

CUATRECASAS

Plan of action for competition authority inspections



2022 version





How should I act in the event of an inspection?

The Plan of action contains general recommendations in case of a competition inspection followed by guides of action, including a specific guide for each group of employees that will take part in the initial response to an inspection, as well as a specific guide in case of inspection in private homes and remote inspections. The guides highlight the most important steps to follow.



1. Recommendations



2. Guide for Reception and Security Staff



3. Guide for the Internal Response Team



4. Guide for IT



5. Guide for inspections in private homes



6. Guide for remote inspections

This presentation has been prepared by Cuatrecasas Competition and EU law team to provide general information. The information contained in this document does not constitute legal advice. Users of this document should seek legal advice before applying it to specific situations.

01

Recommendations

DO's



- Remain calm, with a professional and cooperative attitude.
- Take the necessary measures to ensure compliance by all employees.
- Keep record of the activities of the inspection team (including time and location) and of any discrepancies and conflicts between the officials.
- Only answer practical questions. Try to address any other questions to those appointed in charge of the IRT. Answers should be short and factual and limited to responding to the question without providing any additional information or speculation. Check with the IRT and the external lawyers whenever possible.
- Keep record of the subject matter and scope of the inspection. Protest and contact the IRT and external lawyers if the officials ask questions, investigate documents and use search terms that:
 - are not related to the inspection (e.g., different products, services and geographic areas).
 - are unrelated to the company's activities (e.g., private emails).
 - involve communications with external lawyers.
- Assess with the external lawyers whether a press release about the inspection should be issued.
- Check the list of documents copied by the officials.
- Inform staff with access to the facilities of the duty to keep every affixed by the authority intact. Also inform other relevant staff, such as cleaning and security staff. Take measures to prevent any type of manipulation (such as hiring security guards).
- Review the inspection report and consult with the IRT or external lawyers before signing it.

DONT's



- Do not delay the entrance of the officials to the facilities.
- Do not obstruct the inspection if the officials do not want to wait for the external lawyers.
- Do not leave the officials unescorted.
- Do not inform any third parties that the inspection is taking place.
- Do not destroy, delete or hide documents and files.
- Do not deny the officials access to rooms or devices.
- Do not answer incriminating or questions that are not clearly phrased.
- Do not sign any statements or declarations without consulting the external lawyers.
- Do not tamper with or break any seal.

02

Guide for Reception and Security Staff

1 Welcome



Welcome the officials

- **Security Staff:** Let the officials come in without delay and inform the Reception staff.
- **Reception Staff:**
 - Remain calm, be polite and cooperate.
 - Do not accept or sign any documents that the officials may give or show to you.
 - Keep the ongoing inspection confidential.

2 Inform



Call the Internal Response Team (IRT)

- Call the Internal Response Team and provide the following information: 1) Name of the authority, 2) List of the officials, and 3) Copy of the investigation order or court warrant.

IRT's contact information:

General Management team member: tel:

Legal Services: tel:

First alternate: tel:

Second alternate: tel:

- If the officials ask to speak with a specific employee, notify that employee immediately and make sure they contact the IRT.

3 Accompany



Accompany the officials

- Inform the officials that, "*The company's policy is to collaborate with the investigations, although they may have to wait for the person authorized to receive them.*"
- Tell the officials that someone will meet them shortly.
- Provide badges to identify the officials as visitors to the premises.



03

Guide for the Internal Response Team

1 Contact



Contact the external lawyers

Madrid:

Andrew Ward: +34 600 916 441

Maria López Ridruejo: + 34 669 891 678

Barcelona:

Irene Moreno-Tapia: + 34 605 523 331

Carlos Alberto Ruiz: + 34 600 939 290

2 Welcome



Welcome the officials

- If they agree to do so, accompany the officials to a meeting room (if possible, use a room without files, documents and computers).
- Ask for and obtain a copy of the documents justifying the inspection (investigation order or judicial warrant).
- Ask the officials for their credentials or identification documents. Make copies of them with their consent.
- Ask the officials to wait for the external lawyers to arrive before proceeding with the inspection and ask for the phone number of the person from the authority leading the inspection.
- If the officials do not want to wait for the external lawyers to arrive, try to persuade them to wait until 1) the investigation order and/or court warrant have been read, and 2) a team has been organized to assist during the inspection. It is recommended to give the employees affected by the inspection instructions to turn off their computers and telephones under the watch of the officials.
- Try to agree with the authority which employees, rooms and digital data (such as hard drives, electronic mailboxes, and cell phones) they will inspect first. Try to avoid disagreements in this regard until the external lawyers arrive.

