



SPAIN'S MARITIME LAW ASSOCIATION (SMLA/AEDM) RESPONSE TO THE EPIDEMICS AND PANDEMICS REVISED QUESTIONNAIRE

Madrid, 23rd March 2019

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PART 1

THE CURRENT COVID-19 PANDEMIC

A. What measures were taken by your jurisdiction during the current COVID-19 Pandemic:

a. In relation to the landing of passengers and crew members from ferries?

The Spanish Government has modified the requirements for arrivals to the country. The Spanish Council of Ministers extended the limitation of direct flights and passenger ships between the United Kingdom and Spanish airports and ports, as well as flights from Brazil and South Africa to Spanish airports.

Only passenger ships travelling from the United Kingdom and occupied by Spanish or Andorran citizens, as well as residents in both countries, are allowed to disembark in Spain. The restrictions approved by the Spanish Council of Ministers on 22 December 2020 have been extended several times and are in force until 31 March 2021 at 6pm. It is expected that new extensions will be approved by the Spanish Government pending on the evolution of the pandemic.

Residents in Spain must bring their residence document (green EU residence certificate, NIE or the new TIE). Property deeds or invoices will not be valid as proof of residence.

It is also required to carry out a COVID-19 PCR, TMA or RT LAMP test 72 hours before arriving in Spain so the presentation of a valid document (at the time of check-in) confirming that the test result is negative shall be required. One valid document must be presented per passenger (children under 6 years old are exempt).

Before traveling or returning to Spain, a passenger location form must be filled out:

https://www.mscbs.gob.es/en/profesionales/saludPublica/sanidadExterior/CHS/Pdf/FCS_ingles_avion_111220.pdf

Such form must be printed and completed before disembarking. Boarding from the United Kingdom to Spain is only allowed for Spanish citizens and Spanish residents (with NIE or TIE).

b. In relation to the landing of passengers and crew from Cruise ships?

In the first months of the pandemic, several Cruise ships were denied entry to Spain. For instance, the *Costa Pacifica* cruise ship departed from Buenos Aires (Argentina) on 3 March 2020. However, it was denied entry to the ports of Santa Cruz de Tenerife, Málaga and Barcelona. The ship arrived to the port of Savona (Italy) and 170 Spanish nationals and residents were repatriated to Spain. The Order PCM/216/2020, of 12 March 2020, passed by the Spanish Council of Ministers, brought exceptional measures to contain the spread and contagion by COVID-19, by

prohibiting the entry of passenger ships from the Italian Republic and cruise ships of any origin bound to Spanish ports during 14 days. The Order TMA/286/2020 of 25 March 2020 provided for similar measures until 9 April 2020, while the Order TMA/330/2020 of 8 April 2020, extended the ban until the end of the state of alarm.

Spain first declared the state of alarm under Royal Decree 463/2020, of 14 March 2020, and extended its application to 12 April 2020 following the Royal Decree 476/2020, of 27 March 2020. In addition, the evolution of the epidemic has led the Government to request (several times) authorisation from the Congress of Deputies to extend the state of alarm. This is currently in force until 9 May 2021, according to the Royal Decree 956/2020, of 3 November 2020.

Furthermore, the Resolution of 23 June 2020, of the Spanish General Directorate of the Merchant Marine, which establishes restrictive measures for cruise-type passenger ships, extended the prohibition for an indefinite period until the health crisis caused by COVID-19 is settled. The Resolution provides in its third article for exceptions to lift the restrictions on cruise ships by authorisation of the General Director of the Merchant Navy prior to a request by State Ports agreed with the Ministry of Health. The Spanish Ministry of Transport, Mobility, and Urban Agenda interpreted that the cruise ships anchored in foreign or other national ports, as well as those that have been able to leave a Spanish port and return to the same port or another national port, without stopping in a non-Spanish port, are not considered subject to the prohibition. Furthermore, restrictions to European Union flagged vessels were lifted to allow for "European cabotage" and TUI Cruises' first cruise ships arrived first to Tenerife on 18 October 2020.

The Order TMA/374/2020, of 28 April 2020, establishes the documentation required for crew members to prove their condition and facilitate their movement, in order to ensure the provision of maritime transport services, caused by the health crisis posed by COVID-19. Crew members are allowed to cross the Spanish internal and external borders in order to return to their place or residence, in compliance with the abovementioned Royal Decree 463/2020, of 14 March 2020, approved by the Spanish Council of Ministers, that declares the state of alarm for the management of the health crisis caused by COVID-19.

