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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading with a view to the adoption of a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL amending Regulation (EC) No 1406/2002 establishing a
European Maritime Safety Agency
- Adopted by the Council on 4 October 2012

REGULATION (EU) N° .../2012
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

amending Regulation (EC) No 1406/2002
establishing a European Maritime Safety Agency

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 107, 6.4.2011, p. 68.

² Position of the European Parliament of 15 December 2011 (not yet published on the Official Journal) and position of the Council at first reading of... (not yet published in the Official Journal). Position of the European Parliament of.....

Whereas:

- (1) Regulation (EC) No 1406/2002 of the European Parliament and of the Council¹, which was adopted in response to the 'Erika' oil tanker incident, established a European Maritime Safety Agency (the "Agency") for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships.
- (2) After the 'Prestige' oil tanker incident in 2002, Regulation (EC) No 1406/2002 was modified to give the Agency more tasks with regard to pollution response.
- (3) It is necessary to clarify which types of marine pollution should fall within the objectives of Regulation (EC) No 1406/2002. Thus, marine pollution caused by oil and gas installations should be understood as pollution by oil or any substance other than oil which, if introduced into the marine environment, is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, as established by the Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, 2000.
- (4) Acting in accordance with Article 22 of Regulation (EC) No 1406/2002, the Administrative Board of the Agency (the "Administrative Board") in 2007 commissioned an independent external evaluation on the implementation of that Regulation. Based on that evaluation, in June 2008, it issued recommendations regarding changes to the functioning of the Agency, to its areas of competence and to its working practices.

¹ OJ L 208, 5.8.2002, p. 1.

- (5) Based on the findings of the external evaluation, and on the recommendations, and on the multi-annual strategy adopted by the Administrative Board in March 2010, some provisions of Regulation (EC) No 1406/2002 should be clarified and updated. While focusing on its priority tasks in the area of maritime safety, the Agency should receive a number of new core and ancillary tasks reflecting the development of maritime safety policy at Union and international level. Given the budget constraints facing the Union, considerable screening and redeployment efforts are necessary to guarantee cost and budget efficiency and to avoid any overlapping. Staffing needs for the new core and ancillary tasks should, as a matter of principle, be covered through internal redeployment by the Agency. At the same time, the Agency should receive, where appropriate, funding from other parts of the Union budget, in particular from the European Neighbourhood Policy instrument. The delivery of any new core and ancillary tasks by the Agency will be undertaken within the limits of the current Financial Perspective and the Agency's budget without prejudice to the negotiations and decisions on the future multiannual financial framework. As this Regulation is not a financing decision, the Budgetary Authority should decide on resources for the Agency in the framework of the annual budgetary procedure.
- (6) The Agency's tasks should be described clearly and precisely, and any duplication of tasks should be avoided.
- (7) The Agency has shown that certain tasks can be undertaken more efficiently at European level, which might, in certain cases, offer Member States savings on their national budgets and, where demonstrated, represent genuine European added value.

- (8) Some provisions regarding the specific governance of the Agency should be clarified. Taking into account the special responsibility of the Commission for the implementation of Union policies enshrined by the Treaty on the Functioning of the European Union, the Commission should provide policy guidance to the Agency in the performance of its tasks while fully respecting the legal status of the Agency and the independence of its Executive Director as established by Regulation (EC) No 1406/2002.
- (9) When appointing members of the Administrative Board, electing the Chair and Vice Chair of the Administrative Board and appointing Heads of Department, the importance of ensuring balanced gender representation should be fully taken into account.
- (10) Any reference to relevant legal acts of the Union should be understood to refer to acts in the field of maritime safety, maritime security, prevention of, and response to, pollution caused by ships as well as response to marine pollution caused by oil and gas installations.
- (11) For the purposes of this Regulation, "maritime security" is to be understood – in accordance with Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security¹ – as the combined preventive measures intended to protect shipping and port facilities against threats of intentional unlawful acts. The security objective should be achieved by adopting appropriate measures in the field of maritime transport policy, without prejudice to the rules of the Member States in the field of national security, defence and public security, and in combating financial crimes against the state.

¹ OJ L 129, 29.4.2004, p. 6.

