

COMMISSION REGULATION (EC) No 324/2008

of 9 April 2008

laying down revised procedures for conducting Commission inspections in the field of maritime security

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 ⁽¹⁾, and in particular Article 9(4) thereof,

Having regard to Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security ⁽²⁾, and in particular Article 13(2) and (3) thereof,

Whereas:

(1) In order to monitor the application by Member States of Regulation (EC) No 725/2004 the Commission should conduct inspections starting six months after the entry into force of that Regulation. The organisation of inspections under the supervision of the Commission is necessary to verify the effectiveness of national quality control systems and maritime security measures, procedures and structures.

(2) In accordance with Article 13(3) of Directive 2005/65/EC, the Commission should monitor the implementation by Member States of the said Directive jointly with the inspections provided for in Regulation (EC) No 725/2004.

(3) The European Maritime Safety Agency established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council ⁽³⁾ should provide the Commission with technical assistance in the performance of the latter's inspection tasks in respect of ships, relevant companies and Recognised Security Organisations.

(4) The Commission should co-ordinate the schedule and preparation of its inspections with the Member States. The Commission's inspection teams should be able to call upon qualified national inspectors, where available.

(5) Commission inspections should be carried out according to a set procedure, including a standard methodology.

(6) Sensitive information relating to inspections should be treated as classified information.

(7) Commission Regulation (EC) No 884/2005 of 10 June 2005 laying down procedures for conducting Commission inspections in the field of maritime security ⁽⁴⁾ should therefore be repealed.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee instituted by Article 11(1) of Regulation (EC) No 725/2004,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation lays down procedures for conducting Commission inspections to monitor the application of Regulation (EC) No 725/2004 at the level of each Member State and of individual port facilities and relevant companies.

This Regulation also lays down procedures for the monitoring by the Commission of the implementation of Directive 2005/65/EC jointly with the inspections at the level of Member States and port facilities in respect of ports as defined in Article 2(11) of this Regulation.

The inspections shall be conducted in a transparent, effective, harmonised and consistent manner.

⁽¹⁾ OJ L 129, 29.4.2004, p. 6.

⁽²⁾ OJ L 310, 25.11.2005, p. 28.

⁽³⁾ OJ L 208, 5.8.2002, p. 1. Regulation as last amended by Regulation (EC) No 2038/2006 (OJ L 394, 30.12.2006, p. 1).

⁽⁴⁾ OJ L 148, 11.6.2005, p. 25.

*Article 2***Definitions**

For the purposes of this Regulation the following definitions shall apply:

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;
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;
3. 'national inspector' means a person employed by a Member State as a maritime security inspector, and qualified according to the requirements of that Member State;
4. 'objective evidence' means quantitative or qualitative information, records or findings pertaining to security or to the existence and implementation of a requirement laid down in Regulation (EC) No 725/2004 or Directive 2005/65/EC, which are based on observation, measurement or test and which can be verified;
5. 'observation' means a finding made during a Commission inspection and substantiated by objective evidence;
6. 'non-conformity' means an observed situation where objective evidence indicates the non-fulfilment of a requirement laid down in Regulation (EC) No 725/2004 or Directive 2005/65/EC that requires corrective action;
7. 'major non-conformity' means an identifiable deviation that poses a serious threat to maritime security that requires immediate corrective action and includes the lack of effective and systematic implementation of a requirement laid down in Regulation (EC) No 725/2004 or Directive 2005/65/EC;
8. 'focal point' means the body designated by each Member State to serve as a contact point for the Commission and other Member States and to facilitate, follow up and inform on the application of the maritime security measures laid

down in Regulation (EC) No 725/2004 and the port security measures laid down in Directive 2005/65/EC;

9. 'relevant company' means an entity that has to appoint a Company Security Officer, Ship Security Officer or Port Facility Security Officer, or is responsible for the implementation of a Ship Security Plan or Port Facility Security Plan, or has been appointed by a Member State as a Recognised Security Organisation;
10. 'test' means a trial of maritime security measures, where intent to commit unlawful action is simulated for the purpose of testing efficiency in the implementation of existing security measures;
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.

CHAPTER II

GENERAL REQUIREMENTS*Article 3***Co-operation of Member States**

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

*Article 4***Exercise of Commission powers**

1. Each Member State shall ensure that Commission inspectors are able to exercise their authority to inspect the maritime security activities of any competent authority under Regulation (EC) No 725/2004 or Directive 2005/65/EC and of any relevant company.
2. Each Member State shall ensure that, upon request, Commission inspectors have access to all relevant security related documentation and in particular:
 - (a) the national programme for the implementation of Regulation (EC) No 725/2004 referred to in Article 9(3) of that Regulation;

(b) 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 Member States' monitoring of the implementation of port security plans.