Crew members are requested to submit, among others, a Certificate of competency and/or proficiency, or Seafarers' identity document or Discharge book, together with an employment agreement or letter of appointment). The latter must include, at least, the name and flag of the ship, the port where it is located, and the estimated date for embarkation or disembarkation. Crew members have access to tourist accommodation regulated by the Annex to the Order TMA/277/2020, of 23 March 2020, modified by the Order TMA/305/2020, of 30 March 2020, that provides for the crews' rest periods, changes, and travel to or from the Spanish port where the vessel is located.

c. In relation to restricting or allowing the import, export or transit of cargo?

There are no restrictions on the import, export, or transit of cargo in Spanish ports. Spanish Port Authorities have taken the necessary health measures imposed by Spanish laws.

d. In relation to restricting or allowing the landing of drivers and their trucks from roll-on-roll-off ferries?

There are no restrictions affecting the drivers of the tractor units that are used to transport ro-ro cargo, nor do they affect the aeronautical personnel necessary to carry out air transport activities.

In addition, there are other exemptions regarding State air or maritime transport, search and rescue services, flights with a stopover in Spanish territory for non-commercial purposes and whose final destination is another country, exclusive cargo flights or ships that have departed from a UK port prior to the start of the restriction, among others.

The extension of the measure is intended to contain the progression of the disease and strengthen the health and social health systems, in line with the recommendations in the field of European coordination.

B. Which authority (Department of State or Organisation) in your jurisdiction was responsible for implementing those measures during the current COVID-19 Pandemic:

e. Which authority was responsible for deciding on the measures?

Pursuant to the enactment, by the Spanish Council of Ministers, of the abovementioned Royal Decree 463/2020, of 14 March 2020, declaring the state of alarm for the management of the health crisis caused by COVID-19, the Government was declared the competent authority to take any measures.

In addition, by delegation of the President of the Government, four Ministers (Defense, Home Affairs, Transport, Mobility and Urban Agenda, and Health) were to be competent on their relevant areas of responsibility.

In those areas that did not fall under the responsibility of the said Ministers for Defense, Home Affairs, Transport, Mobility and Urban Agenda, then the Minister for Health would be the delegated competent authority.

Therefore, measures implemented in relation to passengers, crew members and cargoes were, in principle, measures to be decided by the Minister for Transport, Mobility and Urban Agenda, the Minister for Home Affairs and the Minister for Health.

f. Which authority was responsible for providing expert advice on the measures?

In Spain, a collegiate body under the terms provided by Law 40/2015 on the Legal Regime of the Public Sector was not created. Therefore, no authority (as such) provided expert advice on the measures to be taken, without prejudice of what will be explained *infra*.

g. Was there a formally established authority or committee for receiving and giving of expert advice?

On 28 December 2020, the Transparency Portal of the Government of Spain (website dependent on the Ministry of Territorial Policy and Public Function in which the information that the Transparency Law requires to be made public is published) replied to a request submitted by an individual, indicating that there was a group of nine experts who initially advised the President and the Minister for Health. Their advice was not remunerated, nor did those experts prepare opinions or documents, nor adopted decisions.

At a later stage, in a so-called de-escalation phase, which took place in the months of May and June 2020, each of the Autonomous Communities issued technical reports. Coordination took place between the Minister for Health (through the General Directorate of Public Health and the Coordination Center of Health Alerts and Emergencies) with the Health Departments of the Autonomous Communities

A group of technicians attached to the Ministry of Health and technicians appointed by each of the Autonomous Communities, who worked as a team sharing the available information, generated technical reports. The Government of Spain has only reported the identity of the fifteen people who are participants in the work team.

h. Did the authority implement a pre-existing plan to deal with the pandemic?

In 2003, the "*Action plan for a possible flu pandemic*" was created by a work team within the General Directorate of Public Health of the Ministry for Health and Consumption (such Ministry was suppressed and different Ministries were created, separating Health and Consumption). Later, in 2005, and as a consequence of the advance of the H5N1 avian influenza virus, the Government presented the "*National Plan for Preparedness and Response to a Flu Pandemic*". There is no evidence of any other pre-existing plans.

i. Did the authority deviate from the pre-existing plan when dealing with the pandemic and why and when did it do so?

Since there was no specific pre-existing plan in force, the authority did not deviate from it. The most relevant action was, as above-mentioned, that of declaring the state of alarm on 14 March 2020, through Royal Decree 463/2020, which implemented a number of measures.

