

COMMISSION REGULATION (EC) No 884/2005

of 10 June 2005

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

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

CHAPTER I

SUBJECT-MATTER AND DEFINITIONS

Having regard to the Treaty establishing the European Community,

Article 1

Subject-matter

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,

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.

Whereas:

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

(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.

Article 2

Definitions

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

(2) The European Maritime Safety Agency established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council ⁽²⁾, 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.

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;

(3) The Commission should coordinate 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.

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;

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

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;

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

4. 'Committee' means the Committee instituted by Article 11(1) of Regulation (EC) No 725/2004;

(6) 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,

5. '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, which are based on observation, measurement or test and which can be verified;

HAS ADOPTED THIS REGULATION:

⁽¹⁾ OJ L 129, 29.4.2004, p. 6.

⁽²⁾ OJ L 208, 5.8.2002, p. 1. Regulation as last amended by Regulation (EC) No 724/2004 (OJ L 129, 29.4.2004, p. 1).

6. 'observation' means a finding made during a Commission inspection and substantiated by objective evidence;

7. 'non-conformity' means an observed situation where objective evidence indicates the non-fulfilment of a requirement laid down in Regulation (EC) No 725/2004 that requires corrective action;
8. '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;
9. '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;
10. '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;
11. '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.

CHAPTER II

GENERAL REQUIREMENTS

Article 3

Cooperation 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 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.

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, and for the first time within eight weeks of the entry into force of this Regulation.

4. The Commission shall communicate to the Committee the lists referred to in the first subparagraph of paragraph 3.

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

1. 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.

2. The Commission shall communicate to the Committee a list of the technical experts from the European Maritime Safety Agency on whom it may call to participate in an inspection.

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.

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 and the inspection is to include ships at that port facility during the inspection, the focal point shall be informed in the notice.

3. The focal point shall:

- (a) inform the relevant competent authorities in the Member State of the inspection, and
- (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 the name of the flag State and the IMO number of ships expected to be at a port facility 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. 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 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.

8. When notice of an inspection is given to the focal point, a pre-inspection questionnaire may also 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.

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.

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

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.

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.

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

It may contain recommendations for corrective action.

5. When assessing the implementation of Regulation (EC) No 725/2004, 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, 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 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 to check the implementation of corrective actions, the minimum notice for such a follow-up inspection 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, the Commission shall treat sensitive inspection-related materials as classified information.

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 major non-conformity with Regulation (EC) No 725/2004 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.

Article 17

Review

For the first time by 31 December 2006 and regularly thereafter the Commission shall review its system of inspections and in particular the effectiveness of that system.

Article 18

Entry into force

This Regulation shall enter into force on the twentieth day following 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, 10 June 2005.

For the Commission

Jacques BARROT

Vice-President