3. Wherever Commission inspectors encounter difficulties in the execution of their duties, the Member States concerned shall by any means within their legal powers assist the Commission to accomplish in full its task.

Article 5

Participation of national inspectors in Commission inspections

1. Member States shall endeavour to make available to the Commission national inspectors able to participate in Commission inspections, including the related preparatory and reporting phases.

2. A national inspector shall not participate in Commission inspections in the Member State where he is employed.

3. Each Member State shall provide the Commission with a list of national inspectors on whom the Commission may call to participate in a Commission inspection.

That list shall be updated, at least by the end of June each year.

4. The Commission shall communicate to the Committee instituted by Article 11(1) of Regulation (EC) No 725/2004 (hereinafter the Committee) the lists referred to in the first subparagraph of paragraph 3 of this Article.

5. Where the Commission considers that the participation of a national inspector is necessary in a particular Commission inspection, it shall request information from Member States as to the availability of national inspectors for the conduct of that inspection. Such requests shall normally be made eight weeks in advance of the inspection.

6. The expenses arising from the participation of national inspectors in Commission inspections shall, in compliance with Community rules, be met by the Commission.

Article 6

Technical assistance from the European Maritime Safety Agency in Commission inspections

In providing the Commission with technical assistance pursuant to Article 2(b)(iv) 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.

Article 7

Qualification criteria and training for Commission inspectors

1. Commission inspectors shall have appropriate qualifications, including sufficient theoretical and practical experience in maritime security. This shall normally include:

- (a) a good understanding of maritime security and how it is applied to the operations being examined;
- (b) a good working knowledge of security technologies and techniques;
- (c) a knowledge of inspection principles, procedures and techniques;
- (d) a working knowledge of the operations being examined.

2. In order to qualify for Commission inspections, Commission inspectors shall have successfully completed training to carry out such inspections.

In the case of national inspectors the training necessary for them to act as Commission inspectors shall:

- (a) be accredited by the Commission;
- (b) be initial and recurrent;
- (c) ensure a standard of performance adequate for the purposes of controlling whether security measures are implemented in accordance with Regulation (EC) No 725/2004 and Directive 2005/65/EC.

3. The Commission shall ensure that Commission inspectors fulfil the criteria set out in paragraphs 1 and 2.

CHAPTER III

PROCEDURES FOR THE CONDUCT OF COMMISSION INSPECTIONS*Article 8***Notice of inspections**

1. The Commission shall give at least six weeks notice of an inspection to the focal point of the Member State in whose territory it is to be conducted. In response to exceptional events, this period of notice may be reduced.

Member States shall take all necessary steps to ensure that notification of an inspection is kept confidential in order to ensure that the inspection process is not compromised.

2. The focal point shall be notified in advance of the intended scope of a Commission inspection.

Where a port facility is to be inspected, the focal point shall be informed in the notice whether:

- (a) the inspection is to include ships at that port facility, or elsewhere in the port, during the inspection; and
- (b) the inspection will include monitoring of the port under Article 13(2) of Directive 2005/65/EC.

For the purposes of point (b) 'monitoring' means verifying whether or not the provisions of Directive 2005/65/EC have been implemented by Member States and by the ports in their territory that have been notified to the Commission under Article 12 of Directive 2005/65/EC. In particular, monitoring means verifying that all provisions of Directive 2005/65/EC have been taken into account in the conduct of the port security assessments and the establishment of the port security plans and that the measures established thereunder are consistent with the provisions adopted under Regulation (EC) No 725/2004 for the port facilities located in the ports concerned.

3. The focal point shall:

- (a) inform the relevant competent authorities in the Member State of the inspection;
- (b) notify the Commission of those relevant competent authorities.

4. The focal point shall advise the Commission at least 24 hours in advance of the inspection, of the name of the flag State and the IMO number of ships expected to be at a port facility or port notified under the second subparagraph of paragraph 2 during the inspection.

5. Where the flag State is a Member State, the Commission shall, where practicable, inform the focal point of that Member State that the ship may be inspected when at the port facility.

6. Where the inspection of a port facility in a Member State is to include a ship of that Member State as flag State, the focal point shall liaise with the Commission to confirm whether or not the ship will be at the port facility during the inspection.

7. Where a ship previously identified to be inspected will not be berthed in the port during the inspection of the port facility, the Commission and the coordinator appointed under Article 9(3) shall agree an alternative ship to be inspected. This ship may be located at another port facility within the port. Paragraphs 5 and 8 of this Article shall still apply in these cases.

8. Commission inspections shall be carried out under the auspices of the Member State of the port facility exercising control and compliance measures under Regulation 9 of the special measures to enhance maritime security of the 1974 International Convention for the Safety of Life at Sea as amended (SOLAS Convention) when either:

- (a) the flag State of the ship is not a Member State; or
- (b) the ship was not included in the information provided pursuant to paragraph 4 of this Article.