Prior to termination of the state of alarm, the Government enacted Royal Decree-law 21/2020, dated 9 June 2020, on urgent prevention, containment and coordination measures to deal with the health crisis caused by COVID-19. The latter regulated many aspects of the so-called new normality and, in particular, gave powers to the head of the General Directorate of the Merchant Marine to order, at the proposal of the Minister for Health, the adoption of sanitary measures for the control of ships, including cruise ships that make international trips and navigate through the waters of the territorial sea in order to enter Spanish ports

j. Did your authority implement measures to achieve so-called herd immunity while avoiding overwhelming your hospitals, or did your authority seek to suppress the virus *ab initio* or otherwise?

There is no evidence of our authority implementing measures to achieve the herd-immunity. On 18 December 2020, the work group on COVID-19 vaccination declared that vaccination is the only way to overcome in the short and medium term the pandemic that we have been suffering for several months. Such a strategy even makes more sense after having verified that obtaining immunization through community contagion of the virus (the so-called “group immunity or community protection”) generates in several cases a fatal disease.

k. To what extent did your authority override health consideration in order to maintain the exchange of goods and services and the free movement of persons between your State and other states.

Taking into account the critical role that transport and logistics play in the supply of essential products, for whose optimal functioning the fluidity and absence of barriers in the mobility of seafarers are essential, the competent authorities have been forced to try to balance sanitary restrictions with the necessary continuity in transport operations.

In this line, as an essential tool for the supply of medicines, medical devices, food and other basic products necessary to overcome this crisis, the transport sector has not stopped working, guaranteeing the international exchange of goods and services, representing one of the few exceptions to the stoppage of economic activity for health reasons.

An example of how the competent authorities have dealt with this weighting or balance, illustrative of the extent to which the competent authorities overrode health considerations in order to maintain the exchange of goods, can be found in the Order PCM/216/2020, of 12 March 2020, which prohibited the entry into Spanish ports of ships passengers and cruises from Italy, although it maintained the permit for cargo ships, that is, for the transport of goods.

Regarding the free movement of people, Spain (thanks to the efforts of ANAVE, the General Directorate of the Merchant Marine and the MITMA Emergency Unit) was one of the few countries in the world that allowed the transit of the seamen in their territory, allowing Spanish and other crew members to return home and their relays to embark.

Additionally, in response to the difficulties in the crew relief operations, and excepting the severe restrictions imposed on the rest of the citizenry, the Order TMA/374/2020, of 28 April 2020 determined the access of the seafarers to tourist accommodation declared as an essential service, in order to comply with the rest periods provided for the crew or to make the crew travel to or from the Spanish port where the ship is located.

l. Which authority or authorities was or were responsible for enforcing the various measures?

The said measures were substantially performed by the two main national police corps: The National Police and the Civil Guard, which were supplemented in the Basque Country, Catalonia and Navarre by their own regional police corps.

B. Were maritime administrations within your jurisdiction consulted in relation to decisions taken within your jurisdiction during the current COVID 19 Pandemic?

Despite no references are made in the documents perused, the measures adopted imply a previous consultation to Spanish State Ports and the Merchant Marine General Directorate.

C. Were those who took decisions in your jurisdiction during current COVID 19 Pandemic aware of the requirements of:

(i) The International Health Regulations 2005?

The Order PCM/531/2020 of 16 June 2020, purporting the Agreement of the Council of Ministers of 16 June 2020, established that the Spanish ports and airports designated as "Entry Points with service capacity to Public Health Emergencies of International Importance", following the International Health Regulations (IHR-2005), to face the health crisis caused by COVID-19.

The Order applies to ro-ro passenger ships and passenger ships that provide regular line service originating in any port located outside the European Union and Schengen associated States with passengers other than the drivers of the traction heads of the rolled merchandise. The Order entered into force since 21 June 2020 until 1 July 2020.

We estimate that the Spanish Port Authorities concerned have been probably been consulted by the Spanish Government in relation to the measures adopted in June 2021. Authorities have always only referred to the WHO's guidelines and recommendations.

(ii) The FAL Convention 1965 (as amended)?

Spain ratified the Convention for the Facilitation of International Maritime Traffic (FAL Convention, 1965), as amended, done in London on 9 April 1965 (published in the Spanish "Official State Gazette" No. 231 of 26 September 1973).

(iii) The IMO-MLC Convention?

