



Reimbursement of additional costs in case of a continued inspection at the Commission's premises

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1. Applicable principles

Under the relevant case law, when the Commission conducts inspections at the premises of an undertaking pursuant to Article 20 of Regulation (EC) No 1/2003, it may decide to continue it at its premises in Brussels (continued inspection).¹ To avoid a possible encroachment on the undertaking's rights of defence it may be necessary that the Commission agrees to reimburse "*additional costs*" incurred by the undertaking under inspection "*solely as a result of that continuation*", provided that a duly reasoned request is presented by the undertaking concerned.²

Against this background, the following criteria must be cumulatively met to identify the relevant expenses that qualify as additional costs within the meaning of the case-law, and therefore could give rise to compensation by the Commission:

1. Costs can only fall under the category of "additional costs" if ultimately borne by the inspected undertaking.
2. The costs are "additional", if they exceed the costs that the inspected undertaking would have incurred if the same inspection acts had been carried out at the premises of the inspected undertaking.
3. Costs can only fall under the category of "additional costs" if they result "solely" from the fact that the inspection is carried out away from the undertaking's premises. If the causal link between the change of place of the inspection activities and certain costs is not sufficiently direct or not exclusive, the reimbursement can be refused.

The request for reimbursement should illustrate if and why each of the above criteria is met. The request should be accompanied by the relevant supporting documents (e.g. invoices).

2. Categories of expenses

Certain cost categories can in principle be considered additional costs:

- Travel and accommodation costs, including local transportation costs incurred for the purposes of the continued inspection,
- Other specific costs necessary linked to the participation to the continued inspection, e.g. costs of photocopies not provided by the Commission.

Costs that are incurred irrespective of the location of the inspection do not constitute additional costs. Therefore, fees of external lawyers present during continued inspections in Brussels should in principle not qualify as additional costs since such expenses are also incurred during inspections at the undertaking's premises.

The undertaking may request the reimbursement of other categories of costs that are considered necessary to ensure the exercise of its rights of defence, provided that it can show that the criteria set out in Section 1 are met.

3. Reimbursement levels

Any expenditure authorised under the budget of the European Union, such as the reimbursement of additional costs incurred solely as a result of the continuation of an inspection in Brussels, must be in

¹ Judgment of 16 July 2020, Nexans France and Nexans v Commission, C-606/18 P, EU:C:2020:571, paragraph 81.

² See paragraph 90 of the same judgment.

accordance with the principle of sound financial management and thus respect the principles of economy, efficiency and effectiveness³. This means that any additional cost of which the reimbursement is claimed must relate directly to and be necessary for the exercise of the rights of defence of the inspected undertaking.

a. Travel and accommodation costs

The undertaking should make best efforts to adapt the travel schedule of involved representatives to the schedule of the continued inspection.

The use of the following means of transport does not require any specific justification as to the level of reimbursement of additional costs:

- Train travel, excluding local transport, in first class or equivalent business class;
- Air travel, in economy class or equivalent, at the lowest available flexible rates, for flight sections under 4 hours, if the outward and return journeys by rail would total at least 800 kilometres. Air travel for shorter distances is deemed to be reasonable only when it is justified on grounds of cost-efficiency;
- Business class air fares involving a flight of 4 hours or more without stopovers, or when economy class is not available and with justification from the travel agent or the airline;
- Travel by private car when the use of public transport presents clear disadvantages. In such case the cost of travel by private car is reimbursed at the rate of EUR 0.28 per km; this is a flat-rate reimbursement of travel expenses taking into account the costs generally associated with the use of the vehicle.

Accommodation costs for Brussels up to a rate of 148 euros per night do not require any specific justification as to the level of reimbursement of additional costs.

b. Other expenses such as meals and local transport

A lump-sum daily subsistence allowance caters for any specific smaller expenses incurred by the mission performer: breakfast, two main meals and incidental expenses, including local travel.⁴ This daily allowance amounts to 102 euros per day. For the start and the end date of the continued inspection, it is paid (pro rata) from the start of travelling to the end of the travel back.

c. Special circumstances

Special circumstances may, however, result in the undertaking incurring higher additional costs. In such case, the undertaking must justify that the criteria set out in Section 1 are met and explain why further costs (including costs exceeding the above amounts⁵) were necessary to safeguard the undertaking's rights of defence.

4. Process and minimum requirements for submitting a reasoned request for reimbursement

The request for reimbursement should be duly reasoned and include all relevant supporting documents as follows:

- An overview of all relevant costs that are claimed and a sufficiently detailed justification that such costs qualify as reasonable additional costs along the criteria (1-3) set out in section 1. and comply with the elements set out in section 2;

³ See Article 33(1) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012

⁴ Incidental expenses include for example local public transport, telecommunications costs, translation/photocopying costs and local taxes (not related to accommodation).

⁵ Concerning accommodation for example, the undertaking may justify higher costs by providing quotes from different hotels showing that no rooms were available at a price equal to or lower than 148 euros.

- All supporting documents of the costs claimed such as the invoice of the travel and accommodation costs;
- An overview and supporting evidence of all relevant costs in the counterfactual scenario, i.e. costs that would have been incurred in case the inspection had been carried out at the premises of the undertaking. For example, this could include travel and accommodation costs of representatives of the undertaking whose primary work location is not in the vicinity of the inspected premises of the undertaking.

The request for reimbursement should be submitted by the undertaking no later than 3 months after the end of the continued inspection.