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E-MS EXPERT GROUP

Directive 2010/65/EU

On reporting formalities for ships arriving in and/or departing from ports

1st Border Control Sub-Group Meeting

Brussels, Wednesday, 23 January 2013

Participants: see Annex

1. Welcome – Introductory remarks

The meeting was chaired by DG MOVE who introduced the representatives from DG HOME and EMSA and thanked all those who were attending the meeting, representing national maritime and border control administrations and industry.

2. Meeting objectives and terms of reference of the Sub-Group

DG MOVE presented the Terms of Reference for the Border Control Sub-Group and highlighted that the main objective of the meeting was to start the process for drafting the business rules.

3. Reporting Formalities Directive

DG MOVE gave a presentation on the Reporting Formalities Directive, the roadmap for implementation of the Directive and how the work to implement the Directive is organised via the eMS Expert Group.

Enquiries were made as to the role of the Data Mapping Sub-Group in relation to the other sub-groups. DG MOVE explained that each Sub-Group will assess the data that is required for each of their areas of expertise and the role of the Data Mapping Sub-Group will be to consolidate the data required by the Sub-Groups and determine the technical structure of each data element.

4. Legal framework of Border Checks on Persons

DG HOME presented the rules in the Schengen Border Code relevant to maritime traffic. Both the general rules governing border control of persons crossing the external borders

of EU Member States and the specific rules for maritime traffic as detailed in Annex VI of the Schengen Border Code were discussed. Technical amendments to the Schengen Border Code in order to bring it into line with the Reporting Formalities Directive are have been prepared and are due to be adopted in the Spring 2013.

5. Developments of Business Rules – Border Checks on Persons – Key Questions

EMSA presented a list of key questions to be answered with regards to Border Control information that has to be submitted through National Single Windows (NSW) and which Border Control information could be exchanged at an EU level. The answers to these questions will enable suitable Business Rules to be drafted. It was confirmed that the business rules for the NSW will be developed in accordance with the amendments to the Schengen Border Code.

Q1: Which information is required for Border Checks on Persons?

It was agreed that the following information will be required in the NSW for border checks on persons:

- FAL form 5 (crew list) and FAL form 6 (passenger list) plus Visa/residence permit number
- Cruise itinerary
- Stowaway information (if applicable)

It was mentioned that not all Member States are bound by the SBC. They have their own national legislation with respect to Border Checks on Persons notifications required from ships. The submission of this information should also be submitted in compliance with the provisions of the Directive since such information is covered by the reporting formalities referred to in Part B and C of the Annex to the Directive.

Q2: For which categories of ships is the crew and passenger information provided?

As defined in the Schengen Border Code all types and sizes of ships are required to provide advance crew and passenger information, however special rules exist for cruise ships, pleasure boats, coastal fishing and ferries.

This information is required for both international voyages and intra-EU voyages, with the exception of “regular internal ferry connections” within the EU. There was some discussion on the definitions of “regular” and “internal”. The general consensus was that “Regular” is defined in Article 2 paragraph 4 of the Schengen Border Code and refers to ferry connections between ports in Member States in accordance with a published timetable. However it was requested that DG HOME provides a clarification on the definition of “internal” i.e. whether it refers to connections intra-Schengen or intra-EU and whether “internal” voyages also refers to voyages when the ship leaves the territorial waters of one member state before it enters the territorial waters of another member state.

Q3: Do all the ships have to submit the notifications through the National Single Window?

It was remarked that in general naval vessels are not required to provide the crew information but there is close liaison between the border control authorities and the naval

contact person. Moreover, the SBC implementation for different types of vessels, such as yachts and fishing vessels vary between Member States. Consultation with DG HOME will be necessary to explore how it can be ensured that those methods of implementation are harmonised between Member States.

It was concluded that all information which ships have to submit prior to coming into port must be submitted via the NSW, while information which ships are currently required to only retain on board need not be included.

Q4: Who is responsible for providing crew and passenger notification data?

It was agreed that the Master or another duly authorised person is responsible for providing crew and passenger notification data. Acknowledgement of receipt of this information will be provided to the sender by the NSW.

Q5: What is the time frame for submitting the data?

The timeframe for submitting the data is defined in Article 4 of the Reporting Formalities Directive and the amendments to the Schengen Border Code will align the code to this Directive.

Q6: How is the ship identified?

It was agreed that the unique identifier for ships should be the IMO number. When the latter number is unavailable the MMSI can be used and in its absence, as in the case of small yachts and fishing vessels a combination of call sign and name should be used.

Q7: The Schengen Border Code (Para 3.1.5) requires Master to notify the border guards of the ship's departure. How is this notification normally implemented?

EMSA noted that the NSW will contain the Expected Time of Departure (ETD). It was agreed that the ship has to submit a request for departure and the anticipated ETD which will have to be updated at regular intervals if any changes occur in order to ensure it is as relevant as possible. The Actual Time of Departure will also be recorded.

Q8: The Schengen Border Code requires cruise ship masters to transmit to the competent authority the itinerary and the programme of the cruise. How is this information submitted today?

It was discussed that a ship's itinerary is normally received well in advance of a ship entering port and this can vary between 3-5 days and the 24 hour minimum stated in the Schengen Border Code. EMSA queried whether the last 10 ports of call, required by the Security message could replace this notification requirement. The border control representatives stated that future port calls is also important for their risk assessment. Therefore, it was agreed that the cruise itinerary should be submitted to the border control authorities via the NSW. It was confirmed that as a minimum the itinerary should consist of the list of ports of call plus the dates and times. The NSW should also allow for updates of this information.

