

**COMMISSION IMPLEMENTING REGULATION (EU) 2016/462****of 30 March 2016****amending Regulation (EC) No 324/2008 laying down revised procedures for conducting Commission inspections in the field of maritime security****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security <sup>(1)</sup>, and in particular Article 9(4) thereof,

Whereas:

- (1) In order to monitor the application by Member States of Regulation (EC) No 725/2004 and Directive 2005/65/EC of the European Parliament and of the Council <sup>(2)</sup> the Commission should conduct inspections. The organisation of inspections under the supervision of the Commission is needed to verify the effectiveness of national quality control systems and maritime security measures, procedures and structures.
- (2) The Commission is assisted in the performance of the inspection tasks by the European Maritime Safety Agency established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council <sup>(3)</sup>. In the performance of the inspection tasks in the context of the European Economic Area (EEA) the Commission calls upon the assistance of national inspectors listed by European Free Trade Association (EFTA) States in accordance with Decision of the EEA Joint Committee No 116/2008 <sup>(4)</sup>.
- (3) Commission Regulation (EC) No 324/2008 <sup>(5)</sup> establishes procedural rules for conducting Commission inspections in the field of maritime security in a transparent, effective, harmonised and consistent manner.
- (4) In the light of the experience gained since 2008, it is necessary to ensure that Commission inspections under Regulation (EC) No 324/2008 are conducted in a consistent manner in accordance with the set procedure, including a standard methodology. The measures to enhance the cooperation with the Member States and exercise of Commission powers should be efficient and transparent.
- (5) Definitions of the terms used in the context of the conduct of Commission inspections should be further developed. The revisions do not extend the scope of inspections beyond the existing remit.
- (6) The Commission and the Member States should work in cooperation together during the preparation and the conduct of the Commission inspections.
- (7) The Commission should have the possibility of including in its inspection teams qualified national inspectors made available by the Member States that meet the necessary qualification and training criteria.
- (8) To ensure a transparent and efficient conduct of Commission inspections the provisions should be clear and further developed, notably in the case of a ship inspection which concludes in a port of a Member State other than that of the port of embarkation. The issue of inspection of EU flagged ships at a location outside the European Union should be clarified to deal with the specific logistical constraints of such inspections.

<sup>(1)</sup> OJ L 129, 29.4.2004, p. 6.

<sup>(2)</sup> Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security (OJ L 310, 25.11.2005, p. 28).

<sup>(3)</sup> Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

<sup>(4)</sup> Decision of the EEA Joint Committee No 116/2008 of 7 November 2008 amending Annex XIII (Transport) to the EEA Agreement states (OJ L 339, 18.12.2008, p. 106).

<sup>(5)</sup> Commission Regulation (EC) No 324/2008 of 9 April 2008 laying down revised procedures for conducting Commission inspections in the field of maritime security (OJ L 98, 10.4.2008, p. 5).

- (9) Sensitive but non-classified information related to an inspection should be handled under strict security measures to guarantee its confidentiality and non-disclosure.
- (10) Regulation (EC) No 324/2008 should therefore be amended accordingly.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 11(1) of Regulation (EC) No 725/2004,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Amendments to Regulation (EC) No 324/2008**

Regulation (EC) No 324/2008 is amended as follows:

(1) Article 2 is amended as follows:

(a) points 1 and 2 are replaced by the following:

- ‘1. “Commission inspection” means an examination by Commission inspectors of Member States’ national maritime security quality control systems, measures, procedures and structures, to determine compliance with Regulation (EC) No 725/2004 and implementation of Directive 2005/65/EC. It may include inspections of ports, port facilities, ships, competent authorities for maritime security or companies, as defined in Annex I to Regulation (EC) No 725/2004. It may also include inspections of recognised security organisations, as defined in Annex I to Regulation (EC) No 725/2004 and in Annex IV to Directive 2005/65/EC relative to recognised security organisations;
2. “Commission inspector” means a person fulfilling the criteria set out in Article 7 employed by the Commission, or employed by the European Maritime Safety Agency, or a national inspector, mandated by the Commission to participate in Commission inspections, listed by the Member States or by the EFTA States;’;

(b) point 11 is replaced by the following:

- ‘11. “port” means the area within the boundaries defined by Member States under Article 2(3) of Directive 2005/65/EC and notified to the Commission under Article 12 thereof;’;

(c) the following points 12, 13, 14, 15, 16 and 17 are added:

