



Workshop Report

EU States Claims Management
Workshop

10 - 11 October 2012, Lisbon

Background

On 10 and 11 October 2012, EMSA hosted an EU States Claims Management workshop organised within the framework of the Consultative Technical Group for Marine Pollution Preparedness and Response (CTG MPPR).

The CTG MPPR aims to provide a platform for Member States to discuss and contribute to the improvement in preparedness for and response to accidental or deliberate pollution from ships.

One of the objectives of the CTG MPPR is to “promote co-operation and share best practices between Member States in order to provide for cost recovery for damage in accordance with the polluter-pays principle”. Since 2009, claims management has been a standing item on the CTG MPPR agenda.

In 2007, the Maritime and Coastguard Agency (MCA) organised in Gatwick (UK) a workshop “claim management following pollution incident at sea” within the Community Framework for Co-operation in the Field of Accidental or Deliberate Marine Pollution. As follow up action, the workshop participants agreed on the establishment of a Working Group of national claim handlers from the United Kingdom, The Netherlands, Spain, Belgium and Germany. The workshop also agreed that a claims manual could be created based on the existing manuals in use in the United Kingdom, Spain and The Netherlands.

In the course of 2008 and 2009, the members of the Working Group drafted the ‘EU States Claims Management Guidelines’. In 2009, the project was transferred under the CTG MPPR umbrella. Membership of the Working Group was opened to all Member States. The draft Guidelines were distributed to the CTG MPPR members for feedback. In December 2009, a workshop gathering claim handlers from EU Member States, Candidate Countries and EFTA coastal countries was held at EMSA. The aim of the workshop was to discuss and finalise the draft Guidelines.

Following endorsement by the CTG MPPR at its 5th meeting (EMSA, Lisbon, 26 October 2010), Version 1 of the Guidelines were published on the EMSA website.

In 2011, the CTG MPPR members were asked to provide feed-back on the use of the Guidelines. In parallel, the Guidelines were sent for information to relevant stakeholders (International Oil Pollution Compensation FUND (IOPC FUND) Secretariat, International Group of Protection and Indemnity Clubs (IG P&I) and the International Tanker Owner Pollution Federation (ITOPF)).

Feed-back was positive and constructive. The scope of the document was considered appropriate by the Member States. The States particularly appreciate the “practical” aspect of the document and welcome the idea of having for the first time such a document drafted at the EU level.

Following this feed-back from the States and the abovementioned organisations, the Working Group integrated relevant remarks as well as some necessary updates, particularly regarding the legal part.

Currently, the Claims Management Working Group members are:

- Ms Gail Robertson of the Maritime and Coastguard Agency, United Kingdom.
- Mr Sjon Huisman of Rijkswaterstaat Noordzee, the Netherlands.
- Mr Steven Vandenborre of the Federal Marine Environment Unit, Belgium.
- Ms Monica Mulero of the Maritime Safety and Rescue Agency, Spain.
- Mr Siegbert Antonius of Water & Shipping Directorate North, Germany.
- Ms Kjersti Tusvik, Norwegian Coastal Administration;
- Ms Stéphanie Guégan, EMSA, provides the secretariat.



'EU States Claims Management Workshop' participants

Workshop Objectives

The workshop was attended by 22 experts representing 21 coastal States (EU Member States, EFTA coastal States, and EU Candidate Countries).

The workshop addressed the following main objectives:

- Present and discuss Guidelines – Version 2 before their expected endorsement at the 7th CTG MPPR.
- Actually practice the cost recovery process using the Guidelines
- Suggest potential way forward / further actions for the Working Group.

Workshop Programme

Day 1: 10 October (morning plenary session)

Mr Bernd Bluhm, Head of Unit - Pollution Preparedness and Response, welcomed the participants to EMSA's offices. Mr Bluhm stressed the importance of strengthening co-operation between Member States with regard to pollution response costs recovery and thanked the Working Group members for their valuable work in this regard.

The workshop was facilitated by the Claims Management Working Group members.

In line with the workshop agenda (attached as annex 1), key presentations were given by the Working Group members, introducing their work and the various chapters of the Guidelines.

The following topics were presented in order to further familiarise the participants with the Guidelines as basis for the afternoon exercise. The relevant presentations are attached as annexes.

- The international legal framework;
- Methodology to calculate specialised equipment rates;
- Compiling a dossier and drafting a claim.

Ms Tusvik from the Norwegian Coastal Administration (NCA) and member of the Claims Management Working Group gave a presentation on the "*Fjord Champion* incident" her administration had to respond to in March 2005. With a view to recover their response costs from the shipowner, the NCA issued legal action. One of the issues at stake was the scope of the claim and more particularly the types of costs related to specialised equipment, vessels and personnel. The Court decided that the EU States Claims Management Guidelines reflected best practices in the field and more particularly the chapter related to the determination of the pricing structure. Accordingly, the Bergen City Court approved the NCA methodology to calculate the rates and ruled in favour of the administration.

Day 1: 10 October (afternoon - group exercise)

The afternoon of the first day was dedicated to work in groups. The objectives of the exercise were the following:

1. To identify the headings of the claim;
2. To determine the legal basis for claiming;
3. To address the issue of the financial security;
4. To define on behalf of who the claim would be presented and which items would be included in the claim;
5. To draft a Narrative;

6. To calculate the specialised equipment costs using the methodology suggested in the Guidelines or using the methodology in use in their own country;
7. Estimate the staff costs;
8. Decide whether mark ups would be applied;
9. Decide whether VAT would be claimed;
10. Determine which supporting documentation would eventually be enclosed;
11. Envisage the settlement process and timeframe.

For this purpose, the members of the Working Group had drafted the exercise scenario simulating a maritime incident and the response actions (annex 7) and provided the participants with equipment and staff costs (annexes 8 and 9).

Day 2: 11 October (plenary session)

On the morning of the second day, workshop participants were gathered in plenary and presented their claims to the panel of facilitators and workshop participants. These four presentations triggered fruitful discussions on the comparison between the heads of claim, the various items included in the claim. This was also a good opportunity for the participants to outline and compare the approach taken in their own country for particular items such as claiming VAT, staff costs.

Ms Gail Robertson from the UK Maritime and Coastguard Agency gave a presentation regarding the *MSC Napoli* incident claim settlement process.

Workshop Conclusions and Way Forward

Following the discussions:

- The participants agreed that similar workshops should be organised every two years.
- The participants agreed on a list of topics to be expanded / addressed in the Guidelines.
- The participants agreed on further actions as follows:
 - Creation of a dedicated e-mail address through which claim handlers could share experiences.
 - Use of the CTG MPPR/Bonn Agreement Counter Pollution Manual lessons learnt for claims management issues.
 - Review of the comparison of the items claimed by Member States (matrix) established in the 2007 workshop organised by the MCA.

Attachments

1. Workshop Agenda.
2. List of participants.
3. Presentation regarding background and developments since 2009.
4. Presentation regarding chapter 3 (international legal framework), chapter 5 (maritime insurance) and chapter 7 (financial security).
5. Presentation regarding chapter 8 (defining a pricing structure).
6. Presentation regarding chapters 2 (general principles of claims management) and 9 (compiling a dossier and drafting a claim).
7. Exercise scenario "*Nova Terra Island*".
8. Annex 1 to exercise scenario (equipment rates).
9. Annex 2 to exercise scenario (staff costs).

I

This workshop report and annexes will be published on the EMSA website, as well as on the restricted CTG MPPR part of EMSA website.