3 Instruct



Instruct colleagues

- Instruct the IT team to follow the officials' instructions on communications and access to data, computers and other employee devices. Do not cut off or change this access without notifying the officials.
- If the officials do not want to wait for the external lawyers to arrive, assemble a group of colleagues to accompany the officials at all times and keep record of their activities. Provide the phone numbers of the IRT and the external lawyers.
- Appoint a main contact person who will be in charge of communicating with the authority.
- Contact the person in charge from IT and instruct her or him to follow the IT Guide. Provide her or him with the phone numbers of the IRT and the external lawyers.
- Prepare the internal communication following the advice from the external lawyers.

- Once authorized by the officials, send an informative email to all company staff. For example:



To...

Subject

Dear colleagues,

The company is currently being inspected by [the corresponding competition authority]. The company's policy is to cooperate with the officials. It is very important:

- *Not to delete/erase or modify any documents or files.*
- *To follow the instructions from the Internal Response Team [names] and the external lawyers.*

Please keep the inspection confidential as we are bound by a legal duty of confidentiality.

If you have any doubts, please contact the Internal Response Team.

Thank you for your cooperation.

4

Review



Review the documents copied and the inspection report

- Review the list of documents copied by the officials.
- Ensure that all seals placed by the authority are intact. Inform other relevant persons, such as cleaning and security personnel. Take measures to avoid any tampering (such as hiring private security).
- Ask for a signed copy of the inspection report, consult with in-house or external lawyers before signing it and, if it is not truthful and accurate, sign it under protest.



04

Guide for IT

1 Cooperate



Cooperate and comply with the instructions

- Provide officials with “administrator rights” and passwords to encrypted data.
- Block or grant access to accounts, devices and data carriers.
- Provide the officials with access to 1) the IT environment (e.g., servers, computers, laptops, tablets and other mobile devices); and 2) storage media (e.g., CDs, DVDs, USBs, external hard drives, back up tapes and cloud services).
- Switch off programs to create more working memory.

Answer any questions about the digital environment, but provide responses only to the questions asked, without providing additional information.

Keep record of all of the requests and instructions, whether IT-related/digital or otherwise. Notify the IRT or the external lawyers when possible.

Once authorized by the officials, inform all internal and external IT staff.

2 Don't obstruct



Do not obstruct the investigation

- Do not move or delete documents. Avoid doing anything that might be interpreted as an attempt to delete or hide documents.
- Do not rerout or block incoming emails.
- Do not give back access to blocked email accounts, unless expressly authorized by the officials.

3 Consult



Consult with the IRT or the external lawyers

- Before providing access to a server located abroad or belonging to another company (e.g., the parent company).
- Before providing access to private data carriers and devices (e.g., private cell phones).
- Before answering to questions that are not purely practical.

05

Guide for private home inspections

1 Check and inform



Request the officials to provide with judicial warrant to enter the private home

Officials may enter the private home of the employees of the company only if they have: (i) reasonable suspicion that evidence or documents relevant to the inspection may be kept in the private home, and (ii) a court order authorizing the inspection of private home.

- Upon their arrival, request the officials to provide you with a copy of the (i) judicial warrant to enter and inspect the private home, and (ii) investigation order.
- Immediately inform in-house and/or external lawyers and request that they come to the inspected home. Although they are not legally obliged to wait, request the officials not to proceed with the inspection until the lawyers arrive.
- To the extent possible, send a copy of the documents provided by the officials to in-house and/or external lawyers.
- Check that: (i) the court order specifies the reasonable suspicion that evidence or documents relevant to the search may be kept at the private home; and (ii) the purpose and scope of the search. In case of doubt, ask permission to the officials to seek legal assistance from in-house or external lawyers.

2 Do not obstruct and keep record



Follow the same protocol as indicated in the guide for on-site inspections

In general, follow the same protocol as in cases where the inspection is conducted at the company's premises.

- Do not move or delete documents. Avoid taking any action that could be interpreted as an attempt to delete or hide documents.
- Clearly identify documents: (i) of a purely private nature, and (ii) legally privileged (i.e., communications with, or documents prepared by, external lawyers).
- Answer the necessary questions to carry out the inspection (e.g., “do you have company documentation at home? Where?”). Limit the answer strictly to what is being asked, without giving additional indications or information.
- Take detailed notes of (i) everything that occurs during the inspection, (ii) any disagreements or conflicts with officials, and (iii) any verbal explanations given, and documents inspected. It is important to note down the hour and minute of each action.
- Inform any person who has access to the home of the duty to maintain all seals intact. Take measures to prevent tampering.