Spain has ratified the IMO-MLC Convention and has continuously enforced it during the pandemic, including the requirements to facilitate crew changes, repatriation of seafarers, and other obligations derived from the obligations enshrined in that instrument.

D. Are you aware if your jurisdiction has denied free pratique to any vessel during the current COVID-19 pandemic?

Since the announcement of the state of alarm by the Spanish Government on 14 March 2020 for a period of 15 days, this has been subject to consecutive extensions until 9 May 2021.

Cruise ships and passenger ships were restricted access to Spanish ports arriving from foreign ports. Restrictions on the entry into Spanish ports of passenger ships and ro-ro vessels providing regular services between Italy and Spain were extended, according to the Order TMA/330/2020 of 8 April 2020. On its side, the Order TMA 419/2020 of 18 May 2020 restricted the entry to Spanish Ports to Cruise ships. Such a restriction shall be in force, at least, until the end of the state of alarm or until there are circumstances that justify a new order.

In addition, and since the UK variant strain of COVID-19 was detected, ro-ro passenger ships and passenger ships that provide regular line service between ports of the United Kingdom and the Kingdom of Spain and embark passengers in a British port have been allowed to enter Spanish ports only if carrying exclusively Spanish or Andorran nationals, or residents of Spain or Andorra. The entry of the following ships has been allowed as well: (i) State ships; (ii) ships carrying cargo exclusively; (iii) ships carrying out navigations for humanitarian, medical or emergency purposes that affect maritime safety; and (iv) ships that have left a UK port before the start of the ban.

Such restrictions were published on the Council of Ministers Agreement of 22 December 2020 (Order PCM/1237/2020) and have been extended, at least, up to 2 March 2021 through further Orders of the Council of Ministers published on 2 February 2021 (Order PCM/79/2021) and 11 February 2021 (Order PCM/118/2021).

Epidemics and Pandemics revised Questionnaire

PART 2

THE MOST RECENT EBOLA OUTBREAK

(ongoing in the Democratic Republic of the Congo since August 2018)

A. What measures (if any) were taken by your jurisdiction during the *most recent* Ebola outbreak?

Royal Decree Law 14/2014 regarding extraordinary credits and credit supplements was published by the Spanish Government on 7 November 2014 in order to grant finance to different Administrations in charge to the Ebola outbreak.

In particular, the Ministry of Defense was granted with €7,472,003.38 to finance equipment for emergency situations due to highly infectious diseases. Some of the targets were (i) to meet the needs related to the rescue of immigrants at sea; (ii) to visit and carry out inspection of potentially dangerous vessels carrying Ebola-infected personnel; and (iii) to carry out disembarkation of immigrants on Alboran island (where there was a detachment of the Navy).

The Ministry of Health, together with the Foreign Health services, developed an action procedure for all points of entry to Spain and, where the health declarations (General Declaration of Aircraft and the Maritime Declaration of Health) were required, to all the vessels coming from the affected countries. The Ministry of Health also followed all the recommendations and guidelines from the WHO (World Health Organization) and the competent European Union authorities such as the European Centre for Disease Prevention.

B. Which Department of State or Organisation in your jurisdiction was responsible for implementing those measures (if any) during the *most recent* Ebola outbreak?

Different administrations were responsible for implementing the above measures. In relation to sea transport, the Ministry of Defence and the Ministry of Development were the ones in charge of implementing the measures.

C. Were maritime administrations within your jurisdiction consulted in relation to decisions taken within your jurisdiction (if any) during the *most recent* Ebola Outbreak?

Since the Ministry of Health was the leading Ministry during the Ebola outbreak, the rest of the administrations (including the maritime ones) were closely cooperating. All the measures implemented in the Spanish ports considered all the recommendations and guidelines from the WHO.

D. Were those who took decisions (if any) in your jurisdiction during the *most recent* Ebola outbreak aware of the requirements of:

- (iv) **The International Health Regulations 2005?** Yes, they were. They also followed the recommendations. In fact, Spain collaborated in the wording of such Regulation.
- (v) **The FAL Convention 1965 (as amended)?** Yes, they were, since Spain has implemented it (and its further amendments).
- (vi) **The IMO-MLC Convention?** Yes, they were since Spain ratified such Convention which entered into force on 20 August 2013 (a year before of the Ebola outbreak).

E. Are you aware if your jurisdiction has denied free pratique to any vessel during the most recent Ebola outbreak?

No, we are not. All the vessels that entered into Spanish Ports from the affected areas (if any) were required to follow all the requirements provided during such a period but, as far as we are aware, there were no vessels affected by the Ebola outbreak.

