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)

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[(1)], 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[(2)] 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[(3)]. 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[(4)].

(3) Commission Regulation (EC) No 324/2008[(5)] 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.

(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[(6)] 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.;

(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,;

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/462. (See end of Document for details)*

(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: