



**SERVICE LEVEL AGREEMENT**

**between**

**the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)**

**and**

**the European Maritime Safety Agency (EMSA)**

**for**

**the provision of surveillance tools and services in support of Frontex activities, including for the implementation of the EUROSUR framework**

## Parties

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU, established by Council Regulation (EC) 2007/2004 of 26 October 2004, as last amended, referred to hereinafter as “Frontex”, represented by its Executive Director, Fabrice Leggeri, on the one part,

And

The European Maritime Safety Agency, established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002, as amended, referred to hereinafter as “EMSA” and represented by its Executive Director, Markku Mylly, on the other part,

hereinafter referred to collectively as “the parties”,

## Preamble

- Having regard to Regulation 1406/2002/EC of the European Parliament and the Council of 27 June 2002 establishing the European Maritime Safety Agency, as amended,
- Having regard to Council Regulation (EC) 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), as amended,
- Having regard to Regulation 1052/2013/EC of the European Parliament and the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur),
- Having regard to the Cooperation Arrangement between EMSA, on the one part, and Frontex, on the other part, of 15 December 2008,
- Account taken of Directive 2002/59 of the European Parliament and of the Council of 27 June 2002, as amended, establishing a Community Vessel Traffic Monitoring and Information System (VTMIS) and SafeSeaNet (SSN),
- Account taken of the decision of the High Level Steering Group on SafeSeaNet of June 2010, established by Commission Decision of 31 July 2009, defining access rights to AIS information,
- Account taken to the Copernicus programme, and to the Delegation Agreement between Frontex and DG GROW signed on 10 November 2015, for border security services as possible funding mechanism,
- Account taken to Frontex request to access SafeSeaNet of 16 November 2011.

Have agreed on the conditions below and the following Annexes:

Annex I - Specific Agreement (Template).

Annex II - List of Definitions and Abbreviations.

## Article 1

### Objective

The objective of this Service Level Agreement (SLA) is the definition of the operational, administrative, financial, and technical conditions under which EMSA shall deliver surveillance tools and services to Frontex to enhance maritime situational awareness in support of border management activities including EUROSUR related business processes.

## Article 2

### Services Provided

2.1 EMSA shall deliver services, information products and tools, tailored to Frontex operational needs, for the common application of surveillance tools as well as related information products in support to border surveillance.

2.2 The specific services, information products and tools shall be delivered in accordance with "Service Product Description" and as stipulated under the relevant Specific Agreement.

## Article 3

### Services, information products and surveillance tools

3.1 For the purposes of this document, the services, information products and tools are defined as follows:

- a. A service is the provision of information relevant for border surveillance (including land borders in justified cases).
- b. An information product, or "product", is a set of meaningful and interpreted data.
- c. A surveillance tool is a system that produces data to be used in an information product or a service. A surveillance tool can be a reporting system or an observation system using a combination of different sensor information.

## Article 4

### Obligations of the parties

4.1 EMSA shall:

- a. contribute to the development of Common Operational Procedures (COP) between both agencies, and the definition of a Service Product description and SLA Annual Programmes.
- b. deliver services, information products and tools according to the relevant Specific Agreement, the Service Product Description as detailed under the Common Operational Procedures (COP). In cases where the services cannot be delivered due to technical reasons, EMSA shall inform Frontex before the service is accepted in accordance with procedures defined in the COP.
- c. provide services, information products and tools according to standards agreed by both parties.
- d. provide the software user entitlements and end-user licenses for data products to Frontex, where necessary.
- e. provide any further upgrade or development required to the services, information products and tools provided based on operational feedback.
- f. support the development of other services, information products and tools if requested by Frontex upon mutual written agreement.
- g. support the testing and validation of the services, information products and tools provided such as software updates/ hotfixes/ upgrades.
- h. monitor the performance of the services, information products and tools provided.

- i. maintain a 24/7 technical and operational helpdesk service.
- j. deliver, where relevant, appropriate training relating to services, information products and tools offered on terms and (financial) conditions to be agreed.
- k. inform Frontex immediately about the downtime of a service, information product and tools.

