European Commission
Dawn Raids
Practical Tips & Guidance
INTRODUCTION

Competition investigations in the European Union often start with unannounced inspections by officials from the European Commission and national competition authorities. They typically start in the early morning hours and therefore are referred to as dawn raids. Sometimes such dawn raids are also carried out at the private premises of company employees.

Dawn raids are very stressful for all concerned—managers, in-house lawyers, receptionists, and secretaries, to name a few. If a company is unprepared, there is great potential for mistakes being made, in particular in the time between the start of the dawn raid and the arrival of outside counsel. These mistakes can cost dearly in the ensuing investigation. The way to mitigate the risk of such mistakes is to be prepared. As a minimum, each company should have a tailor-made and up-to-date dawn raid manual setting out in a clear and simple manner the procedures to be followed. In addition, it is recommended to do from time to time a dawn raid training for key personnel. In some instances, it may even be useful to carry out a mock dawn raid.

Baker Botts can assist companies in the preparation of detailed dawn raid manuals, tailored to a company's needs and the jurisdictions in which the company has premises. The attached generic manuals provide an idea of what information a tailor-made manual typically contains, but they need to be adapted to the specific situation and risk profile of the company at issue. Baker Botts further provides in-person or remote dawn raid training sessions, and can deliver intensive, mock dawn raid simulations. In the event of a dawn raid, Baker Botts can ensure effective support for companies through attendance on site to assist during the inspection, and through coordination of any local counsel across different jurisdictions in order to ensure a consistent approach is taken on behalf of clients, wherever they are being inspected.

Ultimately, dawn raids are the first step in a long journey. Baker Botts' expertise in assisting clients to prepare for and conduct themselves during dawn raids is complemented by the firm's market-leading international cartel practice, allowing for a seamless transition from advice before and during an unannounced inspection, to working with clients on their defense strategy and future conduct of any cartel or other case that may be brought against them by the European Commission and/or national competition authorities.

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A sample set of generic dawn raid manuals show the guidance that can be followed by reception staff and in-house counsel/management, in the event of a dawn raid. The manuals are accompanied by a quick reference guide to actions that European Commission inspectors can and cannot take in their conduct of a dawn raid inspection. As noted, the manuals and the reference guide should be adapted to the company's specific needs.

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DAWN RAID MANUAL

Reception Staff

What to do if an inspection team arrives on the premises

What is happening?

• As part of a competition law investigation, inspectors from the European Commission have the power to conduct unannounced inspections at business premises (and, in certain circumstances, private premises).
• They will not have an appointment or have given any prior notice of their arrival.
• The inspectors will ask for someone to be notified of their arrival. They may name an individual or ask to see the most senior member of the management team on site.
STEP 1: Who are they and what do they want?

- Ask to see (i) service cards issued by the European Commission (or a national competition authority) or an equivalent proof of identity; and (ii) authorization documents. Ask a colleague to make copies of those documents.
- Establish how many inspectors are on the premises, and whether they are only from the European Commission or also from a national competition authority.
- Establish whether they want to meet any particular individuals.
- Ask the inspectors to wait a few minutes while you contact key individuals (they will usually agree to wait for a short while). If possible ask a colleague to show them to a meeting room (preferably away from common areas and not containing company documents).

STEP 2: Contact key individuals

- It is critical that you first reach out to the relevant internal contact person (see contact details and specific instructions in the box at the end of this document) to inform him/her that the inspectors have arrived.
- Tell him/her:
  - where the inspectors are from;
  - how many inspectors there are;
  - when the inspectors arrived on the premises; and
  - whether they want to speak to any particular individual.
- Follow the instructions given by the internal contact person.
- If you are unable to reach any of the internal contact persons:
  - Contact the external legal counsel (see contact information in the box at the end of this document).
  - Contact any individual that the inspectors have asked to speak to. Briefly explain what is going on and ask them to come to reception.

**DO NOT** hesitate to contact individuals on their mobile phones or to interrupt any meeting—this is an extremely urgent matter. Likewise, do not hesitate to get a colleague to assist you in getting hold of anyone needed.

**DO NOT** answer any questions (except to confirm that the appropriate people have been contacted and will be available shortly).
STEP 3: Deal with the inspectors

- Inform the inspectors that you have contacted your relevant internal contact persons, external legal counsel (if applicable) and any individuals who the inspection team asked to see.
- Issue visitor badges which clearly identify the inspectors as officials from a competition authority.
- Explain that you expect your relevant internal contact persons and/or individuals to arrive shortly and politely ask the inspectors to wait until they arrive.
- The inspectors should normally agree to wait for a short time (approximately 20 minutes, but most likely no longer than 30 minutes from their time of arrival).
- If the inspectors refuse to wait:
  - **DO NOT** try to obstruct them, but ask firmly and politely that they wait at least until you call your internal contact person/external counsel once again;
  - speak with either your internal contact person and/or external counsel and inform them that the inspectors refuse to wait before beginning their investigation; and
  - follow any instructions that your internal contact person or external counsel may give.

