

Maritime Safety and Prevention of Pollution Caused by Ships in the European Union

Minodora-Ioana Balan-Rusu, PhD in progress
Titu Maiorescu University Bucharest, Romania
oana_rusu86@yahoo.com

Nicolae Pircalabescu, PhD
Prosecutor's Court of Panciu, Romania
npircalabescu@yahoo.com

Abstract: In this paper we examine briefly the legislative act and therefore the European Maritime Safety Agency's responsibilities, in the current context, with some proposals that aim at improving the existing framework, the ultimate goal being preventing and combating more effectively the events of this kind occurred in EU territorial waters. The work may be useful to theorists in this field and practitioners as well, that by reasons of work responsibilities collaborate with the European Union institution. The essential contribution consist of examining the European legislative act and in the proposals of modification, additions, and the adoption of other European legislative act, by which the jurisdiction of the agency would be broadened, and the specialized agents would resume in performing also some expertise in order to help the judicial bodies in making and substantiating the decisions in such cases, and especially those of criminal character.

Keywords: legal cooperation; European legislative act; European Maritime Safety Agency

1. Introduction

Maritime safety and pollution prevention caused by ships in the European Union, represented and still do the two main objectives, always very topical. In order to achieve them, their actual transposition into practice, there were adopted several legislative acts which are designed to ensure an effective control of shipping operations, establishing various measures to be taken against natural or legal persons who violate the general rules of safety and protection of waters against pollution.

The development of maritime transport of goods and passengers, the complexity of the activities conducted in this field, the difficulties encountered in the control activity for the compliance of some minimum standards of safety and protection against pollution caused by ships, led to the establishment of a European body specialized in the field.

On this background, it was adopted the Regulation (EC) no. 1406/2002 of the European Parliament and the Council of 27 June 2002 for establishing a European Maritime Safety Agency (EMSA)¹, an institution with the role of coordination and control in the field.

The European legislative act was subsequently supplemented and amended by Regulation (EC) no. 6644/2002², Regulation (EC) no. 724/2004³ and Regulation (EC) no. 1891/2006⁴.

Currently the European Maritime Safety Agency has its headquarters in Lisbon, having as members one representative of each Member State.

2. Agency Objectives and Tasks

According to the depositions of the examined legislative act, the Agency has two main objectives, namely: ensuring a high, uniform and effective level of maritime safety and preventing pollution caused by ships in EU waters and providing technical and scientific assistance to Member States and to the Commission and high-level expertise in order to help them to correctly apply the Community legislation on maritime safety and preventing pollution from ships, to monitor its application and to evaluate the effectiveness of the conducted measures.

In order to ensure the achievement of the set objectives, the Agency has established the following tasks⁵:

(a) to assist the Commission, if it is the case at conducting the preparatory work for updating and developing the legislation on maritime safety and preventing pollution caused by ships, especially according to the developments of the international legislation in the field;

(b) to assist the Commission in the effective implementation of the European legislation in the field by the following ways:

(i) monitoring the global functioning of the European control system exerted by the port State, maybe by visits in the member states, and it proposes the Commission possible improvements in the area;

(ii) providing the Commission technical assistance necessary to take part in the technical bodies activities of the Memorandum of Understanding from Paris on the control of ships by the port State;

¹ Published in Official Journal L 208 of 05.08.2002, pp. 1-9.

² Published in Official Journal L 245 of 29.09.2003.

³ Published in Official Journal L 129 of 29.04.2004.

⁴ Published in Official Journal L 394 of 30.12.2006.

⁵ Regulation (EC) 1406/2002, article 2.

