

CUATRECASAS

# Plan of action for competition authority inspections in private homes



2022 version





# ¿How should I act in the event of an inspection?

This Plan of action, complementary to the Plan of action for competition authority inspections, aims to offer recommendations or basic rules for those employees who are faced with a competition inspection at a private home and/or remote inspection.



## 1. Recommendations



## 2. Guidelines for inspections in private homes



## 3. 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.
- Keep record of the activities of the inspection team (including the time and location) and any discrepancies or conflicts with 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 or use search terms that:
  - are unrelated to the inspection (e.g. different products, services or geographic areas).
  - are unrelated to the activities of the company (e.g. private emails).
  - include communications with outside counsel.
- Check the list of documents copied by the officials.
- Review the inspection report and consult with the IRT or external lawyers before signing it.

## DONT's



- Do not delay the entry of the officials to the home.
- 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 about the existence of the inspections.
- Do not destroy, delete or hide documents or 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.

# 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

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.

### 3 Ask questions



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

- Consult with in-house or external lawyers if you have any questions about your rights or obligations. For example, if you are in doubt about whether or not to answer a question from the officials, or in which direction to respond, 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.





# 03

## Guide for remote inspections

### 1 Coordinate and grant access



**Competition authorities can access all types of information to which the company 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 when carrying out an inspection. In case the officials so requests, the company must:

- Communicate to the 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 presence



#### 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



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#### B. Handing over devices held by employees working from home

- The employee shall not tamper with or remove any documents from the devices prior to delivery.
- The employee shall not block the effective access of the official to the requested devices.
- Before handing over the devices, the employee shall clearly identify documents: (i) of a purely private nature from (ii) communications with outside counsel.

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#### C. Remote access to employee devices

The work of the IT team is of particular relevance, which must ensure:

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



# Contact

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



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> Girona > Lisboa > Madrid  
> Málaga > Palma de Mallorca  
> Oporto > San Sebastián > Sevilla  
> Valencia > Vigo > Vitoria-Gasteiz  
> Zaragoza

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## International

> Bogotá > Bruselas > Casablanca\*  
> Ciudad de México > Lima > Londres  
> Luanda\* > Maputo\* > Nueva York  
> Pekín > Santiago > Shanghái

\* In collaboration with a local firm