- (12) The Agency should act in the interests of the Union. This should include the situation when the Agency is tasked to act outside the territory of the Member States in its fields of competence and to provide technical assistance to relevant third countries, in promoting the Union's maritime safety policy.
- (13) The Agency should provide technical assistance to Member States which should facilitate the establishment of the necessary national capacity to implement the Union *acquis*.
- (14) The Agency should provide operational assistance to the Member States and the Commission. This should include services such as the Union Maritime Information and Exchange System (SafeSeaNet), the European Satellite Oil Monitoring Service (CleanSeaNet), the European Union Long Range Identification and Tracking Data Centre (EU LRIT Data Centre) and the EU Port State Control inspection data base (Thetis) .
- (15) The Agency's expertise in electronic data transmission and in maritime information exchange systems should be used to simplify reporting formalities for ships with a view to the elimination of barriers to maritime transport and the establishment of a European Maritime Transport Space without Barriers. In particular, the Agency should support Member States in the implementation of Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States¹.

¹ OJ L 283, 29.10.2010, p. 1.

- (16) The Agency should enhance its assistance to the Commission regarding research activities related to its fields of competences. However, duplication of work as regards the existing Union research framework should be avoided. In particular, the Agency should not be in charge of the management of research projects.
- (17) In the light of the development of new innovative applications and services and the improvement of the existing applications and services, and with a view to implementing a European Maritime Transport Space without Barriers, the Agency should make full use of the potential offered by the European satellite navigation programmes (EGNOS and Galileo) and by the Global Monitoring for Environment and Security programme (GMES).
- (18) After the expiry of the Union framework for cooperation in the field of accidental or deliberate marine pollution established by Decision No 2850/2000/EC of the European Parliament and of the Council¹, the Agency should continue some of the activities previously carried out under that framework by drawing in particular on the expertise within the Consultative Technical Group for Marine Pollution Preparedness and Response. The activities of the Agency in this field should not relieve coastal states of their responsibility to have appropriate pollution response mechanisms in place and should respect existing cooperation arrangements between Member States or groups of Member States.

¹ OJ L 332, 28.12.2000, p. 1.

- (19) Upon request, the Agency provides Member States with detailed information about potential cases of pollution by ships through CleanSeaNet to enable them to fulfil their responsibilities under Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements¹. However, the effectiveness of enforcement varies greatly despite such pollution having the potential to end up in other national waters. In its next report under Article 12 of that Directive, the Commission should therefore provide information to the European Parliament and to the Council about the effectiveness and the consistency of the enforcement of that Directive and other relevant information about its application.
- (20) Requests from affected States for the mobilisation of anti-pollution actions by the Agency should be relayed through the EU Civil Protection Mechanism established by Council Decision 2007/779/EC, Euratom². However, the Commission may consider that in circumstances other than requests for mobilisation of stand-by anti-pollution ships and equipment, alternative means of communication using advanced information technology may be more appropriate and, thus, may inform the requesting Member State.

¹ OJ L 255, 30.9.2005, p. 11.

² OJ L 314, 1.12.2007, p. 9.

- (21) Recent events highlighted the risks of offshore oil and gas exploration and production activities to maritime transport and the marine environment. The Agency's response capabilities for oil pollution and its expertise in the field of pollution by hazardous and noxious substances should be used to cover response to pollution originating from such activities, at the request of an affected state.
- (22) In particular, CleanSeaNet, which is currently used to provide evidence of oil spills from ships, should also be used by the Agency to detect and report oil spills from offshore oil and gas exploration and production activities, without causing any detrimental effects to the service provided for maritime transport.
- (23) The Agency has established and recognised valuable expertise and tools in the fields of maritime safety, maritime security, prevention of, and response to, pollution caused by ships. This expertise and these tools can be relevant for other Union activities related to the Union maritime transport policy. The Agency should therefore assist the Commission and the Member States upon request in the development and implementation of such Union activities provided that the Administrative Board has approved this in the context of the Agency's annual work programme. Such assistance should be subject to a detailed cost/benefit analysis and should not be detrimental to the Agency's core tasks.
- (24) Through the technical assistance that the Agency provides, it also contributes to the development of more environment-friendly maritime transport.