- ‘12. “provisional corrective measure” means a temporary measure or range of measures aimed at limiting to the maximum extent practicable the impact of a major non-conformity or a non-conformity identified during the conduct of an inspection before full correction can take place;
13. “classified information” means identified or identifiable information obtained during the conduct of inspection activities, disclosure of which may lead to a breach of security, classified in accordance with the provisions of Commission Decision (EU, Euratom) 2015/444 (\*) or in accordance with relevant national legislation of the Member States;
14. “sensitive but non-classified information” means inspection related material or information obtained during the conduct of inspection activities, disclosure of which may lead to a breach of security and which can only be shared on a need-to-know basis;
15. “not confirmed” means a finding made during a Commission inspection which indicates non-fulfilment of Regulation (EC) No 725/2004 or Directive 2005/65/EC but is not substantiated by objective evidence;
16. “Committee” means the Committee established by Article 11(1) of Regulation (EC) No 725/2004;
17. “representative of a flag State” means a member of the competent authorities of the Member State whose flag the ship is flying or, if nominated by that Member State, a representative of a recognised security organisation.

(\*) Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).’;

(2) Article 3 is replaced by the following:

*'Article 3*

### **Cooperation of Member States**

1. Without prejudice to Commission responsibilities, Member States shall cooperate with the Commission in the accomplishment of its inspection tasks. This cooperation shall be effective during the preparatory, monitoring and reporting phases.

2. Member States shall take all necessary steps to ensure that notification of an inspection:

(a) is kept under strict measures of security to guarantee its non-disclosure in order not to compromise the inspection process; and

(b) is communicated to relevant parties on a need-to-know basis.;

(3) in Article 4, paragraph 2 is replaced by the following:

2. Each Member State shall ensure that, upon request, Commission inspectors have timely access to relevant security documentation necessary for the performance of the inspection duties, and in particular to:

(a) the national programme for the implementation of Regulation (EC) No 725/2004 referred to in Article 9(3) of that Regulation;

(b) the most recent updates of data supplied by the focal point and monitoring reports referred to in Article 9(4) of Regulation (EC) No 725/2004;

(c) the outcome of the Member State's monitoring of the implementation of port security plans;

(d) relevant ship, port and port facility security assessments, and relevant ship, port and port facility security plans, records of training drills and exercises for ship and port and port facility while Commission is conducting inspections;

(e) notifications by the Member States of the decisions referred to in Article 3(3) of Regulation (EC) No 725/2004 taken after the mandatory security risk assessment;

(f) any guideline, instruction or procedure, issued by the Member State for the implementation of Regulation (EC) No 725/2004 and Directive 2005/65/EC.;

(4) Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. In agreement with the Commission, as far as practicable, Member States shall make available national inspectors able to participate in Commission inspections, including the related preparatory and reporting phases.;

(b) paragraph 5 is replaced by the following:

5. Requests for national inspectors to participate in Commission inspections shall be communicated in good time, normally at least 2 months before the inspection is due to take place.;

(5) Article 6 is replaced by the following:

*'Article 6*

### **Technical assistance from the European Maritime Safety Agency in Commission inspections**

In providing the Commission with technical assistance pursuant to Article 2(2)(b) of Regulation (EC) No 1406/2002, the European Maritime Safety Agency shall make technical experts available to participate in Commission inspections, including the related preparatory and reporting phases.;

(6) Article 7 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (b) is replaced by the following:

‘(b) a good working knowledge of security technologies and techniques;’

(ii) point (d) is replaced by the following:

‘(d) a working knowledge of the operations being examined;’

(iii) the following points (e) and (f) are added:

‘(e) an awareness of health, safety and security requirements for working in a maritime environment;

‘(f) a knowledge of the main legal requirements applicable in the field of maritime security.’;

(b) in paragraph 2, the first subparagraph is replaced by the following:

‘In order to qualify for Commission inspections, Commission inspectors shall have successfully completed training to carry out such inspections. Commission inspectors shall periodically undergo training at least every 5 years in order to update their knowledge.’;

(c) the following paragraph 4 is added:

‘4. If during a previous inspection, the behaviour or performance of an inspector fails to meet the requirements of this Regulation, that inspector shall not be nominated anymore for Commission inspection tasks.’;

(7) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The Commission shall give at least 6 weeks’ notice of an inspection to the focal point of the Member State in whose territory it is to be conducted.

Commission may communicate to the focal point, in parallel to the notice of the inspection, a pre-inspection questionnaire for completion by the competent authority, along with a request for any relevant documentation. The completed questionnaire and any requested documentation shall be submitted to the Commission at least 2 weeks before the inspection is scheduled to begin.

