

EUROPEAN MARITIME SAFETY AGENCY

8th MEETING OF THE ADMINISTRATIVE BOARD

Agenda number/item: 6

6. POLICY FOR VISITS TO MEMBER STATES

Executive Summary: Please find attached an EMSA paper on the issue of procedures for Visits to Member States in accordance with article 10 of Regulation 1406/2002, as amended. It sets out a horizontal policy and procedures for visits to Member States which has to be carried out in the context of several¹ of EMSA's tasks.

The Administrative Board has adopted this paper at its 8th meeting on June 25th 2004 in Brussels.

I. CONTEXT

1. In accordance with Regulation 1406/2002², as amended, creating EMSA, the Agency has the task *inter alia* to assist the Commission in its role for the implementation of Community Law. Article 10.2 (g) of the Regulation stipulates that the Administrative Board shall "*define a policy for the visits to be carried out pursuant to Article 3*". Article 3³ sets out the aim of the visits for EMSA "*in order to perform the tasks entrusted to it*", the general framework and in short indicates the practical issues involved. Article 2 describes the tasks of EMSA, and more particularly Article 2 (b)⁴, sets out the background for the need for such visits.

In order to further specify the necessary steps involved in visits to Member States a policy has to be developed and agreed. It is suggested that such a policy should be horizontal e.g. it should try to address all general circumstances and situations where the Agency may have to carry out visits to Member States in order to execute its

¹ Issues and procedures relating to Security tasks are not dealt with in this document. These will require special guidelines and will be developed separately.

² O J L 208, 5.8.2002, p 1

³ text of Article 3

"Visits to Member States

1. In order to perform the tasks entrusted to it, the Agency may carry out visits to the Member States in accordance with the policy defined by the Administrative Board. The national authorities of the Member States shall facilitate the work of the Agency's staff.

2. The Agency shall inform the Member State concerned of the planned visit, the names of the delegated officials, and the date on which the visit starts. The Agency officials delegated to carry out such visits shall do so on presentation of a decision from the Executive Director of the Agency specifying the purpose and the aims of their mission.

3. At the end of each visit, the Agency shall draw up a report and send it to the Commission and to the Member State concerned."

⁴ "it shall assist the Commission in the effective implementation of Community legislation on maritime safety and prevention of pollution by ships throughout the Community"

tasks. On the basis of the experience gained, it might however be necessary to revise or further specify the procedures for particular type of visits.

II. BACKGROUND

1. *Comparable practice*

In relation to assessments of Classification Societies (CS) carried out by the Commission under Directive 94/57/EC⁵, as amended, an established practice⁶ has been put in place in the following way:

The procedure involves the Commission informing the Member State (normally about 6 weeks prior to the visit) who originally recognised the Class Society that an assessment is being planned, and at the same time the CS in question is informed. In the situation where a Regional office is included in an assessment, the Member State where that office of the Class society is situated will be informed, where appropriate. If the CS is in a third country the Class Society only is informed

Inspiration can be drawn from the above procedure also for other types of inspection/assessment tasks in general.

2. *Tasks which may involve visits to Member States*

Article 2, as amended, together with EMSA's work programme for 2004 sets out some of the areas, which require visits to Member States in order to perform the tasks entrusted to it. Without being exhaustive, such visits can be envisaged in areas such as: monitoring the overall functioning of the Community port State control regime, assessment of Classification Societies, without prejudice to existing practices under Directive 94/57/EC, as amended, the implementation of the Directives on Port reception facilities, training of seafarers, etc.

3. *Co-operation between EMSA and Member States*

The Regulation establishing EMSA gives the legal base and scope of visits to Member States, and as indicated in article 3 1 "*The national authorities of the Member States shall facilitate the work of the Agency's staff.*". The overall objective is that when EMSA may need to visit Member States in order to carry out its tasks, such visits require the mutual understanding and co-operation between EMSA and the Member States, and staff involved.

III. POLICY

1. The Agency will carry out visits to Member States as necessary for the performance of its tasks as defined in article 2 of Regulation 1406/2002, as amended and more particularly in order to monitor the overall functioning of the Community maritime safety and ship pollution prevention system. Where the Agency's task is of such nature, as defined in article 2 (b), it is clear that the Commission retains full authority to decide how and when this assistance is required.

⁵ OJ L 319, 12.12 1994, p. 20

⁶ This may need to be changed in accordance with this Policy, once adopted

The visits are carried out following a decision⁷ by the Executive Director, after consultation of the Commission and in line with the policy established by the Administrative Board.

