given the opportunity to review the provisional data set(s) selected by the Inspectors to be added to the case file in order to determine if it wishes to raise claims related, for instance, to data potentially protected by Legal Professional Privilege, or special categories of personal data<sup>4</sup>. The undertaking may also indicate, at this stage, if it considers that any data selected by the Inspectors to be added to the case file is not related to the subject-matter of the inspection decision. As regards the final data set selected by the Inspectors during the inspection on the spot (or following a continued inspection) which is added to the Commission's case file, the undertaking will receive a data carrier (e.g. a USB stick) on which all these data sets are stored. The undertaking will be requested to sign the final export list(s) of data items selected. Two identical copies of these data sets stored on encrypted data carriers will be taken along by the Inspectors.
18. Evidence items selected during the course of the inspection may be collected in their 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 each evidence item may be taken apart into its individual components (e.g. cover email, attachments and/or other embedded data items) and these may then be listed individually and accordingly receive individual reference numbers.
19. Where the undertaking makes available material for making copies at the request of the Inspectors, the Commission will, at the request of the undertaking, reimburse the cost of the material used to produce copies for the Commission.
20. The documents copied during an inspection will be covered by the provisions of Article 28 of Regulation (EC) 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, for example for the purpose of granting access to the file, the undertaking will be asked to identify any business secrets or other confidential information contained in the documents, to justify its claims and to provide non-confidential copies.
21. 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.
22. Regulation (EU)2018/1725 applies to 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

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<sup>4</sup> See Article 10(1) of Regulation (EU) 2018/1725, which defines special categories of personal data as personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic or biometric data processed for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation. See also Article 9(1) of Regulation (EU) 2016/679.

their names, telephone numbers, email addresses) may, however, be contained in business documents related to such investigations and may therefore be copied or obtained during an inspection and may become part of the Commission file.

23. 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 (EU) 2018/1725 as further specified in DG Competition's Privacy Statement<sup>5</sup>.
24. If data set(s) that are made accessible to the Inspectors include special categories of personal data,<sup>6</sup> the undertaking should alert the Inspectors about the presence of such sensitive personal data, identifying specifically the files or data concerned. The Inspectors will endeavour to review such records according to a separate process having regard to their sensitivity.

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<sup>5</sup> See [https://competition-policy.ec.europa.eu/system/files/2021-05/privacy\\_statement\\_antitrust\\_en.pdf](https://competition-policy.ec.europa.eu/system/files/2021-05/privacy_statement_antitrust_en.pdf)

<sup>6</sup> See footnote 4 above.