REMEMBER

**IT IS CRITICAL** that you have contacted both relevant internal contact persons and external counsel as soon as possible to tell them about the inspection.

**DO NOT** tell anyone else about the fact that an investigation is underway.

**DO NOT** talk to the inspectors about the company’s business or the reason for their inspection.

**DO NOT** answer any questions, other than to confirm that the appropriate people have been contacted and will be available shortly.

**DO NOT** leave the inspectors unattended, but do not obstruct them.

CONTACT DETAILS

[Insert here telephone number, mobile number, and email address of the internal and external persons to be contacted and make clear in which order they should be contacted (internal contacts should be listed first).]

As regards internal contact persons, if a member of the legal department is on site, that person would typically be contacted first. Alternatively, a manager would typically be contacted first.]
What is happening?

• As part of a competition law investigation, inspectors from the European Commission have the power to conduct unannounced inspections at business premises (and, in certain circumstances, private premises).
• They will not have an appointment or have given any prior notice of their arrival.
• The inspectors will ask for someone to be notified of their arrival. They may name an individual or ask to see the most senior member of the management team on site.
STEP 1: Call external legal counsel

- **Call external legal counsel immediately** (if not already done by reception). For contact details see the end of this document.
- Inform them that inspectors from the European Commission (and, if applicable, officials from a national competition authority) are on the premises to carry out an inspection and provide any other information that you have received from reception. External legal counsel will arrive at the premises as soon as possible.

STEP 2: Go immediately to reception and attend to the inspectors

- Ask the inspectors to wait for the external legal counsel to arrive.
- The inspectors do not have to wait until external legal counsel arrives. In practice, they will generally be prepared to wait for between 10 to a maximum of 30 minutes.
- If inspectors begin the inspection before the arrival of external counsel, you are entitled to take legal advice, by telephone if necessary.
- **DO NOT** obstruct the investigation. Refusal to cooperate with the investigation and obstruction of the inspectors’ activities can result in substantial fines.

STEP 3: Review and copy the authorization documentation

- Check and note which authorization documentation is presented by the inspectors.
  - Do they only have a European Commission inspection **authorization** or also a European Commission inspection **decision**? This is relevant, because a company’s legal obligations are different depending on which document is used.
  - If the European Commission inspectors are accompanied by officials from a national competition authority, do those officials have nationally-issued authorization documentation?
  - Do the inspectors have a European Commission inspection decision, complemented by a prior authorization by a national judicial authority, which together authorize the inspection of private premises/vehicles?
- Check and note the name of the company being investigated and the names of any other companies being investigated; check and note the names of any individuals being investigated.
- Check and note the scope of the investigation; this is important as it determines the boundaries of the inspectors’ powers and the extent of your company’s duty of cooperation:
  - Check and note if the inspectors are investigating a breach of Article 101 or 102 TFEU or any other provision.
• Check and note the alleged infringement.
• Check and note in which market (i.e., in relation to which products or services), in what countries, and during what time period the infringement allegedly took place.
• Check that all the inspectors present are named in the authorization document, that all have a valid/current service card issued by the European Commission (or a national competition authority) or an equivalent proof of identity, and that reception has taken a copy of all of these documents.
• Ask reception to email these documents to external legal counsel—the authorization/warrant documents are the most important. You can also call the external legal counsel to inform them of the content of these documents.

STEP 4: Sign the minute of notification

• Assuming that the inspectors wish to begin the inspection before external legal counsel has arrived, you may need to decide if you are going to allow the on-site inspection to proceed:
  • There are very limited circumstances in which you may legally prevent the inspection to proceed, but even in these limited circumstances it is generally not advisable to refuse to give the inspectors permission to proceed.
  • Therefore, DO NOT stop the inspection from proceeding without first obtaining legal advice. If such legal advice cannot be obtained, allow the inspection to proceed.
• Assuming that the inspection proceeds:
  • Do one final check by confirming that the name of the company, the location of the search and the date are correct on the authorization documents. If they are not correct, contact external legal counsel before signing the minute of notification. If correct, sign it.
  • The inspectors will provide your company with a signed copy of the minute of notification. They will also typically provide your company with a copy of the explanatory note setting out the European Commission’s interpretation of its dawn raid powers.

