

METHODOLOGY FOR VISITS TO MEMBER STATES

ADOPTED BY THE EMSA ADMINISTRATIVE BOARD AT ITS 43rd MEETING ON 18 NOVEMBER 2015

In accordance with Article 10(g) of Regulation (EC) No. 1406/2002 establishing a European Maritime Safety Agency, as amended, the Administrative Board has established this methodology for the visits to Member States to be carried out pursuant to Article 3 of that Regulation.

Preamble

Since its creation, EMSA has been performing visits to Member States on behalf of the Commission. The main objective of the visits is to assess the effective implementation of Union law by Member States at national level.

In addition to the main objective the visits offer specific added value in terms of building up trust and confidence at EU level on the uniformity and effectiveness of the implementation of Union law.

Firstly, the findings from each visit give direct feedback to the Member State visited and provide input to assist the Member State in improving its implementation of the requirements of Union law. Secondly, the horizontal findings arising from the cycles of visits to the Member States serve to analyse areas of common concern in implementation, as well as identify best practices and lessons learnt on the effectiveness and cost efficiency of the measures in place. In consequence, the visits provide feedback to the policy cycle and help set the direction for the review and further development of Union law. They help to define a level playing field and to explore the possibilities for further harmonisation.

Finally, the results of the visits serve as feedback to the EMSA Administrative Board, helping it to prioritise better EMSA's tasks including assistance to the Commission and the Member States, the training of staff from the relevant national administrations and providing guidance for further developments in different activities.

This methodology aims at maximising the added value that the visits to Member States offer.

1. Framework elements

1.1 Scope

This methodology applies to the visits to Member States carried out by EMSA under Article 3.1 of Regulation 1406/2002. Therefore, it does not apply to the visits and inspections carried out by EMSA listed below:

- Ad hoc visits requested by the Commission (for example an investigation following a complaint by a third party);
- Inspections regarding organisations recognised by the Union in accordance with Regulation (EC) No 391/2009 on common rules and standards for ship inspection and survey organisations;
- Inspections regarding the training and certification of the seafarers in third countries in accordance with Directive 2008/106/EC; and
- Inspections carried out by the Commission under Regulation (EC) No 725/2004 on enhancing ship and port facility security with technical assistance provided by EMSA.

1.2 Objectives

This methodology aims to ensure that the process of visits will:

- Result in the correct and effective operational implementation of the applicable Union law, thereby assisting the Commission in fulfilling its Treaty obligations;
- Monitor and report on the effectiveness of the implementation of the measures taken by the Member States, as well as the progress made;
- Analyse the findings from the visits in order to share Member States' best practices as part of horizontal analysis;
- Enhance transparency;
- Maximise the added value of the results of the visits to the benefit of the Commission, the Member States and EMSA.

1.3 Basic principles

The visits to Member States in accordance with this methodology are carried out without prejudice to the role of the Commission in accordance with the Treaty on the European Union and in respect of Articles 1, 2.2(b) and 3 of Regulation (EC) No. 1406/2002.

1.4 Legal basis

EMSA has been tasked by Article 2.2(b) of Regulation (EC) No. 1406/2002 with assisting the Commission in its role of monitoring and verifying the proper implementation and application of Union law, in particular by carrying out visits to the Member States as provided by Article 3. Article 3.1 states that:

“EMSA ... will conduct visits to Member States to assist the Commission in its task of the assessment of the effective implementation of the European law on the basis of the methodology established by the Administrative Board”.

The Commission is responsible for deciding what visits EMSA should undertake and their scope, as part of its role in ensuring that the obligations of the Treaty on the European Union are met, In particular:

Article 4(3):

“the Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.”

Article 17:

“the European Commission .. shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them.”

2. Visit cycles

The visits to Member States carried out in accordance with this methodology are organised in cycles. In principle all Member States will be visited during a cycle.

The visit cycles should be specified in a way that best serves the added values highlighted in the Preamble above, as well as keeping the administrative burden on Member States as low as possible.

The Commission is responsible for deciding which Union law should be the subject of a cycle of visits to Member States to be carried out by EMSA and provides in good time an overview of the planned

visit cycles with the number of Member States to be visited in a multi-annual perspective, in order for the cycles to be included in the EMSA Work Programme for the relevant year.