Against the above background and on the basis of the principle question of ‘who gives information about what, when’ a Policy for visits to Member States should include the following procedure:

1.1 Information – who

In accordance with article 3 2 of the EMSA Regulation “*The Agency shall inform the Member States concerned of the planned visits....*”.

The best way to do this, in order to meet the formal requirement, is to send information to the Permanent Representation to the EU of the Member State involved, with the transport attaché, or equivalent, in copy. (However, this should be done only for the initial contact. It is not suggested that all communication must go via the Permanent Representation. Once the correct contact point in the Member State has been established there should be direct communication.)

Depending on the type of visit it may be necessary to inform also other parties involved. In the case of Class Societies the RO itself obviously needs to be informed. For port State control (and port reception facilities) there may be a need to inform the Harbourmaster/Port authorities, or equivalent, in the port subject to visit. In line with Article 3, it is necessary that the Member State will inform any local authorities concerned.

In addition to the above, EMSA could copy its information letter to the Permanent Representation as mentioned above, to a “focal point” (normally the Head of the maritime administration) in the Member State administration. Member States are therefore invited to designate their focal point and inform EMSA accordingly.

The responsible directorate of the Commission shall be kept in copy of all correspondence relating to the visit.

1.2 Information – what

Article 3 2 stipulates that the information should indicate “ *...the names of the delegated officials, and the date on which the visit starts. specifying the purpose and the aims of their mission* ” In practical terms this should include:

- Indication of the names of the persons involved and of the lead person, if any.
- Contact details
- a workschedule setting out the purpose and aim together with a more detailed list of tasks and, where appropriate, indicating a time table.
- any supporting documentation – EMSA may also request form the Member State relevant information relating to the scope of the visit.

1.3 Information – timing

⁷ Article 15 2(b) of Regulation 1406/2002.

Information about a planned visit should, as a general rule, be sent by EMSA to the Member State not later than 30 days in advance of the visit. That communication should include the information in point 1.2 above. It should also request a contact point in the Member State, where different from the contact points list. Where necessary, more detailed information should be sent not later than 15 days in advance of the visit, to the relevant contact point. Such information could include arrival and departure times, hotel information, possible local transportation needs etc etc.

In cases of changes to the schedule, these should be communicated as soon as possible, and at the latest at the commencement of the visit.

Under exceptional circumstances (pollution incidents and urgent requests by the Commission or a Member State) the above notice periods may be bypassed.

1.4 *Information – mode*

The fastest mode to send, and receive, information is by electronic means (e-mail) with an electronic signature. This should therefore, as far as is possible, be the standard mode of communication. Where necessary or required, this can be followed by a paper original (fax or post).

2. *Authorisation*

Article 3.2 also stipulates that *“The Agency officials delegated to carry out such visits shall do so on presentation of a decision from the Executive Director of the Agency ...”*. A draft such standard decision is attached at Annex 1.

3. *Reporting*

Article 3.3 sets out that *“At the end of each visit, the Agency shall draw up a report and send it to the Commission and to the Member State concerned.”* This is a straightforward requirement, which needs little further explanation (and is already practice in the case of assessments of class societies).
As a general rule such reports should be made available not later than 20 working days after the end of the visit.

4. *Confidentiality*

It is to be noted that some reports, in whole or in part, may be bound by confidentiality⁸ and such reports will have to be treated in accordance with EMSA Decision ... on confidentiality⁹.

5. *Travel and accommodation*

⁸ This could be the case for Security related work and also assessments of Classification Societies, in whole or in part

⁹ EMSA Decision , Regulation 1049/2001

EMSA will arrange all travel and accommodation for its staff, in accordance with EMSA mission guidelines. EMSA may request advice from the Member State concerned about best practical arrangements.

6. *Costs associated with Visits to Member States*

The main principle should be that each party carries its own costs.

EMSA covers its staff for all travel to and from the place of visit, and all accommodation in accordance with EMSA mission guidelines.

Any possible needs for local transport in relation to carrying out the task at or within the place of visit¹⁰ should be facilitated by the Member State (or organisation) being visited.