- (25) As regards classification societies, most classification societies deal with both seagoing and inland waterway vessels. Based on the Agency's experience with classification societies for seagoing vessels, the Agency could provide relevant information to the Commission with regard to classification societies for inland waterway vessels and thus allow for efficiency gains.
- (26) As regards the interface between transport information systems, the Agency should assist the Commission and the Member States by exploring, together with competent authorities for the River Information Services System, the possibility of sharing information between such systems.
- (27) Without prejudice to the responsibility of the competent authorities, the Agency should assist the Commission and the Member States in the development and implementation of the future e-Maritime initiative, which aims at improving the efficiency of the European maritime transport sector by facilitating the use of advanced information technologies.
- (28) With a view to achieving the single market and a European Maritime Transport Space without Barriers, administrative burdens on shipping should be reduced, thereby inter alia encouraging short sea shipping. In this context, the "Blue Belt" concept and e-Maritime could potentially be used as a means of reducing reporting formalities required from commercial vessels on entering or leaving ports in the Member States.

- (29) It is recalled that according to the case-law of the Court of Justice of the European Union, and in order to respect the principle of institutional balance, the power to adopt decisions of general application may not be conferred on an agency.
- (30) Without prejudice to the objectives and tasks laid down in Regulation (EC) No 1406/2002, the Commission should prepare and submit, within one year of the date of entry into force of this Regulation, in close cooperation with relevant stakeholders, a feasibility study with a view to evaluate and identify the possibilities of enhancing coordination and cooperation of different coastguard functions. That study should take into account the existing legal framework and relevant recommendations from the appropriate Union fora as well as the current development of the Common Information Sharing Environment (CISE) and should fully respect the principles of subsidiarity and proportionality, making clear the costs and benefits to the European Parliament and the Council.
- (31) Attracting well trained European seafarers is important for the competitiveness of the Union maritime clusters. Therefore, in light of the current and future demand in the Union for highly qualified seafarers, the Agency should, if appropriate, support Member States and the Commission in promoting maritime training by facilitating the voluntary exchange of best practice and by providing information on Union exchange programmes on maritime training. This could include assisting competent European stakeholders in pursuing excellence for maritime education and training on a voluntary basis, while fully respecting the responsibility of the Member States for the content and organisation of maritime training.

- (32) In order to counter the growing risk of piracy, the Agency should continue, where appropriate, to forward to competent national authorities and other relevant bodies, including operations such as EU Naval Force operation Atalanta , detailed information about the position of vessels flying the flag of Member States and transiting through areas, which are classified as very dangerous. Furthermore, the Agency has at its disposal means that could be useful, notably in the context of the development of the CISE. It is therefore appropriate that the Agency should provide, upon request, relevant vessel positioning and earth observation data to competent national authorities and Union bodies, such as Frontex and Europol, to facilitate preventive measures against intentional unlawful acts as understood in relevant Union law without prejudice to the rights and obligations of Member States and in accordance with the applicable national and Union law, in particular regarding those bodies requesting data. The provision of long-range identification and tracking of ships (LRIT) data should be subject to the consent of the flag State concerned, in accordance with procedures to be established by the Administrative Board.
- (33) When publishing information in accordance with Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control¹, the Commission and the Agency should build upon the expertise and experience gained under the Paris Memorandum of Understanding on Port State Control ("Paris MoU") to ensure consistency.

¹ OJ L 131, 28.5.2009, p. 57.

- (34) The assistance of the Agency to the Member States and to the Commission with regard to the relevant work of international and regional organisations should be without prejudice to the relationship between those organisations and the Member States resulting from Member States' membership of those organisations.
- (35) The Union has acceded to the following instruments , establishing regional organisations, whose activities are also covered by the Agency's objectives: the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention as revised in 1992)¹; the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention)², and its 1995 revision³ and to a number of protocols thereto; the Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances (Bonn Agreement)⁴; the Convention for the protection of the marine environment of the North-East Atlantic (OSPAR Convention)⁵; the Cooperation Agreement for the protection of the coasts and waters of the north-east Atlantic against pollution, signed on 17 October 1990 (Lisbon Agreement)⁶, with the Additional Protocol thereto, signed on 20 May 2008, which have not yet entered into force⁷. The Union is also negotiating accession to the Convention on the Protection of the Black Sea Against Pollution, signed in April 1992 (Bucharest Convention). The Agency should therefore provide technical assistance to Member States and the Commission to take part in the relevant work of those regional organisations.