3 Ask questions



Consult with the IRT (Internal Response Team) or external lawyers

- Consult with in-house or external lawyers present if you have any questions about your rights or obligations. For example, if you are in doubt about whether or not you should answer a question, or which way to answer, indicate that you want to consult with legal counsel.
- Ask for a signed copy of the inspection report, consult with in-house or external lawyers before signing it and, if it is not truthful and accurate, sign it under protest.



06

Guide for remote inspections

1 Coordinate and grant access



Competition authorities can access all types of information to which the undertaking under investigation has access, regardless of where it is located

In a working-from-home context, there is also a duty to cooperate with the competition authorities carrying out an inspection. In case the officials so requests:

- Communicate to officials which employees are working from home.
- Ensure that the officials have access to company information or document even when the number of employees present in the company is limited.
- Set up a channel to gather documents and devices required by the authority (by centralizing the delivery of devices to the authority).

Officials are entitled to: (a) request the physical presence of employees working from home at the company's premises; (b) request the handing over of devices held by employees working from home; and (c) remotely access these devices.

2 Physical appearance



A. Physical presence of teleworkers

- If the officials request the presence of any person working from home, the employee in question must attend with the least possible delay in the event that there is no objective justification to the contrary.
- If requested, the employee in question must provide his or her work computer, as well as any other device and/or documentation requested.



3 Handing over devices



4 Remote access



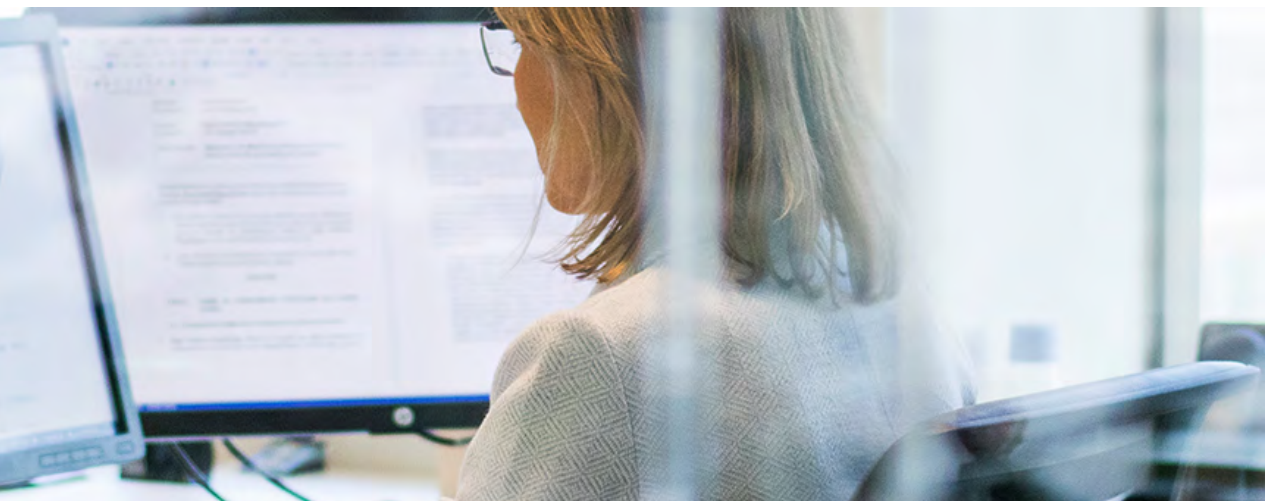
B. Handing over devices held by employees working from home

- The employee shall not tamper with or delete any documents from the devices before handing them over.
- The employee shall not block effective access to the officials to the requested devices.
- Before handing over the devices, the employee shall clearly identify (i) the documents of a purely private nature, and (ii) communications with external lawyers.

C. Remote access to employee devices

The work of the IT team is of particular relevance in this situation, as they should ensure:

- Access to electronic devices or administration rights to officials.
- Access to the documentation and information requested, regardless of the format which is found.
- Conducting remote interviews with company personnel.



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Cuatrecasas also offers additional materials for inspections, such as inspection manuals designed specifically for the company and training sessions for staff. For further information, contact the [Competition and EU Law](#) team at any time.



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* In collaboration with a local firm