#### 4.2 Frontex shall:

- a. contribute to the development of Common Operational Procedures (COP) between both agencies, and the definition of a Service Product Description and SLA Annual Programmes.
- b. provide feedback on services, information products and tools delivered under the terms of this agreement.
- c. support the execution of services, information products and tools provided, which may include system tests (functional, load/ stress tests, availability tests, etc.) in line with procedures and simulation tools to be agreed with EMSA.
- d. report incidents to the EMSA Maritime Support Services (MSS) requiring remote intervention by EMSA.
- e. pay the costs for the services, information products and tools described in this agreement.
- f. shall provide additional data relevant for the services, information products and tools to be delivered by EMSA.
- g. respect data access rights inherent to the EMSA services, information products and tools as communicated by EMSA.
- h. undertake all necessary actions for the implementation of the above tasks.
- i. based on anticipated needs, commit for a period of 3 years to the level of human and organisational resources required on the date of the signature of this SLA by the last party.

## Article 5

### Costs

5.1 Frontex shall bear the following costs arising from the provision of services under this Service Level Agreement:

- a. Fixed costs: correspond to the costs which relate to human and organizational resources required for the delivery, establishment and maintenance of requested services as defined under Article 3 and Article 4 above. In the event of a major change in the operational reality and if this would result in a reduction of the number of human resources required, the respective contract(s) shall be terminated. Frontex shall pay the costs related to the early termination of the contracts.
- b. Variable costs: correspond to the services, information products and tools.

5.2 EMSA shall charge Frontex the prices EMSA has obtained following public procurement without any surcharge. These prices may change if during the course of the SLA relevant contracts expire and need to be retendered or following an indexation of prices under running contracts.

5.3 Frontex reserves the right to adjust, suspend or refuse payment of some costs when services do not meet the expected standards or when services have not been accepted. Likewise Frontex shall not accept any expenditure incurred due to late payments made by EMSA to suppliers unless otherwise agreed by both parties.

## Article 6

### Implementation

6.1. This Service Level Agreement is implemented through subsequent Specific Agreements. For each subsequent period a new Specific Agreement shall be signed.

6.2 The Specific Agreement shall include the types of services to be delivered as well as the amount of fixed and variable costs. In each Specific Agreement, the following items are described:

- indicative type of service, information products and tools,

- estimated amounts per each category of costs.

6.3 The first Specific Agreement implementing this SLA shall be signed within 30 days after the signature of this SLA.

The first Specific Agreement shall cover the period from 1 May 2016 until 31 December 2016.

6.4 Subsequent Specific Agreements implementing this SLA are to be signed at least 90 calendar days before the expiry of the previous Specific Agreement and cover one or more calendar years starting from 1 January.

6.5 Notwithstanding the provision of the previous paragraph, the duration of the last Specific Agreement shall comply with the last day of implementation of this SLA as provided for in Article 16.1.

6.6 The documents implementing this Agreement - COP, SLA Annual Programme and Service Product Description - are agreed and approved by the Heads of Unit appointed for this purpose by each party upon signature of the SLA.

6.7 The names of authorising officers and delegated staff responsible for daily ordering and implementation shall be listed in the COP. In case of changes the other party shall be informed in due course.

## **Article 7**

### **Budget & Funds Management**

7.1 Specific Agreements indicate the maximum amount of funding available for the implementation of the services during their duration.

7.2 Requests for pre-financing payment shall be made by EMSA within 30 calendar days of the signature of the relevant Specific Agreement. EMSA shall issue a Debit Note covering up to 100% of the amount indicated by the Specific Agreement in question. This pre-financing may be split into tranches upon agreement of the Parties. Frontex shall make payments according to the terms and by the date specified in the Debit Note.

7.3 If Frontex does not pay within the payment deadlines, EMSA is entitled to late-payment interest at the rate applied by the European Central Bank (ECB) for its main refinancing operations in euros ('the reference rate'), plus three and a half points. The reference rate is the rate in force on the first day of the month in which the payment deadline expires, as published in the C series of the Official Journal of the European Union.