The overview covers the scope of the visits and indicates the relevant Union law that is the subject of the planned cycles. The following elements should be specified:

- The object of the visit cycles (the implementation of the relevant Union law);
- The objectives of the visits (if there is a specific focus to be covered);
- The number of visits to be conducted in each year of the cycles.

2.1 Specifying the individual visit cycle

The Commission will decide on the scope of the visits. The first cycle of visits should focus on the implementation of the relevant Union law in general while any subsequent cycles in the same area can concentrate on specific elements as highlighted by the horizontal analysis of the previous cycle.

Specification of the visit cycle is guided by the following factors:

- The purpose and intent of the applicable Union law;
- Equal treatment of the Member States in terms of the overall planning of the visit cycle;
- The experience gained from any previous visit cycles;
- The outcome from any past horizontal analyses;
- Other relevant information sources (e.g. PSC concentrated inspection campaigns, the EMSA MSS, AI database, STCW database, etc.). This type of background information can in particular give guidance for the length, the extent and possibly the substance of specific visits.

The following factors will to the extent possible be taken into account when planning individual visits:

- A Member State should not be visited whilst it holds the Presidency of the EU Council;
- There should normally be a gap of at least three months between EMSA visits to any one Member State;
- A Member State should not be visited by EMSA more than twice in one calendar year;
- A Member State that is visited twice in one calendar year, should not normally be visited by EMSA in the following calendar year. If a Member State is visited in the following calendar year, the number of the visits should be limited to one;
- Holiday periods including national holidays;
- The programming of inspections carried out by the Commission under Regulation (EC) No 725/2004 on enhancing ship and port facility security;
- The degree of relevance of the objective of the visit cycle in relation to the profile of different Member States; and
- Geographical spread.

2.2 Preparing the start of the cycle

Following a request by the Commission to carry out a cycle of visits, EMSA shall organise an ad hoc workshop, to be attended by the Commission and representatives of the relevant competent authorities of the Member States.

The Commission will present the purpose, scope and objectives of the visits. All participants will have the possibility to provide information and details that may be of assistance to the Commission and EMSA when carrying out the visits.

The preparation of the workshop may involve the circulation of a questionnaire to the Member States and a prior desk analysis of the relevant issues.

The objectives of the workshops are to:

- share the general outcome of the legislative “conformity check” performed by the Commission;
- identify specific issues in the operational implementation;
- identify difficulties or differences in the interpretation of relevant provisions of the Union law in question;
- share operational experience gained at national level;
- discuss issues emerging from any questionnaire circulated before the workshop; and
- discuss the elements that could form the specific pre-visit questionnaire.

Each Member State shall provide the Commission and EMSA with their contact points for all the relevant national competent authorities that are involved with the items to be addressed during the visit process.

The results of the workshop shall be analysed by EMSA in consultation with the Commission and shall be a starting point for the visits.

2.3 Preparation of the visits: gathering the relevant information

The conformity check of the legal transposition is performed by the Commission before the start of the visit cycle. Before preparation of the individual visits, EMSA shall, for each Member State, receive the results of this check together with the national legislation that formed the basis of the check.

The Member State shall timely provide EMSA with any amendments to the national legislation or organisation and with any other documents that might be relevant to help EMSA to prepare adequately the visit through desk analysis, and reduce to the minimum the physical visit. EMSA may also send a specific pre-visit questionnaire to the Member State concerning the areas to be focussed on during the visit and relating to information not already in the possession of EMSA from the pre-workshop questionnaire and the conformity check.

EMSA may set a deadline for Member States to provide the information requested, to ensure that time is not spent unnecessarily during the visit reviewing the information. Adequate time should be allowed for the completion of the questionnaire. The duplication of information requests should be avoided.

As a general rule, EMSA should prepare as much as possible through desk analysis and reduce to the minimum the number of issues to be checked during the visit, prioritising the operational aspects of implementation. The use of video and teleconferences during the preparation of the visit is encouraged.

Member States shall cooperate with EMSA during the preparatory, control and reporting phases of its visits.