9. When notice of an inspection is given to the focal point, a pre-inspection questionnaire may be communicated for completion by the relevant competent authority or authorities, together with a request for the documents referred to in Article 4(2).

The notice shall also specify the date by which the completed questionnaire and documents referred to in Article 4(2) shall be returned to the Commission.

*Article 9***Preparation of inspections**

1. Commission inspectors shall undertake preparatory activities in order to ensure efficiency, accuracy and consistency of inspections.

2. The Commission shall provide the focal point with the names of the Commission inspectors mandated to conduct the inspection, and other details as appropriate. Those names shall include the name of the Team Leader for the inspection, who shall be a Commission inspector employed by the Commission.

3. For each inspection the focal point shall ensure that a coordinator is designated to make the practical arrangements associated with the inspection activity to be undertaken. During the inspection, the team leader shall be the primary contact for the coordinator.

Article 10

Conduct of inspections

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.

2. Member States shall ensure that Commission inspectors are accompanied at all times during the inspection.

3. Where a ship at a port facility is to be inspected and the flag State of the ship is not the Member State of the port facility, the Member State of the port facility shall ensure that the Commission inspectors are accompanied by an officer of an authority referred to in Article 8(2) of Regulation (EC) No 725/2004 during the inspection of the ship.

4. Commission inspectors shall carry an identity card authorising them to carry out inspections on behalf of the Commission. The Member States shall ensure that Commission inspectors are able to obtain access to all areas required for inspection purposes.

5. A test shall only be performed after notification to and agreement with the focal point on its scope and purpose. The focal point shall undertake any necessary coordination with the competent authorities concerned.

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 the focal point of the Member State as port State immediately.

Article 11

Inspection report

1. Within six weeks of completion of an inspection, an inspection report shall be communicated by the Commission to the Member State. This inspection report may contain as appropriate the outcomes of the monitoring of the port undertaken in respect of Article 8(2)(b).

2. Where a ship has been inspected during the inspection of a port facility, the relevant parts of the inspection report shall also be sent to the Member State that is the flag State, if different from the Member State in which the inspection took place.

3. The Member State shall inform the inspected entities of the relevant observations of the inspection. However, the inspection report itself shall not be sent to the inspected entities.

4. The report shall detail the observations of the inspection, identifying any non-conformity or major non-conformity with Regulation (EC) No 725/2004 or Directive 2005/65/EC.

It may contain recommendations for corrective action.

5. When assessing the implementation of Regulation (EC) No 725/2004 and Directive 2005/65/EC, one of the following classifications shall apply to each of the observations of the report:

- (a) in conformity;
- (b) in conformity, but improvement desirable;
- (c) non-conformity;
- (d) major non-conformity;
- (e) not applicable;
- (f) not confirmed.

Article 12

Response from the Member State

1. Within three months of the date of dispatch of an inspection report, the Member State shall submit to the Commission in writing a response to the report which:

- (a) addresses the observations and recommendations; and
- (b) provides an action plan, specifying actions and deadlines, to remedy any identified deficiencies.

2. Where the inspection report does not identify any non-conformity or major non-conformity with Regulation (EC) No 725/2004 or Directive 2005/65/EC, no response shall be required.

Article 13

Action by the Commission

1. The Commission may take any of the following steps in the event of non-conformity or major non-conformity with Regulation (EC) No 725/2004 or Directive 2005/65/EC and following receipt of the response of the Member State:

- (a) submit comments to the Member State or request further explanation to clarify all or part of the response;
- (b) conduct a follow-up inspection or monitoring to check the implementation of corrective actions, the minimum notice for such follow-up being two weeks;
- (c) initiate an infringement procedure in respect of the Member State concerned.

2. Where a follow-up inspection of a ship is to be conducted, the Member State that is the flag State shall, where possible, inform the Commission of the ship's future ports of call, so the Commission can decide where and when to carry out the follow-up inspection.

CHAPTER IV

GENERAL AND FINAL PROVISIONS

Article 14

Sensitive information

Without prejudice to Article 13 of Regulation (EC) No 725/2004 and Article 16 of Directive 2005/65/EC, the Commission shall treat sensitive inspection-related materials as classified information.

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

Done at Brussels, 9 April 2008.

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 inform the Committee on a regular basis about the implementation of its inspection programme and about the results of the inspections.

Article 16

Informing Member States of major non-conformity

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 Community, the Commission shall inform the other Member States immediately after communicating the inspection report to the Member State concerned.

Once a major non-conformity notified to the other Member States under this Article has been corrected to the satisfaction of the Commission, the Commission shall immediately inform the other Member States.

Article 17

Review

The Commission shall regularly review its system of inspections and in particular the effectiveness of that system.

Article 18

Repeal

Regulation (EC) 884/2005 is repealed.

Article 19

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

For the Commission
Jacques BARROT
Vice-President