

FONASBA MEMBERSHIP ENQUIRY



RESPONSE SUMMARY

ORIGINATING ASSOCIATION:	ECASBA ADVISORY PANEL
ENQUIRY DETAILS:	<i>The convention "As Agents Only" is traditionally used, under English Law at least, to offer protection to agents from errors or omissions of their principal. Developments in European maritime and customs policy would indicate that this protection is under threat. In order to determine whether to base ECASBA's future actions on reporting formalities, customs liability and similar on this convention, ECASBA members are asked to advise if it, or something similar, is in regular use by ship agents in their country.</i>
Date:	March 2015

	RESPONSE
BELGIUM	<p>Under Belgian law the agent is indeed also protected. There are provisions in this respect in the civil code and there is also a particular law on commercial agency which is the transposition of the EU Agency directive, and which has been included in the commercial code last year.</p> <p>To have the position of "agent" recognised, the mere mention "as agents only" does however not suffice in Belgium. In order for the agent to benefit from the protection that comes along with this status, he needs to formally reveal the identity of his principal. This should especially be done during contract negotiations and ultimately before the contract is concluded. An agent can only be acting as such in the name and on behalf of a KNOWN /NAMED principal.</p> <p>The Belgian courts have a tradition of ruling very strict in this respect. They opine that the counterpart needs to know with whom he is dealing/who his actual contracting party is. An agent who fails to state that he is acting on behalf of XYZ will be considered as acting in his own name/on his own behalf.</p> <p>This principle is also incorporated in article 19 UCC, but many of the (national) IT-systems to be used for making all required customs declarations are not allowing the agent to do so. The agent, possibly</p>

	<p>supported by the local associations, should therefore seek for alternative ways of securing his position as an "agent" = direct representative as per article 18.1 UCC" e.g. by confirming that he is acting as a direct representative for XYZ e.g. by registered letter to the customs administration. This is also a point for attention when single windows are developed.</p> <p>PS - There are some exceptions to this general principle made with local regulations where authorities have turned (or are trying to turn) matters into their favour.</p> <p>E.g. the ship agent remains personally liable for port dues, towage dues and "all costs" following out of incidents", this u/i 30 days after he declared the vessel to the port authorities even if the agency-representation was meanwhile terminated. And as mentioned during the last seminar, there still is some legal insecurity about how article 15 UCC in fine should be understood ("customs representative").</p>
CROATIA	The use of "As Agents Only" is mandatory in Croatia. Otherwise, agent works in his own name and account.
DENMARK	<p>In the recent years "as agent only" seems to have given rise to certain challenges. Generally it is accepted in Denmark.</p> <p>Some Danish agents have the opinion that their position can be strengthened by adding the name of their principals, namely "as agent to...."</p> <p>Under the present circumstances we would appreciate if ECASBA/FONASBA consider to raise this issue.</p>
FRANCE	<p>Please be informed that the French ships agents often use the convention of "as agents only" stating that they only act on behalf and for account of the owners ".As per the French law the shipping agents are employees representatives of the shipowners ;</p> <p>Above convention must be protected by Ecasba</p>
FINLAND	<p>Regarding Finland indeed correct! To work "as Agents only" is between the rock and the hard place. Under the new Fairway Dues legislation as of 1st Jan. 2015 the ship agent/representative is equally liable along with the shipowner/operator for fairways dues charged and collected by customs. In theory you can perform your duties as a "direct agent" for an EU domicile principal, but subject this principal is approved by Finnish customs, EORI registered. For non EU principals an indirect representative is required. Be it direct or indirect, representation is subject to customs</p>

	<p>approval and financial guarantees you required to set. Without approval you do not get access to the government/customs electronic reporting system (PORTNET).</p> <p>So far this restricted to state/customs dues/fees but surely first instance ports (now when made public companies within EU and lost their fiscal rights) aim for same "benefits" and this goes for at least pilots and other authorities too.. (for example possible SOx fines to vsl)</p>
MALTA	<p>Most of the local shipping agents make sure to include the specific wording "AS AGENTS ONLY" but as per current legislation, we cannot exclude the possibility that there might be indicators that this protection could be under threat.</p>
NETHERLANDS	<p>The question is short and clear, but the reality is that it is difficult to give a general answer as situation is rather complex.</p> <p>In general there are two situations :</p> <p>Commercial contacts where we refer to our general conditions acting 'as agent only'</p> <p>Governmental contacts (eg. Customs, Port Authority - Port Dues, etc.) where we are fully responsible and we cannot 'hide' ourselves with 'as agents only'.</p>
SPAIN	<p>We inform that the convention "As Agents only" is in regular use by ship agents in Spain.</p>
SWEDEN	<p>In Sweden we try to act as "agents only", but the Swedish Maritime Organisation force us to be in charge for the Fairway dues, anyway. And a lot of ports claim us responsible because we have "put the order".</p> <p>I think this is a complicated questions, in one way I think we should be responsible, if we also have the muscles to force the ship owner to pay.</p>
TURKEY	<p>We are surprised to learn that 'as agents only' topic is under threat, please note that in our country while some of our colleagues are signing a kind of document (NOR, damage report, Letter of Protest, L.O.I., Bill of Lading) they are using ''as agent only'' together with ''for receipt only'' which indicated that the letter received and will convey to concern party.</p>
IRELAND	<p>Confirm this terminology is in regular use by Irish agents .</p>
ITALY	<p>The expression "as agents only" is commonly used in Italy and recognized by Italian Jurisprudence. The agent carries out the activity only as a representative of his Principal and as long as he specifies that he is acting only as agent, the activity will be referred to his Principal. This is also a consequence of Italian general principles of law. The decisions of Italian</p>

	Jurisprudence mainly concern the undersginment of the bill of lading and state that in case the bill of lading is undersigned "as agent only", the agent cannot be sued in the proceeding as carrier of the carriage (e.g. Court of Genoa 18 June 2003; Supreme Court 4 March 1997 n. 1914).
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