2.4 Practical arrangements

EMSA will informally contact the Member State to be visited as early as possible to discuss the practical arrangements for the visit. This may include the specific timing as to when information has to be submitted, the establishment of a national contact point for each particular visit and any other practical arrangements related to the organisation of the visit.

A visit programme outlining the activities to be addressed and the venues to be visited will be prepared by EMSA and presented to the national contact point for review. The Member State shall ensure that suitably qualified and directly responsible personnel are available at the venues for the

visit. The EMSA representatives may propose to work in more than one team in order to cover more locations in a shorter time span.

Irrespective of the state of informal contacts with the national contact point, EMSA will send a formal notification of a visit to the Permanent Representation to the European Union of the Member State concerned three months prior to the said visit, with a copy to the Commission. This notification will include the names of the EMSA visit team and the visit programme. The Member State shall in turn send a formal response.

Each party bears its own costs. This includes the members of the EMSA team, the personnel and entities of the visited Member States.

2.5 Executing the visit

The number of days of the visit should be kept to a minimum and on-the-spot verification should be limited to the operational issues that cannot be covered in the desk analysis whenever feasible, consistent with the scope of the visit as decided by the Commission.

Any EMSA staff, or team of staff, delegated to carry out a visit will hold a Decision of the Executive Director of the Agency indicating the date of the visit and its main objective and purpose.

EMSA and the Member State visited should respect the agreed programme in respect of the scope, venues and timing.

At the end of each visit EMSA should hold a closing meeting during which it will provide the visited Member State with a preliminary indication of the findings established during the visit.

The Member State being visited may invite other Member States to participate in the visit as observers, in which case the Member States concerned will make all the practical arrangements. These observers will not form part of, nor will they assist, the EMSA team.

2.6 Post visit feedback and support

Following a visit, EMSA will produce a report on the results of the work undertaken. Within 90 calendar days of the end of the visit a draft version shall be sent to the Member State visited, with a request for the Member State to provide any factual corrections within 30 calendar days.

A follow-up video/tele-conference with the Member State for clarifications/ questions on the draft Visit Report may be organised.

The final version of the report is sent to the Commission and the Member State visited.

On request by the Member State and if possible, EMSA will produce, together with the draft report, an additional document containing suggestions for improvement, if possible based on a SWOT analysis. This document would be purely advisory in nature and without prejudice to the Member States' responsibilities.

In the same spirit the Member State may ask EMSA for support in developing the corrective action plan.

EMSA and the Commission will be informed about the corrective actions taken by the Member State.

2.7 Horizontal Analysis

EMSA shall produce a horizontal analysis report at the end of the cycle of visits. If appropriate and in order to share knowledge and experience across the Member States, a horizontal analysis report

shall also be produced about halfway through the visits cycle or sooner in case common important implementation difficulties emerge.

The report should focus, *inter alia*, on:

- the effectiveness of the implementation measures in place,
- identification and analysis of areas of common concern,
- best practices identified and lessons learnt,
- feedback for the evaluation of the legislation and its further development, and
- the overall cost efficiency of the measures in place.

When a cycle of visits has been completed a workshop should be organised at which the final horizontal analysis report is to be presented. This will provide the Member States with a forum for the sharing of lessons learnt and best practices and identifying future training needs. The possibility of an additional workshop following a mid-cycle horizontal analysis should be considered on a case-by-case basis with a view to the benefits of having the Member States share best practices.

Feedback should be provided periodically directly to the Administrative Board at an appropriate EMSA Administrative Board meeting(s) presenting the horizontal analysis work undertaken in relation to the efficiency and effectiveness, and the actions suggested, discussed, agreed or taken.

3. Periodical review of the methodology

This methodology shall be periodically reviewed by the Administrative Board, ideally in tandem with reviews of the EMSA 5-Year Strategy, to take account of relevant developments such as the outcome of horizontal analyses and experience gained in this and other areas (e.g. methodologies used in other EU Agencies and other modes of transport, development of Member State profiles and Key Performance Indicators, etc.) to benchmark for maximising efficiency and effectiveness of the maritime mode methodology.