¹ Council Decision 94/157/EC (OJ L 73, 16.3.1994, p. 19).

² Council Decision 77/585/EEC (OJ L 240, 19.9.1977, p. 1).

³ Council Decision 1999/802/EC (OJ L 322, 14.12.1999, p. 32).

⁴ Council Decision 84/358/EEC (OJ L 188, 16.7.1984, p. 7).

⁵ Council Decision 98/249/EC (OJ L 104, 3.4.1998, p. 1).

⁶ Council Decision 93/550/EEC (OJ L 267, 28.10.1993, p. 20).

⁷ Council Decision 2010/655/EU (OJ L 285, 30.10.2010, p. 1).

- (36) In addition to those regional organisations, a number of other regional, sub-regional and bilateral coordination and cooperation arrangements exist with regard to pollution response. When providing assistance with regard to pollution response to third countries sharing a regional sea basin with the Union, the Agency should act, taking into account those arrangements.
- (37) The Union shares the regional sea basins of the Mediterranean Sea, the Black Sea and the Baltic Sea with neighbouring countries. Upon request by the Commission, the Agency should provide assistance with regard to pollution response to those countries.
- (38) In order to maximise efficiency, the Agency should cooperate as closely as possible in the context of the Paris MoU. The Commission and Member States should continue to examine any options for further efficiency gains, which could be proposed for consideration within the framework of the Paris MoU.

- (39) In order to ensure that the binding legal acts of the Union in the fields of maritime safety and the prevention of pollution caused by ships are correctly implemented in practice, the Agency should assist the Commission by carrying out visits to Member States. These visits to the national administrations should allow the Agency to gather all necessary information to present a comprehensive report to the Commission for its further assessment. The visits should be conducted in the spirit of the principles referred to in Article 4(3) of the Treaty on European Union and should be conducted in such a way so as to minimise the administrative burden upon the national maritime administrations. Furthermore the visits should be carried out in accordance with a set procedure including a standard methodology as adopted by the Administrative Board.

- (40) The Agency should assist the Commission by carrying out inspections of recognised organisations in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations¹. These inspections may also take place in third countries. The Commission and the Agency should ensure that the Member States concerned are duly informed. The Agency should also carry out the inspection tasks with regard to the training and certification of seafarers in third countries pursuant to Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers², which the Commission has delegated to the Agency. Details of the technical assistance provided by the Agency to the maritime security inspections carried out by the Commission in accordance with Commission Regulation (EC) No 324/2008 of 9 April 2008 laying down revised procedures for conducting Commission inspections in the field of maritime security³ should not be covered by Regulation (EC) No 1406/2002.
- (41) In order to ensure coherence with the policy objectives and the institutional set-up of the Union as well as with the applicable administrative and financial procedures, the Commission should issue formal advice in the form of a written opinion on the Agency's draft multi-annual strategy and draft annual work programmes, which the Administrative Board should take into account before adopting those documents.

¹ OJ L 131, 28.5.2009, p. 11.

² OJ L 323, 3.12.2008, p. 33.

³ OJ L 98, 10.4.2008, p. 5.

(42) In order to ensure a fair and transparent procedure for the appointment of the Executive Director, the selection procedure to be followed should be in accordance with the Commission guidelines for the selection and nomination of Directors for agencies of the Union. These guidelines provide that nationals of any Member State can submit an application.

For the same reasons, the Administrative Board should be represented by an observer in the pre-selection committee. The observer should be kept informed during the further stages of the selection procedure.

At the time that the Administrative Board takes its decision on appointment, its members should be able to address questions to the Commission on the selection procedure. Furthermore, the Administrative Board should have the opportunity to interview the shortlisted candidates, in line with standard practice.

At all stages of the selection procedure and appointment for the post of the Executive Director of the Agency, all parties involved should ensure that the personal data of the candidates are processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹.

¹ OJ L 8, 12.1.2001, p. 1.