STEP 5: Discuss administrative arrangements with the inspectors

• The inspectors are likely to want to talk to the most senior IT manager available:
  • They may want to know, for example: (i) how the IT environment is set up (location of servers, etc.); (ii) how to temporarily block email accounts; (iii) how to disconnect running computers from the network; (iv) how to remove and re-install hard drives from computers; and (v) how to be provided with administrator access rights in order to e.g., take images of a storage medium. Provide this support if requested.
  • They may ask to use company hardware (e.g., hard disks, CD-ROMs, DVDs, USB-keys, connection cables, scanners, printers). Provide this support if requested and available.
• They are also likely to request a site map of the premises and personnel structure diagrams. Provide these if available.
• Set aside a meeting room for use by the inspectors and, if available, offer a second room they can use for their IT specialists.

STEP 6: What to do during the inspection

• Assuming that external legal counsel has not yet arrived on site, go ahead and establish a core team (ideally including a senior executive, executives/in-house legal counsel and an IT specialist). Assign one member to each inspector and ask him/her to shadow the inspector at all times.
• To the extent that there are any in-house legal staff on-site, ALL of those employees should be asked to join the core team immediately.
• Brief the core team on whatever information you have on the inspection and ensure that you emphasize the following:
  • Your company is cooperating with the investigation.
  • They must ensure that no-one destroys any documents which could be relevant to the investigation. For all practical purposes, any document destruction should simply be suspended during the inspection—this includes deletion of electronic files on any device (firm computer, laptop, mobile device, etc.), including personal devices used for professional purposes, as well as shredding hard copies.
  • They must ensure that no-one interferes with, or obstructs, the IT searches carried out by the inspectors (fines have been imposed in past cases for, e.g., failure to block an email account and for diverting incoming emails to another account).
  • No contact should be made with personnel outside your company in relation to the inspection.
  • Each “shadow” should follow his/her inspector and must take note of all documents/electronic records which are reviewed by the inspectors. If the inspectors request copies of any documents, the shadow should also take a copy—as soon as external legal counsel arrives, show them any documents which have been copied by the inspectors.
  • Allocate at least one “shadow” to watch the inspectors’ IT team and to try to work out what search terms the IT team are using in their investigation.
  • If an inspector asks any questions of anyone, e.g., requesting clarification on the contents of a particular document, the “shadow” must take note of that discussion. Ensure that in-house legal counsel or, if they have arrived, external legal counsel, are present when an employee is being questioned.
• Where inspectors have fixed a seal to a door, a cupboard, or in any other place, it is crucial that no-one breaks or otherwise interferes with the seal:
  • Ensure that cleaning staff or others who may be on the premises after hours are made aware of this.

Typical seal used by the European Commission during an inspection.
• Inform all employees (at least those on the relevant business site) by internal email [insert here a hyperlink to a draft email prepared in advance with the assistance of external counsel] that a dawn raid is underway and provide key instructions: cooperation with inspectors, suspension of any document destruction, no breach of seals, no disclosure of the dawn raid to anyone outside the company, etc.
• As soon as external legal counsel arrives, give them a full briefing on what has happened so far. The external lawyer(s) will provide advice and you will be able to discuss strategy.

STEP 7: Before the inspectors leave

• Once the inspectors have finalized the document search and the interviews, they will draft the minutes of the inspection and provide the draft to the external legal counsel for revision and signature. Your company will be provided with a copy.
• In the unlikely event that no external counsel is present at this stage, the following should be borne in mind:
  • A copy of all the documents gathered during the inspection (photocopies of the documents in paper format and CDs/USB sticks/hard drives containing the documents in electronic format) will also be handed over to your company.
  • Ensure that you have reviewed all the documents that the inspectors take away on grounds of relevance/privilege.
  • Ensure that you have a copy of all the documents that the inspectors are taking away on a data carrier (DVD, USB stick or hard disk) and that you have signed a list outlining all the documents that are being taken away.
  • Agree with the inspectors on any outstanding points (e.g., documents to be provided, questions to be answered, treatment of documents that were set aside for assessment of whether they are covered by legal privilege or outside the scope of the inspection) and make a written record of any areas of disagreement.

CONTACT DETAILS

[Insert here telephone number, mobile number, and email address of the internal and external persons to be contacted and make clear in which order they should be contacted (internal contacts should be listed first).

