

**Guidelines on the Competences  
of the Antimonopoly Office of the Slovak  
Republic to Conduct Inspections**

**11. 04. 2016**

## Guidelines on the Competences of the Antimonopoly Office of the Slovak Republic to Conduct Inspections

These Guidelines clarify the competences and the procedures of the Antimonopoly Office of the Slovak Republic (hereinafter referred to as “the Office”) in conducting an inspection in those premises and means of transport of the undertaking, which are related to their activities or conduct pursuant to article 22a par. 1 of the Act No. 136/2001 Coll. on Protection of Competition and on the Amendments and Supplements to the Act of the Slovak National Council No. 347/1990 Coll. on the Organisation of Ministries and Other Central Bodies of State Administration of the Slovak Republic as amended as amended (hereinafter referred to as “the Act”).

1. In the performance of their duties pursuant to the Act, the employees of the Office and the persons entrusted with the performance of the duties falling within the powers of the Office (hereinafter in these guidelines referred to as "inspectors", or "inspector" in the singular) shall have the right to enter any premises and means of transport of the undertaking, which are related to the activities or conduct of the undertaking, in order to conduct an inspection.
2. Pursuant to article 22a of the Act, an undertaking is obliged to submit to the inspection conducted by the inspectors. When conducting an inspection the inspectors shall prove their identity to the undertaking through a written authorization issued by the Vice-Chairperson of the Office or by the Chairperson of the Office depending on instance of the administrative proceedings, at which the inspection is conducted.
3. During the inspection, inspectors shall negotiate with a person who is under specific legislation or internal rules or instructions of the undertaking authorized to act on behalf of the undertaking, it means the statutory body or a person designated by him/her to represent the undertaking in his/her absence. If such person is not present, the inspectors negotiate with a present person who is at that time holding the highest job position. If such a person cannot be specified, they negotiate with any employee of the undertaking, which is determined on the spot.
4. The inspectors shall inform the undertaking of the object of the inspection in the extent of the authorization to conduct an inspection, and shall instruct the undertaking on their rights and obligations, as well as on the consequences of not allowing to conduct an inspection or other form of non-cooperation with the inspectors during the inspection.
5. The inspectors may ask the undertaking to allow the inspectors to use their technical equipment and data carriers (HDD, PC, laptop, USB, DVD, CD-ROM, cables, printer, copy machine, etc.). If they do not ask the undertaking to use their technical equipment and data carriers, they use technical equipment and data carriers provided by the Office.
6. During the inspection the inspectors are empowered to:
  - a) seal the documents or carriers of the undertaking on which information is recorded, to seal the premises and the equipment of the undertaking, as well as the means of transport of the undertaking for a certain period and to the extent necessary for the inspection;
  - b) take away the documents and carriers on which information is recorded for the time that is necessary with the aim of making copies or gaining access to the information if the inspectors are unable, primarily for technical reasons, to gain access to the information or make copies of the documents during the inspection;
  - c) ensure the access to the premises of the undertaking and means of transport, to open closed premises and their equipment or to otherwise ensure access to documents and carriers on which information is recorded; the inspectors are entitled to summon other persons capable of overcoming the obstacle;
  - d) ensure the access to all the information stored in any electronic form in the data storage of the undertaking or created in any electronic form by the undertaking or which the undertaking may access in connection with their operations, including information stored in any electronic form in the data storage of other entities to which the undertaking has access and uses for their activity; to ensure the access to these carriers the inspectors are entitled to summon other persons capable of ensuring such access. However, these persons are not entitled to access this information.

7. The inspectors are further empowered to make copies of any information in document form, all computer data and information of the undertaking stored in any electronic form on data carriers pursuant to paragraph 6 subparagraph d) of these Guidelines.

8. For the purpose and in the course of conducting an inspection the undertaking is obliged to:

- a) allow the inspectors to enter the premises and means of transport of the undertaking, to open closed premises and their equipment or otherwise provide access to documents and carriers on which information is recorded;

The undertaking is obliged, without restrictions on its part, to enable the inspectors to quickly entry all premises and means of transport specified by the inspectors in order to prevent the unauthorized disclosure of possible evidence during the inspection and with the aim of the consequent examining, copying and conducting other necessary acts. For this reason the undertaking is obliged to accompany the inspectors to its premises and means of transport determined by the inspectors.