Q9: How is the confidentiality of personal data (identification of individual persons) ensured?

The Schengen Border Code does not specify confidentiality standards. However National Border Control Authorities are required to follow confidentiality standards as specified in Article 8.2 of Directive 2010/65/EU and standards on the on the protection of personal data as specified in Directive 95/46/EC.

Q10: Is there any commercial data, does it's confidentiality need to be ensured?

As above, confidentiality standards are specified in Article 8.2 of Directive 2010/65/EU.

Q11: Is there need to develop a classified system?

A classified system will not be necessary as the standards referred to in questions 9 and 10 are adhered to by National Border Control authorities.

Q12: What information is required in the case of Stowaways and persons rescued at sea?

The information on stowaways is the same as that which is required for reporting passengers on board. Therefore the same data elements will be required through the NSW for stowaways as that which is required in the passenger list. This same information will also be suitable when reporting persons rescued at sea.

Q13: Is a formal signature required in respect of crew and passenger information?

The traceability of persons submitting the information is important. In general the person submitting the information via the NSW should be easily identified by a user name and password. There was some discussion on the liability of the persons submitting the information, particularly if log-in details are shared, whether an electronic signature is required and situations where a signature is necessary, for example to enable crew to go on shore leave. It was agreed that the Directive regulates only information required in respect of port clearance and not other procedures related for example to shore leave of crew.

Open Issue: This matter is to be considered an open issue as it is a horizontal issue which relates to all reporting formalities and DG MOVE is seeking legal advice as to whether an electronic signature is necessary.

Q14: Should the data providers have access to data already provided in National Single Window for other messages (ship ID, voyage information, etc.) related to the same ship call?

The general consensus was that data providers should have access to that which they have already provided in order to avoid double reporting. However one member state advised that there could be alternative systems for avoiding double reporting. .

Q15: Is it required to provide updates on information already transmitted to National Single Window?

The group concluded that if any changes take place updates to the information provided will be necessary and will need to take place as soon as possible to ensure that Border

Control authorities can, if necessary, deploy staff to perform checks in an efficient way. These updates will need to be provided until the vessel has departed from the port. Traceability of who performed the updates is also necessary.

Q16: Are there any other systems that should be connected to the National Single Window with respect to border checks on persons?

It was agreed that there is no need for direct connections between the NSW and other border control systems in respect of border checks on persons. Verification of the crew and passenger information with the Border Control systems can be done after the data has been submitted to the Border Control authorities through the NSW.

Q17: Are there any procedures related to exemptions from the provision of the information?

The SBC does not provide for “exemptions” as such but certain categories of ships benefit from special conditions, for example the regular ferry services need not submit the crew and passenger lists to the border control authorities. However as previously discussed in question 2 the definition of a regular ferry service is still an open issue.

Q18: Do Border Control Authorities require information from other public authorities?

To be able to carry out risk assessments Border Control authorities will require information from other public authorities that will have been provided via the NSW, for example, health, security, maritime and cargo information.

Q19: Are there any required clearance functionalities?

It was discussed that under normal circumstances Border Control authorities may not refuse entry to a port based only on the information required for border checks on persons. However special circumstances may exist where it would be necessary to hold a vessel and make interventions prior to allowing it into port.

Q20: Is there any requirement/need to store the data? If yes, what is the timeframe for data storage?

In other Sub-Groups it has been agreed that the minimum timeframe of storing the information will be two months online and 5 years offline. However in terms of border control information, the requirements of the national authorities ranges from destroying the information as soon as it is no longer required and holding it for up to 20 years.

Open Issue: This issue requires further discussion since it is a horizontal issue and a common approach needs to be adopted for all reporting formalities particularly if the information is required also by other authorities.

Q21: What should be the data availability requirements of the National Single Window?

It was agreed that the minimum data availability of the Single Window should be at least the same as the SafeSeaNet system which is a minimum of 99% of the year, with a

maximum interruption of 12 hours. It was also agreed that the national authorities should provide electronic backup systems and business continuity plans for periods when the NSW is off-line in order to avoid disruptions to shipping.

Q22: Is there a need to exchange crew and passenger information between Member States?

It was explained that the Directive does not impose a legal requirement to make the crew and passenger information available in the SafeSeaNet systems. However, it states that member states may require that exchange takes place through SSN. It was maintained that the exchange of crew and passenger information between Member States would help to reduce duplication of work by ships. Moreover, the border control authorities will be able to receive the information within a relatively short period of time after the vessel's departure from the previous port and the processing of the data will be facilitated if it is confirmed that it was already verified at the departing port. However, the participants were divided on the feasibility of using SSN for exchanging information. There would be financial, legal and technical consequences for both the member states and EMSA, if the information is exchanged through SafeSeaNet.

Open Issue: Further analysis of the consequences needs to be carried out before a final decision can be taken.

Q23: Who should have access to the crew and passenger information?

It was discussed that the Border Control authority within each Member States is the main body responsible for maintaining the crew and passenger data, however there may be other authorities who have a legal requirement to receive or access crew and passenger information as, for example, authorities responsible for security, health and search and rescue

Q24: Which authority is responsible for managing permission to grant access to the information?

It was decided that the authority responsible for managing access to crew and passenger information is likely to be the Border Control authority. However this would be dependent on the Legislation in each Member State.

5. Conclusions/Next Steps

- DG MOVE/EMSA to prepare and distribute a report of this meeting.
- EMSA to draft business rules based on the conclusions reached at this meeting.
- All attendees to provide comments on the report of the meeting and draft business rules in advance of the next meeting.
- Business rules to be finalised in advance of the 8th eMS meeting scheduled for 20 March 2013.