The notice period provided for in the first subparagraph may be reduced to not less than 2 weeks provided that the Commission acts in response to an exceptional event which may have significant impact on the overall level of maritime security in the European Union and that the Commission consulted the focal point concerned prior to giving the notice. In that case the second subparagraph shall not apply.’;

(b) paragraph 5 is replaced by the following:

‘5. Where the flag State is a Member State, the Commission shall give notice as soon as possible to the focal point of that Member State that the ship may be inspected when at the port facility. If an inspection is to cover a ship flying the flag of a Member State other than that of the authority being inspected, the Commission shall inform the focal point of the flag State so that the necessary practical arrangements can be made for conducting the inspection on board that ship.’;

(c) paragraph 9 is replaced by the following:

‘9. When the Commission attends a national inspection or verification of a ship at a location outside the European Union, the Commission shall make the necessary arrangements with the focal point in order to follow inspections or verifications with the representative of the flag.’;

(8) Article 10 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. A standard methodology shall be used to monitor the application by Member States of the maritime security requirements laid down in Regulation (EC) No 725/2004 and in Directive 2005/65/EC.

2. Commission inspectors, when carrying out inspection activities, shall be accompanied at all times by a representative of the relevant competent authority. That representative shall not prejudice the efficiency or effectiveness of the inspection activities.

The inspections shall be carried out in a way which impedes as little as possible the fluidity of the commercial operations. In order to achieve this, whenever appropriate and with the prior agreement of the flag State and of the master of the ship, an inspection of a ship that has commenced in port may continue after the ship has left port.

If a ship subject to an inspection is serving international scheduled services between two or more Member States, the inspection may also relate to the operations of embarkation and disembarkation applied to passengers and vehicles at each end of the voyage. In such a case, the Commission shall notify the Member State’s focal point of the port of arrival in accordance with Article 8(1).;

(b) paragraph 6 is replaced by the following:

‘6. Without prejudice to Article 11, the Commission inspectors shall, wherever appropriate and practicable, deliver an informal oral summary of their observations on the spot.

The relevant focal point shall be informed promptly of any major non-conformity with Regulation (EC) No 725/2004 or Directive 2005/65/EC identified by a Commission inspection, prior to completion of an inspection report in accordance with Article 11 of this Regulation.

However, in cases where a Commission inspector carrying out the inspection of a ship finds a major non-conformity requiring action under Article 16, the Team Leader shall inform immediately in writing the relevant focal points.;

(c) the following paragraph 7 is added:

‘7. Commission inspectors shall conduct inspections in an efficient and effective manner, with due regard to safety and security.’;

(9) in Article 11, paragraphs 4 and 5 are replaced by the following:

‘4. When assessing the implementation of Regulation (EC) No 725/2004 and Directive 2005/65/EC in accordance with this Regulation, the findings shall be classified in one of the following categories:

(a) in conformity;

(b) in conformity, but improvement desirable;

(c) non-conformity;

(d) major non-conformity;

(e) not confirmed.

5. The report shall detail the findings of the inspection identified as “major non-conformity”, “non-conformity”, “in conformity, but improvement desirable” and “not confirmed” in the implementation of Regulation (EC) No 725/2004 or Directive 2005/65/EC in accordance with the present Regulation.

The report may contain recommendations for corrective action.’;

(10) in Article 12, the following paragraph 3 is added:

‘3. When a Member State proposes immediate corrective measures to address a major non-conformity found, it shall promptly notify the Commission about them before the Commission issues its inspection report. In such case, the report shall quote the corrective actions taken by the Member State. If only provisional measures are taken, the Member State shall promptly notify the Commission and shall also inform about the deadline for implementation of the complete and final corrective actions.’;

(11) Articles 14 and 15 are replaced by the following:

*Article 14*

#### **Confidentiality of information**

In accordance with existing rules applicable, when conducting inspections in the field of maritime security, the Commission shall take the appropriate measures to protect classified information to which it has access or which is communicated to it by Member States. Member States shall take equivalent measures in accordance with their relevant national legislations.

Sensitive but non-classified information may be exchanged between Member States and the Commission, provided that they protect that information in accordance with the requirements applicable to guarantee its confidentiality.

*Article 15*

#### **Commission inspection programme**

1. The Commission shall seek advice from the Committee on the priorities for the implementation of its inspection programme.

2. The Commission shall regularly inform the Committee about the implementation of the inspection programme and the results of the inspections. The Commission shall share good practices observed during the inspections with the Member States.

Inspection reports shall normally be made available to the Committee:

- (a) as soon as the Member State's response under Article 12(1) has been received; and
- (b) when the file is closed.;

(12) in Article 16, the first paragraph is replaced by the following:

'If an inspection discloses a major non-conformity with Regulation (EC) No 725/2004 or Directive 2005/65/EC which is deemed to have a significant impact on the overall level of maritime security in the Union and that cannot be immediately addressed at least by corrective measures of a provisional nature, the Commission shall inform the other Member States after having notified that major non-conformity to the Member State concerned.'

*Article 2*

#### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 March 2016.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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