- (43) While the Agency is mainly financed through a contribution from the Union, it also has revenues resulting from fees and charges relating to its services. Those fees and charges relate in particular to the operation of the EU LRIT Data Centre and are applied in accordance with the Council Resolution adopted on 1 and 2 October 2007 and 9 December 2008 related to the establishment of the EU LRIT Data Centre and in particular with the paragraphs related to the financing of LRIT reports.
- (44) In the framework of the progress report provided for pursuant to Regulation (EC) No 1406/2002, the Commission should also examine the Agency's potential contribution to the implementation of a future legislative act on the safety of offshore oil and gas prospecting, exploration and production activities, which is currently being examined by the European Parliament and the Council, with regard to the prevention of pollution from offshore oil and gas installations, taking into account the Agency's established and recognised expertise and tools.
- (45) The Agency's activities should, where appropriate, also contribute to the establishment of a genuine European Maritime Transport Space without Barriers.
- (46) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹, and in particular Article 185 thereof, should be taken into account.
- (47) Regulation (EC) No 1406/2002 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

¹ OJ L 248, 16.9.2002, p. 1.

Article 1
Amendments to Regulation (EC) No 1406/2002

Regulation (EC) No 1406/2002 is hereby amended as follows:

- (1) Articles 1 to 3 are replaced by the following:

'Article 1

Objectives

1. This Regulation establishes a European Maritime Safety Agency ('the Agency') for the purpose of ensuring a high, uniform and effective level of maritime safety, maritime security, prevention of, and response to, pollution caused by ships as well as response to marine pollution caused by oil and gas installations.
2. To that end, the Agency shall cooperate with the Member States and the Commission and provide them with technical, operational and scientific assistance in the fields mentioned in paragraph 1 of this Article within the limits of the core tasks set out in Article 2 and, as and when applicable, the ancillary tasks set out in Article 2a, in particular in order to help the Member States and the Commission to apply the relevant legal acts of the Union properly. As regards the field of response to pollution, the Agency shall provide operational assistance only upon the request of the affected state(s).

3. By providing the assistance referred to in paragraph 2, the Agency shall, where appropriate, contribute to the overall efficiency of maritime traffic and maritime transport as set out in this Regulation, so as to facilitate the establishment of a European Maritime Transport Space without Barriers.

Article 2

Core tasks of the Agency

1. In order to ensure that the objectives set out in Article 1 are met in the appropriate manner, the Agency shall perform the core tasks listed in this Article.
2. The Agency shall assist the Commission:
 - (a) in the preparatory work for updating and developing relevant legal acts of the Union, in particular in line with the development of international legislation;
 - (b) in the effective implementation of relevant binding legal acts of the Union, in particular by carrying-out visits and inspections as referred to in Article 3 of this Regulation and by providing technical assistance to the Commission in the performance of the inspection tasks assigned to it pursuant to Article 9(4) of Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security*. In this regard, it may address suggestions to the Commission for any possible improvements of those binding legal acts;

- (c) in the analysis of ongoing and completed research projects relevant to the objectives of the Agency; this may include the identification of possible follow-up measures resulting from specific research projects;
 - (d) in the performance of any other task assigned to the Commission in legislative acts of the Union regarding the objectives of the Agency.
3. The Agency shall work with the Member States to:
- (a) organise, where appropriate, relevant training activities in fields which are the responsibility of the Member States;
 - (b) develop technical solutions, including the provision of relevant operational services, and provide technical assistance, to the building up of the necessary national capacity for the implementation of relevant legal acts of the Union;
 - (c) provide, at the request of a Member State, appropriate information resulting from the inspections referred to in Article 3 in order to support the monitoring of the recognised organisations that carry out certification tasks on behalf of the Member States in accordance with Article 9 of Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations** without prejudice to the rights and obligations of the flag State;

- (d) support with additional means in a cost efficient way pollution response actions in case of pollution caused by ships as well as marine pollution caused by oil and gas installations, when a request has been presented by the affected Member State under the authority of which the cleaning operations are conducted, without prejudice to the responsibility of coastal States to have appropriate pollution response mechanisms in place while respecting existing cooperation between Member States in this field. As appropriate, requests for mobilisation of anti-pollution actions shall be relayed through the EU Civil Protection Mechanism established by Council Decision 2007/779/EC, Euratom^{***}.