Epidemics and Pandemics revised Questionnaire

PART 3

GENERAL QUESTIONS RELATING TO THE WHO AND YOUR ADMINISTRATION FROM THE IMLA 2015 QUESTION. (IF YOU ANSWERED THESE QUESTIONS IN 2015, PLEASE IGNORE THEM UNLESS YOU WOULD LIKE TO UPDATE WHERE FURTHER INFORMATION HAS COME TO YOUR KNOWLEDGE).

Q1. Is your jurisdiction a member of the World Health Organisation?

Yes.

Q2. Has your jurisdiction given effect under its domestic law to the International Health Regulations 2005?

Yes. On 21 January 2015, at the 4th Meeting of WHO Emergency Committee, when reviewed in accordance with IHR 2005, Spain declared the end of Ebola transmission.

Q3. Has your jurisdiction ratified the ILO-MLC 2006 Convention?

Yes. Spain ratified ILO-MLC 2006 Convention on 4 February 2010 in respect of social security; medical care; sickness benefits; unemployment benefits; and employment injury benefit, in accordance with Standards A4.5 (2) and 10. It entered into force on 20 August 2013.

Q4. What steps have been taken within your jurisdiction to give effect to the ILO-MLC 2006 Convention?

Spain complies with ILO-MLC 2006 Conventions through the following departments:

- For inspection and control issues: Ministry of Public Works.
- For mariner's safety, labour and employment tasks, health and social security issues: Social Marine Institute,
- For maritime, navigation, merchant fleets, operational and certification purposes: Merchant Marine General Directorate.

Q5. Has your jurisdiction ratified the IMO Facilitation of Marine Traffic Convention 1965 (FAL Convention)?

Yes. Spain ratified the Convention for the Facilitation of International Maritime Traffic (FAL Convention, 1965), as amended, done in London on 9 April 1965 (published in the Spanish "Official State Gazette" No. 231 of 26 September 1973).

Q6. What steps have been taken within your jurisdiction to give effect to the FAL Convention?

Further amendments to FAL were gradually incorporated, although some practical differences appeared also in the Spanish "Official State Gazette" in 1977 and 1978.

Q7. Are you aware if your jurisdiction has denied free pratique to a vessel during any of the following epidemics or pandemics – AVIAN FLU?

No, we are not aware of any restriction to any vessel as a consequence of the AVIAN FLU.

- **SARS-1:** No, we are not aware of any restriction to any vessel as a consequence of the SARS-1.
- **CHIKUNGUNYA:** No, we are not aware of any restriction as a consequence of the CHIKUNGUNYA.
- **MERS:** No, we are not aware of any restriction / denial of free pratique to any vessel as a consequence of MERS.
- **EBOLA:** No, we are not aware of any restriction. All the vessels that entered into Spanish Ports and came from the affected areas were required to follow all the requirements provided during such a period but, as far as we are aware, there were no vessels affected by the Ebola outbreak.

Q8. Are you aware if your jurisdiction has taken any steps to establish the care capacities identified in Sections A or B of Annex 1 of the International Health Regulations?

Spanish care capacities are already in line with said International Health Regulations (2005) annex 1. The authority in charge for the implementation and monitoring of these capacities is the General Sub-Directorate of Foreign Health.

Q9. Has your jurisdiction prepared a “national public health emergency health plan” in compliance with the International Health Regulations?

Yes. According to the Order SCO/3870/2006 of 15 December 2006, the General Directorate of Public Health of the Ministry of Health was declared to be the responsible health authority to act as WHO Liaison Centre. A plan (SIAPR) was approved in 2013. Previously, on 2004 the Centre for Coordination of Health Alerts and Emergencies had been created pursuant to the Order SCO/564/2004 of 27 February 2004.

Most recently, as a consequence of COVID-19, additional plans have been approved (such as the General State Plan for Civil Protection Emergencies dated 15 December 2020).

Q.10. Can you provide the postal address, email address, and/or world wide web address where the pratique requirements and quarantine requirements of your jurisdiction can be obtained?

The Ministry of Health is located at Paseo del Prado 18-20, 28014 Madrid, www.mscbs.gob.es; oiac@msssi.es. The General Directorate of Public Health and the General Sub-Directorate of Foreign Health are located at the same place, and can be contacted at saniext@mscbs.es.