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)

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.

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EC) No 324/2008. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(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.

Article 2

Definitions

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

1. **[**[F1]'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;**]**

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;

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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. **[**[F1]‘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;**]**

12. **[**[F2]‘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[(5)] 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;

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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.**]**

Textual Amendments

F1 Substituted by 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).

F2 Inserted by 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).

CHAPTER II

GENERAL REQUIREMENTS

[F1 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.**]**

Textual Amendments

F1 Substituted by 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).

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.

[F1 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:

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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.**]**

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.

Textual Amendments

F1 Substituted by 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).

Article 5

Participation of national inspectors in Commission inspections

[F1 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.**]**

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.

[F1 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.**]**

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