4. The Agency shall facilitate cooperation between the Member States and the Commission:

- (a) in the field of traffic monitoring covered by Directive 2002/59/EC, the Agency shall in particular promote cooperation between riparian States in the shipping areas concerned, as well as develop and operate the European Union Long-Range Identification and Tracking of Ships European Data Centre and the Union Maritime Information and Exchange System (SafeSeaNet) as referred to in Articles 6b and 22a of that Directive as well as the International Long-Range Identification and Tracking information data exchange system in accordance with the commitment made in the International Maritime Organisation ("IMO");

- (b) by providing, upon request and without prejudice to national and Union law, relevant vessel positioning and earth observation data to the competent national authorities and relevant Union bodies within their mandate in order to facilitate measures against threats of piracy and of intentional unlawful acts as provided for in applicable Union law or under internationally agreed legal instruments in the area of maritime transport, subject to applicable data protection rules and in accordance with administrative procedures to be established by the Administrative Board or the High Level Steering Group established in accordance with Directive 2002/59/EC, as appropriate. The provision of long-range identification and tracking of ships data shall be subject to the consent of the flag State concerned;

- (c) in the field of the investigation of marine casualties and incidents in accordance with Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector^{****}; the Agency shall, if requested by the relevant Member States and assuming that no conflict of interest arises, provide operational support to these Member States concerning investigations related to serious or very serious casualties and it shall carry out analysis of safety investigation reports with a view to identify added value at Union level in terms of any relevant lessons to be drawn. On the basis of data provided by the Member States, in accordance with Article 17 of that Directive, the Agency shall compile a yearly overview of marine casualties and incidents;
- (d) in providing objective, reliable and comparable statistics, information and data, to enable the Commission and the Member States to take the necessary steps to improve their actions and to evaluate the effectiveness and cost-efficiency of existing measures. Such tasks shall include the collection, recording and evaluation of technical data, the systematic exploitation of existing databases, including their cross-fertilisation, and, where appropriate, the development of additional databases. On the basis of the data collected, the Agency shall assist the Commission in the publication of information relating to ships pursuant to Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control^{****};

- (e) in gathering and analysing data on seafarers provided and used in accordance with Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers^{*****};
- (f) in improving the identification and pursuit of ships making unlawful discharges in accordance with Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements^{*****};
- (g) regarding marine oil pollution caused by oil and gas installations, by using the European Satellite Oil Monitoring Service (CleanSeaNet) to monitor the extent and environmental impact of such pollution;
- (h) in providing technical assistance necessary for the Member States and the Commission to contribute to the relevant work of the technical bodies of the IMO, the International Labour Organisation as far as shipping is concerned, and the Paris Memorandum of Understanding on Port State Control ("Paris MoU") and relevant regional organisations to which the Union has acceded, with regard to matters of Union competence;
- (i) with regard to the implementation of Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States^{*****}, in particular by facilitating the electronic transmission of data through SafeSeaNet and by supporting the development of the single window.

5. The Agency may, upon the request of the Commission, provide technical assistance, including the organisation of relevant training activities, as regards relevant legal acts of the Union, to states applying for accession to the Union, and, where applicable, to European Neighbourhood partner countries and to countries taking part in the Paris MoU.

The Agency may also provide assistance in case of pollution caused by ships as well as marine pollution caused by oil and gas installations affecting those third countries sharing a regional sea basin with the Union, in line with the EU Civil Protection Mechanism established by Decision 2007/779/EC, Euratom, and by analogy with the conditions applicable to Member States as referred to in paragraph (3)(d) of this Article. These tasks shall be coordinated with the existing regional cooperation arrangements related to marine pollution.

Article 2a

Ancillary tasks of the Agency

1. Without prejudice to the core tasks referred to in Article 2, the Agency shall assist the Commission and the Member States, as appropriate, in the development and implementation of the Union activities set out in paragraphs 2 and 3 of this Article related to the Agency's objectives, in so far as the Agency has established and recognised expertise and tools. The ancillary tasks set out in this Article shall:
 - (a) create substantiated added value;
 - (b) avoid duplication of efforts;
 - (c) be in the interest of the Union maritime transport policy;
 - (d) not be detrimental to the Agency's core tasks and
 - (e) not infringe upon Member States' rights and obligations, in particular as flag States, port States and coastal States.