If the late-payment interest is lower than or equal to EUR 200, it is to be paid to EMSA only upon request submitted within two months of receiving the late payment. Late-payment interest cover the period running from the day following the due date for payment up to and including the date of payment.

7.4 Frontex is in no circumstances liable to pay any sum which exceeds the maximum amount as provided for in paragraph 7.1 nor any cost that is ineligible under this Service Level Agreement.

7.5 In case Frontex adjusts, suspends or refuses payment of fixed and variable costs based on duly substantiated grounds, Frontex notifies EMSA without delay aiming at preventing or reducing the occurrence of costs for EMSA; an explanation should be attached to the notification.

7.6 If any amount is to be recovered by Frontex under this SLA, EMSA repays Frontex the amount in question. Payments are made by EMSA according to the terms and by the date specified in the Debit Note. If payment has not been made by the date set out in the Debit Note, the amount due bears interest at the rate established in paragraph 7.3 above.

## Article 8

### Performance requirements

8.1 EMSA shall deliver services, information products and tools to Frontex in a timely manner, according to the monitoring requirements of each service.

8.2 The lead time for ordering information for each service, information products and tools to be provided by EMSA are defined in the Common Operational Procedures (COP).

8.3 In all instances, EMSA ensures its availability to respond to service requests on a 24 hour day, 7 days a week basis via the Maritime Support Services (MSS).

8.4 In case of system failures, or other incidents, the parties undertake actions as defined in the COP.

## Article 9

### Reporting requirements

9.1 In execution of this SLA EMSA submits to Frontex the following reports:

- a. Annual Report
- b. Six-months Report
- c. Final Report

The content of the reports as well as their templates shall be further agreed and detailed under the COP.

9.2 By 31 January of each calendar year EMSA submits to Frontex an Annual Report.

9.3 The Annual Report made during Year (N) includes financial information about the Specific Agreement of Year (N) and the Specific Agreement of Year (N-1) for the purpose of cost forecast and clearing of pre-financing respectively.

9.4 Financial information regarding the Specific Agreement of Year (N-1) shall include information on the total cost incurred and the amount of interest generated on the pre-financing payment received from Frontex. EMSA shall support the total cost incurred by means of copies of all invoices available provided they represent at least 50% of the total cost of the relevant Specific Agreement. In the case of staff costs, invoices can be replaced by cost statements due to personal data protection rules.

9.5 By 31 July of each year EMSA shall submit to Frontex a Six-months Report.

9.6 The Six-months Report of Year (N) includes financial information about the Specific Agreement of Year (N) and the planned Specific Agreement of Year (N+1). The latter constitutes the basis for negotiating the Specific Agreement of Year (N+1) as provided for in Article 6.4.

9.7 Within 90 days from the expiry of this SLA EMSA submits to Frontex the Final Report.

9.8 The Final Report includes information on cumulative costs incurred under the implementation of this SLA.

9.9 Frontex has 30 calendar days from receipt of each report to approve or reject it or to request any supporting documentation or additional information. This period can be suspended if Frontex requests any supporting documentation or additional information.

9.10 The acceptance of the Annual Report by Frontex shall allow the latter to clear the relevant part of the open pre-financing given to EMSA.

9.11 After approval by Frontex of the Annual Report, Frontex shall notify EMSA of the amount of costs reported and accepted. Such notification shall allow EMSA to clear the adequate part of the open pre-financing as received from Frontex.

9.12 If the SA duration exceed one calendar year, then the the provision of this article shall apply to that duration *mutatis mutandi*.

## **Article 10**

### **Force Majeure**

10.1 Neither party shall be liable for any unforeseeable and irresistible event beyond its control not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this agreement.

10.2 In the event of the occurrence of such a force majeure event, the party unable to perform notifies it to the other party and make its best efforts to resume performance as quickly as possible; it suspends the performance only for such period of time as is necessary as a result of the force majeure event.

## **Article 11**

### **Data protection**

Any personal data processed on the basis of this SLA, in particular related to the agreement or its implementation, must be processed in compliance with the Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data (hereinafter the 'data protection Regulation'). The data is to be processed solely for the purposes of the performance, management and monitoring of the agreement without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in application of Union law.