(iii) assisting the Commission to fulfill all tasks assigned to by the existing and future Community legislation on maritime safety and preventing pollution caused by ships, in particular the legislation on the classification societies, ship passenger safety and the one referring to safety, training, certification and watch keeping of ships' crews;

(c) collaborating with Member States to:

(i) organize, where appropriate, relevant training activities in fields which are under the responsibility of the port and flag State;

(ii) elaborate technical solutions and providing technical assistance for the implementation of legislation;

(d) facilitating the cooperation between Member States and the Commission under the scope of the Directive 2002/59/EC, so that the Agency:

(i) promotes the cooperation between riparian states of the maritime areas in the fields covered by this Directive;

(ii) develops and operates any information system necessary to achieve the objectives provided by the Directive;

(e) facilitating the cooperation between the Member States and the Commission, taking into account the different legal systems of Member States, in order to develop a common methodology for investigating the maritime accidents according to the agreed principles at international level, supporting the Member States in the investigating activities on marine serious casualties and in conducting an analysis of the reports on the investigation of accidents;

(f) providing the Commission and Member States objective, reliable and comparable data and information on maritime safety and pollution caused by ships, in order to enable them to take necessary measures of improvement on the maritime safety and preventing the pollution caused by ships and to evaluate the effectiveness of existing measures. These tasks include collecting, recording and evaluation of technical data on maritime safety and maritime traffic, and also in the field of marine pollution, both accidental and deliberate, the systematic exploitation of the existing databases, including their mutual enrichment, and, if applicable the creation of additional databases. Based on the collected data, the Agency assists the Commission to publish at every six months information regarding the ships that were refused the access to the to Community ports after the appliance of the Directive 95/21/EC of 19 June 1995 on the application, in the case of ships that have as place of call in the Community ports and they sail in waters under the jurisdiction of the Member States, of the international standards on ships' safety, preventing pollution and living and working conditions on the board of ships (Port

State Control)¹. Also, the Agency will also assist the Commission and Member States in their activities to improve the identification and pursuit of ships making unlawful discharges;

(g) during negotiations with candidate to ascension countries, the Agency may provide technical assistance on the implementation of Community legislation in the field of maritime safety and preventing the pollution caused by ships. This task is performed in coordination with the existing regional cooperation programs and it includes, where appropriate, the organization of training activities in this field.

In order to fulfill the tasks set out in the European legislative act, the Agency may carry out visits to Member States in accordance with the policy of the Board. In this regard, the Agency will inform the Member State concerned of the planned visit, the names of the delegates and the date on which the visit starts. After each visit, the Agency will prepare a report that it submits to the Commission and to the visited Member State.

The examination of these attributions conferred to the Agency according to the depositions of the European legislative act, it allows us to formulate some conclusions relating only to them.

Thus, we see that the duties of the Agency are established solely for achieving two main objectives, namely to ensure maritime safety and preventing pollution caused by ships, on the one hand and technical and scientific assistance for the correct application of the legislation in the field, both Member States and the Commission.

Within these tasks, we believe to have a great importance those referring to updating and developing the European legislation in this field, the insurance of its application and implementation by all Member States. This activity involves increasing and continuous improvement of the complex activities of cooperation between Member States, at least in this area.

The control exercised by each member state as port State, is another task with direct effects in terms of general and special prevention of pollution caused by ships.

An important aspect is related to the work of collaboration with the Member States, aimed at a complex of special activities and measures, focusing especially on, training, implementation of European legislation and harmonization of different legal systems. If training generally poses no special problems, the application of European legislation and harmonization of the Member States' laws has a number of features, requiring other approaches, all of course in compliance with the relevant international law.

¹ Published in Official Journal L 57 of 7.7.1995, p. 1, as last amended by Directive 2001/106/EC of the European Parliament and Council, published in Official Journal L 19 of 22.1.2002, p. 17.

3. The Organization and Operation of EMSA

European Maritime Safety Agency is a European Union body and it has legal personality, having a similar body in each Member State, being legal persons under the national law. Also, at the request of the Commission, with the acceptance of the Member States concerned, the Administration Board may decide to establish regional Centers for the supervision of navigation and maritime traffic.

According to the depositions of the European legislative act, the Agency is the lead by an administration board composed of one representative of each Member State and four representatives of the Commission and four representatives of the professional sectors most concerned, nominated by the Commission, without voting rights. Each Member State and the Commission shall appoint their members of the Administration Board and an alternate member will represent the member in his absence, the term of office for five years, renewable once. The Administration Board shall appoint a chairperson and vice chairperson from among its members. Also, the Board appoints an Executive Director.