2. The Agency shall assist the Commission:
 - (a) in the context of the implementation of Directive 2008/56/EC of the European Parliament and of the Council (Marine Strategy Framework Directive) ^{*****}, by contributing to the objective of achieving good environmental status of marine waters with its shipping related elements and in exploiting the results of existing tools such as SafeSeaNet and CleanSeaNet;

- (b) providing technical assistance in relation to greenhouse gas emissions from ships, in particular in following up ongoing international developments;
- (c) as concerns the Global Monitoring for Environment and Security programme (GMES), in promoting the use of GMES data and services for maritime purposes, within the GMES governance framework;
- (d) in the development of a Common Information Sharing Environment for the EU maritime domain;
- (e) with respect to mobile offshore oil and gas installations, in examining IMO requirements and in gathering basic information on potential threats to maritime transport and the marine environment;
- (f) by providing relevant information with regard to classification societies for inland waterway vessels in accordance with Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels ***** . This information shall also be part of the reports referred to in Article 3(4) and (5) of this Regulation.

3. The Agency shall assist the Commission and the Member States:
- (a) in the examination of the feasibility and the implementation of policies and projects supporting the establishment of the European Maritime Transport Space without Barriers, such as the Blue Belt concept and e-Maritime, as well as Motorways of the Sea. This shall be done in particular by exploring additional functionalities to SafeSeaNet, without prejudice to the role of the High Level Steering Group established in accordance with Directive 2002/59/EC;
 - (b) by exploring with competent authorities for the River Information Services System the possibility of sharing information between this system and maritime transport information systems on the basis of the report provided for in Article 15 of Directive 2010/65/EU;

- (c) by facilitating voluntary exchange of best practices in maritime training and education in the Union and by providing information on Union exchange programmes relevant to maritime training while fully respecting Article 166 of the Treaty on the Functioning of the European Union (TFEU).

Article 3

Visits to Member States and inspections

1. In order to perform the tasks entrusted to it and to assist the Commission in fulfilling its duties under the TFEU, and in particular the assessment of the effective implementation of relevant Union law, the Agency shall carry out visits to Member States in accordance with the methodology established by the Administrative Board.

2. The Agency shall inform the Member State concerned in good time of the planned visit, the names of the authorised officials, and the date on which the visit starts and its expected duration. The Agency officials delegated to carry out such visits shall do so on presentation of a decision in writing from the Executive Director of the Agency specifying the purpose and the aims of their mission.
3. The Agency shall carry out inspections on behalf of the Commission as required by binding legal acts of the Union regarding organisations recognised by the Union in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations^{*****}, and regarding the training and certification of seafarers in third countries in accordance with Directive 2008/106/EC.
4. At the end of each visit or inspection, the Agency shall draw up a report and send it to the Commission and to the Member State concerned.

5. Where appropriate, and in any case when a cycle of visits or inspections is concluded, the Agency shall analyse reports from that cycle with a view to identifying horizontal findings and general conclusions on the effectiveness and cost-efficiency of the measures in place. The Agency shall present this analysis to the Commission for further discussion with Member States in order to draw any relevant lessons and facilitate the dissemination of good working practices.

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- * OJ L 129, 29.4.2004, p. 6.
** OJ L 131, 28.5.2009, p 47.
*** OJ L 314, 1.12.2007, p. 9.
**** OJ L131, 28.5.2009, p. 114.
***** OJ L 131, 28.5.2009, p. 57.
***** OJ L 323, 3.12.2008, p. 33.
***** OJ L 255, 30.9.2005, p. 11.
***** OJ L 283, 29.10.2010, p. 1.
***** OJ L 164, 25.6.2008, p. 19.
***** OJ L 389, 30.12.2006, p. 1.
***** OJ L 131, 28.5.2009, p. 11."

(2) In Article 4, paragraphs 3 and 4 are replaced by the following:

- '3. The Administrative Board shall adopt the practical arrangements for the application of paragraphs 1 and 2, including, where appropriate, arrangements regarding consultation with Member States before the publication of information.