## **Article 12**

### **Training**

12.1 Upon Frontex request, EMSA shall provide training at an adequate level allowing the staff appointed by Frontex based on the EU Member States or Schengen Associated Countries requests to enable the use of services, information products and tools, and carry out an analysis of the data delivered through the services, information products and tools.

12.2 The terms and (financial) conditions for the provision of training, materials and facilities by EMSA shall be determined according to the requirements agreed by both parties in the Specific Agreement.

## **Article 13**

### **Human Resources**

Each party remains responsible for its own personnel in relation to the activities undertaken pursuant to the present agreement.

## **Article 14**

### **Communications**

14.1 The points of contact, coordinators and addresses of both parties for communications are detailed in the Common Operational Procedures (COP). All communications relating to daily operations or reporting shall be sent to the contact points for the operational communications.

14.2 The parties shall communicate in writing any change with regard to the above-mentioned coordinators or contacts.

14.3 The notifications mentioned in this agreement shall be made in writing to the appointed coordinators.

## Article 15

### Settlement of disputes

15.1 In case of dispute between the parties arising out of or in connection with this agreement the parties hereto shall settle it by mutual agreement.

15.2 If the dispute not be settled successfully though the procedure abovementioned it may be submitted to the Court of Justice of the European Union.

## Article 16

### Duration and termination

16.1 This agreement is concluded for a period of three (3) years from its implementation date. This period and all other periods specified in the agreement are calculated in calendar days.

16.2 Each party has the right to terminate this agreement. Any termination notice under this paragraph is to be made in writing and the resulting termination shall become effective within three months after termination notification has been received by the other party.

16.3 In the event of termination of this agreement by Frontex, the parties shall make their best efforts to settle costs already committed or entitled in an equitable way based on the principles described in paragraph 16.4 below.

16.4 In the event of termination of this agreement by Frontex, the settlement of the costs by Frontex shall be governed by the following provisions:

- a. the staff-related costs.
- b. the remaining costs - only if a specific cost item has been fully delivered by EMSA and accepted by Frontex. Existing contractual arrangements that have been entered into by EMSA with other parties for the sole purpose of this SLA and that cannot be terminated, shall be honoured following a written justification sent by EMSA to Frontex. The latter solution shall apply where the costs are borne by the budget allocated for the purpose of this Service Level Agreement, and without prejudice to EMSA's obligation to make its best efforts to prevent or minimize the costs.

16.5 In the event of termination of this agreement by EMSA, Frontex shall not finance any new costs incurred by EMSA after the date of termination and all pre-financing and interests, regardless of their nature (pre-financing for fixed costs or for variable costs) after the deduction of borne costs before termination, are to be reimbursed to Frontex.

## Article 17

### Suspension

Any failure to fulfil any of the obligations pursuant to this agreement by one party gives the other party the right to suspend its responsibilities for as long as the first party is in breach of the agreement. Suspension takes effect on the day the party in breach receives the notification on the suspension or at a later date specified in the notification.



## Article 18

### Liability

18.1 Any cost for a loss, damage or injury by one party in connection with the performance of this agreement shall be borne exclusively by it.

18.2 Each party is exclusively liable for any loss, damage or injury caused by its personnel to third parties in their facilities, arising out of the performance of the agreement.

## Article 19

### Amendments

Any amendment to the agreement shall be made in written form. No oral amendments are to be considered binding for the parties.

## Article 20

### Entry into force

20.1 This Agreement enters into force on the date on which the last party signs.

20.2 The implementation of the SLA in terms of provision of services, information products and tools shall start on 1 May 2016.

On behalf of EMSA:

On Behalf of Frontex:

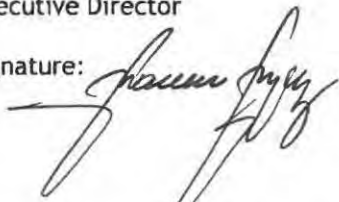
Markku Mylly

Fabrice Leggeri

Executive Director

Executive Director

Signature:



Signature:

(on behalf) *Fabrice Leggeri*

Date and Place

*LISBON 2/3/2016*

Date and Place

*Lisbon, 18.3.2016*