- b) cooperate with the inspectors and provide the necessary collaboration and to allow proper conducting of the inspection;

The undertaking is obliged to actively cooperate with the inspectors during entire inspection. Person who has been submitted an authorization and was instructed pursuant to the authorization is obliged to ensure the cooperation according to the instructions of inspectors also from the other employees or other persons acting for the undertaking.

Any persons present in premises of the undertaking during the inspection are obliged to tolerate the necessary restriction according to the instructions of inspectors, in the extent preventing from leak of information which might result in frustration of course of inspection or in frustration of achieving the purpose of inspection. These persons are obliged to tolerate the necessary restrictions since all the measures preceding this frustration are realized, particularly to tolerate the restriction on the use of electronic devices such as making phone calls, sending emails, SMS messages, leaving some space, accompanying inspectors in the premises of undertaking.

Undertaking is obliged to enable the inspectors to search all premises and means of transport with the aim to verify whether there are information and documents which might relate to object of inspection. Thus the inspectors can examine any documents and data of the undertaking in electronic or paper form in order to verify whether there are data falling within the object of the conducted inspection.

If the undertaking believes that from some reason any instruction of the inspectors is not possible to ensure or the instruction is not clear, it is appropriate to ask the inspectors for clarification or to consult that instruction. It could prevent the undertaking from possible sanction for incorrect fulfilment of instruction or failure to fulfil it.

- c) enable their employees to give an explanation and to present documents and information necessary for the operations of the inspectors or the Office regardless of the carrier on which it is recorded;

Undertaking is obliged to ensure the cooperation of its employee with the inspectors. Undertaking is responsible for the conduct of its employee. Thus the undertaking is responsible, if the employee provides incomplete or incorrect explanations, or if he/she provides information and documents that are incomplete or false or fails to submit the electronic device or a data carrier or information and documents.

- d) ensure access to all documents, information and data in electronic form;

Undertaking is obliged to enable the inspectors to access and examine all documents, materials and content of electronic devices and other media for transmission and storage of digital data related to his business or to which it has access and use them for its business (personal computers, mobile phones, tablets, servers, CD, DVD, BD-R, HDD, USB) and make copies of their content, including forensic copies of information stored on them.

For this purpose the undertaking is obliged to provide the inspectors with the necessary cooperation such as granting access passwords.

Undertaking is obliged to allow the access not only to data having been present in its device or data carrier before starting the inspections but also to those that occur during an inspection.

During all inspection the undertaking is obliged to provide the inspectors with the necessary technical support, especially to make the company's infrastructure available through the administrator privileges. Undertaking is obliged to inform the inspectors on technical details of

company's IT infrastructure. According to the instructions of inspectors the undertaking is obliged to ensure blocking of determined mailboxes in such a way that after using the server logs it could be consequently clearly seen that blocking of accounts took place according to the instructions of the inspectors and comply with their instructions.

- e) ensure the seal is intact, if the inspectors seal documents or carriers on which information is recorded, or seal the premises and their equipment as well as means of transport.

Undertaking is obliged to allow the inspector to seal the documents or carriers, premises and their equipment or transport premises determined by the inspector for a period and to the extent necessary to achieve the purpose of inspection, it means to prevent from the unauthorized disclosure of possible evidence. If the inspectors use the seal the undertaking is obliged to ensure that the seal is intact, damaged or removed. The inspector is exclusively authorized to handle with the seal.