The Agency is lead by the executive director who is completely independent in carrying out its duties, without bringing prejudice to the competencies of the Council and of the administrative Commission. Among the Executive Director's responsibilities, we mention the following:

- he decides on the visits of Member States, after consulting the Commission;
- he prepares the work program and submits it to the administrative Board after consulting the Commission;
- he takes all appropriate measures, including the adoption of internal administrative instructions and the publication of notices, in order to ensure the Agency, according to the law;
- he organizes an effective monitoring system to compare the Agency's achievements with its operational objectives. On this basis the Executive Director prepares each year a general draft report that he presents to the Board. He establishes procedures for regular evaluation actions according to the recognized professional standards;
- he draws up an estimated budget of the Agency's revenue and expenses.

As mentioned previously, the Executive Director is appointed by the administrative Board on its administrative and managerial merits and skills, as well as competence and experience in maritime safety and preventing pollution caused by ships.

4. Conclusions

The adoption of the examined legislative act, based on which it was established the European Maritime Safety Agency, has become a necessity, given the increasing acts of violation of relevant international laws in the field and especially the lack of specific sanctions, by which it would discourage such acts.

Improving the maritime safety concerns both cargo and passenger transports the Member States' territorial waters, the pollution caused by ships represents, in our opinion, an alternative which regards directly the maritime safety.

In fact, given the growing crime in the area, we believe that the maritime security should target each time, two main segments, namely, the passenger and cargo transport security and the prevention and fight against pollution caused by ships.

Without a doubt these two goals cannot be achieved within the European Union territory, but on the terms of adopting the coherent legislation and ensuring consistent and specific activities of cooperation between the competent authorities of the Member States.

The European Maritime Safety Agency represents in this context, the European institution with concrete attributions of preventing and combating crime and other violations of law, in this particularly sensitive area.

However, considering the perspectives of the crime developments in the field, we consider that the European legislative act should be amended and supplemented, or adopting another legislative act that would regulate clearly in what the technical and scientific assistance consists of.

Thus, under the provisions mentioned in article 1, line (2), *the Agency provides to Member States technical and scientific assistance needed and high-level expertise in order to help them to correctly apply the Community legislation on maritime safety and preventing pollution caused ships, to monitor its implementation and to evaluate the effectiveness of carried out measures.*

Being in essence the second objective of the Agency, the above provisions do not involve the Agency in the specific activity of proving the illegal activities in this field.

In our opinion the attributions of the European institutions must be expanded, in the sense of giving in its competence also the specialized assistance in the situation of handling the criminal cases, certainly with regard to the vocational qualification of its employees. This can be solved in two distinct ways, respectively, either by completing the examined legislative act with such provisions, either by obliging the judicial and administrative authorities of the Member States to require every time a qualified point of view, in all the situations of this kind.

The concrete solution that can be adopted, but only under a legislative act, is to grant the Agency the right to express at least one point of view on a question dealt with by the judicial or administrative authorities of a Member State. Moreover, we believe that in the view of the hired competent staff, to the Agency it may be granted even the possibility of executing judicial expertise, that should be considered by the judicial authorities that investigate such cases.

Such regulation would allow the Member States a different approach, more dynamic, the main purpose being to prevent such events.

5. Bibliography

Regulation (EC) no. 1406/2002 of the European Parliament and the Council of 27 June 2002 establishing a European Maritime Safety Agency, published in Official Journal L 208 of 05.08.2002, pp. 1-9.

Boroi, A. & Rusu, I. (2008). *Cooperarea judiciară internațională în materie penală/The judicial cooperation in criminal matters*. Bucharest: C.H. Beck.

Boroi, A.; Rusu, I. & Balan-Rusu M.-I. (2012). *The Judicial Cooperation in Criminal Matters in the European Union*. Germany: LAP LAMBERT Academic Publishing.