¹⁰ Depending on the task this could include availability of a car or minibus for transport within the area or, when remote, to/from hotel or airport/station

Policy for Visits to Member States

In accordance with Article 10.2 (g) of Regulation 1406/2002¹¹, as amended, establishing the obligation for the Administrative Board to define a Policy for the visits to be carried out by the Agency,

Respecting articles 2, 3 and 15.2(b) of the above Regulation, setting out the aim and framework policy for such visits,

Bearing in mind article 3.1 of the above Regulation, setting out the prerequisite of co-operation between EMSA and Member States in this respect, and,

Considering, Article 2 b, as amended, concerning assistance to the Commission,

Considering EMSA's annual work programme which as a general rule shall outline the subject areas of the programme of visits, which EMSA is planning to undertake to Member States, in order to perform the tasks entrusted to it,

The following Policy has been decided by the Administrative board on 25th June 2004 at Brussels, for visits to Member States;

1. *Information – who*

EMSA shall send an information letter about any planned visit to the Permanent Representation to the European Union of the Member State. A copy of the information shall, in parallel, be sent to transport attaché or equivalent of the Member State, with copy to the Commission.

In addition, EMSA shall inform in writing relevant person(s) in Member States (contact points) to be provided by the Member States. Member States will have the obligation to inform the local authorities concerned.

1.2 *Information – what*

The information should include:

- Indication of the names of the persons involved, and of the lead person, if any.
- Contact details of EMSA staff and requesting contact details of contact point in Member State, if different from name listed in list of contact points.
- a workschedule setting out the purpose and aim of the visit together with a more detailed list of tasks and, where appropriate, indicating a time table.
- any supporting documentation. EMSA may also request from the Member State relevant information relating to the scope of the visit.

1.3 *Information – timing*

Information about a planned visit shall, as a general rule and as far as possible, be communicated by electronic means¹² from the Commission or the Agency (EMSA) acting on its behalf, to the Member State not later than 30 days in advance of the visit. Where necessary, more detailed

¹¹ O.J.L 208, 5.8.2002, p. 1

¹² Where requested, copy of e-mail could be send by fax and/or post.

information should be sent not later than 15 days in advance of the visit (such information could include arrival and departure times, hotel information, possible local transportation needs etc).

In cases of changes to the schedule, these should be communicated as soon as possible, and at the latest at the commencement of the visit.

Under exceptional circumstances (pollution incidents and urgent requests by the Commission or a Member State) the above notice periods may be bypassed.

2. *Authorisation*

Any EMSA staff, or team of staff, delegated to carry out visits will hold a decision from the Executive Director of the Agency, indicating the commencement of the visit and the main objective and purpose of the visit.

3. *Reporting*¹³

As a general rule, reporting from any visit to a Member State, in accordance with this procedure, will be communicated to the said Member State and to the Commission not later than 20 working days after the end of the visit.

4. *Confidentiality*

Where required or deemed necessary in accordance with EMSA Decision on 20 May 2004 regarding implementation rules on access to documents¹⁴, reports may be subject to confidentiality, in whole or in part.

5. *Travel and accommodation*

EMSA will arrange all travel and accommodation for its staff, in accordance with EMSA mission guidelines. Where necessary, EMSA may request advice from the Member State concerned about best practical arrangements. Any possible needs for local transport in relation to carrying out the task at or within the place of visit¹⁵ should be facilitated by the Member State (or organisation) being visited.

6. *Costs associated with Visits to Member States*

Each party carries its own costs.

EMSA will cover its staff for all travel to and from the place of visit, all accommodation and, all subsistence, in accordance with EMSA mission guidelines.

Signed on 15-11-2004.

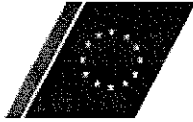

Chairman of the Administrative Board


Executive Director

¹³ Distribution of reports and documentation which are required in accordance with EU legislation which falls under the COSS Regulation will follow any procedures established for that committee.

¹⁴ Decision of the Administrative Board, May 20th 2004, implementing Regulation 1049/2001

¹⁵ Depending on the task this could include availability of a car or minibus for transport within the area or, when remote, to/from hotel or airport/station.



EUROPEAN MARITIME SAFETY AGENCY

Decision No.

To whom it may concern,

The following person(s) [Name and EMSA staff nr] is authorised in accordance with point 2 of the agreed policy for visits to Member States as decided by EMSA Board of Directors, to carry out a visit on/between [date(s)] to [Member State and place] in order to carry out the following tasks:

1. [specified tasks]
- 2

in accordance with Regulation 1406/2002¹⁶, as amended, for the purpose of [*monitor compliance with Directive 95/21 as amended*]

Your co-operation in facilitating for authorised staff to carry out the above task(s) is kindly requested in conformity with Article 3.1 of Regulation 1406/2002.

Brussels, 200X,

Willem de Ruyter
Executive Director

[stamp]

CC:
[Workschedule, timetable...]

¹⁶ OJ L 208, 5 8 2002, p 1