As regards internal contact persons, if a member of the legal department is on site, that person would typically be contacted first. Alternatively, a manager would typically be contacted first.]
DAWN RAID MANUAL
Quick Reference Guide

Inspectors are NOT allowed to:

Review or copy documents which are clearly outside the scope of their investigation
- The inspectors should only search for documents within the “scope” of the investigation (defined in the inspection decision). You should question them reviewing or copying documents relating to matters clearly outside the scope (although they may need to briefly examine a document to ascertain whether it is within or outside the scope).
- To the extent that there is any doubt over the relevance of a particular document, the document in question should be set aside in a sealed envelope until external legal counsel has an opportunity to review it and to discuss it with the inspection team; if it is an electronic document, it should be copied on a data carrier which should itself be placed into a sealed envelope. Objections should be recorded in the inspection minutes.

Review or copy legally privileged documents
- Documents subject to legal privilege are written communications between the company and external EU-qualified lawyers.
- Many such documents (including emails) may be clearly labeled as legally privileged.
- It is essential that the shadows on your core team are aware of the requirement that legally privileged documents are protected and that they keep a close watch on inspectors to ensure they are not accessing such documents.
- If there is a disagreement about whether or not a document is subject to legal privilege, it should be set aside in a sealed envelope so that it can be examined by a lawyer before being discussed with the inspection team; if it is an electronic document, it should be copied on a data carrier which should itself be placed into a sealed envelope. Objections should be recorded in the inspection minutes.

Remove original documents
- The inspectors may only remove copies of documents from the premises.
- Ensure that you have, at the very least, a complete list of every document copied by the inspectors, including documents retrieved during the inspectors’ IT searches.

Ask potentially self-incriminating questions
- The inspectors do not have the right to ask questions the answer to which would involve the potential admission of an infringement.
- For example, the inspectors may ask individuals whether they attended a meeting, but they may not ask them whether they discussed price-fixing during the meeting.
- Distinguishing between factual and potentially self-incriminating questions may not be straightforward, and refusal to respond to questions could be construed as obstruction, which could have a serious impact on the company at a later stage. Legal advice must always be taken in respect of any proposed refusal to respond to the inspectors’ inquiries.
Inspectors are allowed to:

Access all parts of a business’ premises/vehicles and (potentially) private premises/vehicles
- Access to business premises and vehicles is permitted pursuant to a European Commission inspection authorization or decision.
- Access to private premises (such as the homes of managers and other staff) and vehicles is permitted if, in addition to a European Commission inspection decision, the inspectors also have prior authorization from the relevant national judicial authority. Inspection of private premises is not routine, but the European Commission may wish to carry out such searches if it suspects that relevant evidence is being kept at private premises.

Examine and copy documents (whether hard copy or electronic)
- The inspectors may search all parts of the company’s IT infrastructure (e.g., servers, desktop computers, laptops, tablets, mobile phones) and all storage media (e.g., CD-ROMs, DVDs, USB-keys, external hard disks, backup tapes, cloud services), and may take a forensic copy (“image”).
- The searches may cover personal devices and media used for professional purposes, as well as servers physically located outside the EU, if they can be accessed from the premises.
- It is now a routine part of dawn raid inspections for the inspectors to request at the beginning of the inspection that individuals hand over their devices. Failure to comply could be seen as attempted obstruction of the inspection.
- Always take legal advice if there is any dispute over an individual handing over a particular smart phone or other piece of IT equipment.

Seal off cupboards/offices
- The inspectors may decide to fix a seal to a door, a filing cabinet, or any other place, in order to secure evidence and prevent it from being interfered with in their temporary absence (for example, overnight). Interference with these seals by anyone, including external cleaning staff, is a serious matter.

Conduct IT searches
- The inspectors will most likely have their own forensic IT specialists who will want access to the company’s server and assistance from your IT staff (e.g., for specific tasks such as temporary blocking of individual email accounts and providing “administrator access rights” support). They are permitted to do this and, to the extent practical, you should ensure that the inspectors have access to the necessary IT equipment and personnel. Interference with IT measures taken by the inspectors is a serious matter and has already given rise to fines imposed by the European Commission.
- The inspectors are entitled to use their own dedicated IT software and/or hardware for the purposes of the searches.

Ask oral questions
- Inspectors are allowed to ask questions related to the “scope” of the investigation.
- Inspectors are allowed to ask factual questions, but not questions the answer to which could involve self-incrimination. Objections to any particular questions should be recorded in the inspection minutes. Failure to answer a question could be construed as obstruction—always take legal advice if an employee intends to refuse to respond (note that your responsibility is to the company, not to any individual).
- Employees should keep answers short, factual and accurate. Do not volunteer additional information or views.
- If anyone does not understand the question or does not know the answer, they should say so clearly. Do not guess or speculate. Supplementary information can always be given in writing to the inspectors at a later date.