9. The undertaking has the right to summon legal assistance during the inspection, however, the presence of a legal representative is not a statutory condition of the inspection and the absence of a legal representative does not affect the initiation of the inspection, the inspection process, or the assessment of the legality of the inspection. Thus the entry of the Office to the premises and means of transport of the undertaking cannot be conditioned by the presence of the legal representative. The inspectors may wait for the arrival of a legal representative of the undertaking for a reasonable time (about 30 minutes), however, this does not prevent them from carrying out urgent operations needed to safeguard (secure) the objects, documents, information and data carriers of the undertaking, which may contain these documents and information. After realizing urgent security operations the inspectors shall accept only a short delay or postponement because of the consultation of the undertaking with the legal representative who is not present at the place of inspection, or due to the arrival of legal representative to the place of inspection, before they begin to search and examine the devices, carriers and documents, copy, or ask questions other than those necessary to realize urgent security operations.
10. The undertaking is obliged to consult in advance with inspectors if he/she want to summon the legal representative, as well as manner of his/her summoning. Legal representative shall provide the valid authorization. Legal representative can be authorized also directly on spot through statement into the minutes.
11. Representative of the undertaking/legal representative is entitled to be present at all acts of the Office relating to the inspection, both in the premises of undertaking and in the Office's premises.
12. The inspectors have the right to request from the undertaking and any other natural and legal persons the provision of information and documents necessary for their operations, regardless of the carrier on which they are recorded, and to make copies and notes of these documents (in electronic or paper form) or to request their officially certified translations into the Slovak language, to request written or oral explanation and to make audio recordings of the orally given explanation.
13. If the member of statutory or other body of the undertaking or employees of the undertaking use the electronic devices or working data carriers also for private purposes, the undertaking is obliged to allow their searching and making copies of data from them, since their using also for private purposes does not deprive them of the status of devices and data carriers used for business purposes.
14. Undertaking is obliged to ensure the access for searching and making copies of data also to private electronic device or to private data carrier of employee or other person acting for the undertaking, which are used for business activities of the undertaking. In this connection the undertaking is obliged to ensure the cooperation of employee or the person owning the private device or private data carrier concerned.
15. If the person concerned claims that the made copy of data contains information of private nature, the inspectors may ask him/her to specify this information (in particular location of data,

## Guidelines on the Competences of the Antimonopoly Office of the Slovak Republic to Conduct Inspections

- addressees and recipients of private messages) and justify why these data should be regarded as private.
16. Inspectors do not search the private data, however, they are entitled to verify if that information is of such nature.
  17. Person whose private information, private electronic device or private data carrier is concerned, is entitled to be present at searching. Though, the inspection is not conditioned by his/her presence.
  18. If the person concerned claims that made copy of data contains communication with a lawyer, the inspectors may ask him/her to specify this communication (in particular location of data, addressees and recipients of private messages) and justify why these data should be considered confidential communication with a lawyer for the purpose of defense. Specification of data by the person concerned does not prevent inspectors from brief examination and verification if that information is of such nature.
  19. Searching the devices and mailboxes shall be realized based on key words specified by the inspectors. The inspectors do not provide a list of key words in advance. An exact list of key words used during the inspection is specified in the minutes of the inspection.
  20. The electronic devices and data carriers (PC, laptops, mobile telephones, tablets, etc.), which the undertaking provided at the inspection venue, will be returned to the undertaking immediately after the inspectors have searched them and have created copies on the data carrier of the Office. Inspector shall select the content of this carrier using key words. The inspectors shall make copies in paper and/or electronic forms from the documents selected from the content of devices and carriers. In case it would be not possible to search the selected content of devices and carriers and/or to make copies of found documents, the searching takes place in the premises of the Office.
  21. Data carriers containing documents and information in electronic form, content of which would be not possible to search during the inspection and that will be searched in the premises of the Office will be safeguarded, it means sealed into the security envelopes in the presence of undertaking. The Office will inform the undertaking and/or its legal representative of the time of the examination in writing in time and in advance. If the undertaking and/or their legal representative fails to appear at the specified time without giving a reason, the examination will be carried out in their absence.
  22. The inspectors may request from the undertaking the provision of the documents in paper form; these will be returned to the undertaking immediately after the inspectors have examined them and have created copies of the documents. If neither examination, nor creation of copies of these documents at the inspection venue is possible, for time or technical reasons (for example in the case of a large number of documents), the inspectors may take away these documents for the time that is necessary and examine and/or create copies of them in the premises of the Office. The Office shall allow the undertaking/its legal representative to be present at examining and making copies in the Office's premises.
  23. The inspectors may interrupt the inspection at any time, even repeatedly, and therefore the inspection may last for more days. In such a case the premises of the undertaking with the documents, electronic devices and data carriers that have not been examined (selected) yet, or the premises that have not been searched at all, are sealed. Minutes will be done on sealing. Sealed premises of the undertaking will be unsealed on an agreed day and the inspection will continue.
  24. The inspectors are obliged to inform the undertaking of the possibility to identify those pieces of information or documents submitted to the Office during the inspection, which it considers to be subject to trade secret or confidential information.

25. The inspectors shall prepare the minutes of the inspection, which will be signed by the inspectors, the undertaking, and possibly other present persons. The inspection shall be deemed complete after signing the minutes. The inspection shall be deemed complete even if some of the persons present during the inspection refuse to sign the minutes; grounds for refusal shall be given in the minutes. Inspectors shall provide one copy of the minutes to the undertaking.