4. The information collected and processed in accordance with this Regulation by the Commission and the Agency shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data* and the Agency shall take the necessary measures to ensure the safe handling and processing of confidential information.

* OJ L 8, 12.1.2001, p. 1.

- (3) In Article 5, paragraph 3 is replaced by the following:

- '3. At the request of the Commission, the Administrative Board may decide, with the agreement of and in cooperation with the Member States concerned and with due regard to budgetary implications, including any contribution the Member States concerned may provide, to establish the regional centres necessary in order to carry out, in the most efficient and effective way, some of the Agency's tasks. When taking such a decision, the Administrative Board shall define the precise scope of activities of the regional centre while avoiding unnecessary financial costs and enhancing cooperation with existing regional and national networks.'

(4) In Article 10, paragraph 2 is amended as follows:

(a) point (b) is replaced by the following:

'(b) adopt the annual report on the Agency's activities and forward it each year by 15 June to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States.

The Agency shall forward annually to the budgetary authority all information regarding the outcome of the evaluation procedures;'

(b) point (c) is replaced by the following:

'(c) examine and approve, in the framework of the preparation of the work programme, requests for assistance to the Commission, as referred to in Article 2(2)(d), requests from Member States for technical assistance, as referred to in Article 2(3), and requests for technical assistance, as referred to in Article 2(5) as well as requests for assistance as referred to in Article 2a;

(ca) examine and adopt a multi-annual strategy for the Agency for a period of five years taking the written opinion of the Commission into account;

(cb) examine and adopt the multi-annual staff policy plan of the Agency;

(cc) consider draft administrative arrangements, as referred to in Article 15(2)(ba);'

(c) point (g) is replaced by the following:

'(g) establish the methodology for the visits to be carried out pursuant to Article 3. In the event that the Commission expresses, within 15 days from the date of adoption of the methodology, its disagreement, the Administrative Board shall re-examine and adopt it, possibly amended, in second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States;';

(d) point (h) is replaced by the following:

'(h) perform its duties in relation to the Agency's budget pursuant to Articles 18, 19 and 21 and monitor and ensure adequate follow-up to the findings and recommendations stemming from various audit reports and evaluations, whether internal or external;';

(e) point (i) is replaced by the following:

'(i) exercise disciplinary authority over the Executive Director and the Heads of Department referred to in Article 16;';

(f) point (l) is replaced by the following:

'(l) review the financial execution of the detailed plan referred to in point (k) of this paragraph and the budgetary commitments provided for in Regulation (EC) No 2038/2006 of the European Parliament and of the Council of 18 December 2006 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships*";

(g) the following point is added:

'(m) appoint an observer from amongst its members to follow the selection procedure by the Commission for the appointment of the Executive Director.

* OJ L 394, 30.12.2006, p. 1.'

(5) Article 11 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

'Administrative Board members shall be appointed on the basis of their degree of relevant experience and expertise in the fields referred to in Article 1. The Member States and the Commission shall each strive for a balanced representation between men and women on the Administrative Board.';

(b) paragraph 3 is replaced by the following:

'3. The duration of the term of office shall be four years. The term of office may be renewed.'

(6) In Article 13, paragraph 4 is replaced by the following:

'4. When there is a matter of confidentiality or conflict of interest, the Administrative Board may decide to examine specific items of its agenda without the presence of the members concerned. Detailed rules for the application of this provision shall be laid down in the rules of procedure.'

(7) Article 15 is amended as follows:

(a) in paragraph 2, points (a) and (b) are replaced by the following:

'(a) he/she shall prepare the multi-annual strategy of the Agency and submit it to the Administrative Board after consultation of the Commission at least eight weeks before the relevant Administrative Board meeting, taking into account views and suggestions made by members of the Administrative Board;

(aa) he/she shall prepare the multi-annual staff policy plan of the Agency and submit it to the Administrative Board after consultation of the Commission at least four weeks before the relevant Administrative Board meeting;

- (ab) he/she shall prepare the annual work programme, with an indication of the expected human and financial resources allocated to each activity, and the detailed plan for the Agency's pollution preparedness and response activities, and submit them to the Administrative Board after consultation of the Commission at least eight weeks before the relevant Board meeting, taking into account views and suggestions made by members of the Administrative Board. He/she shall take the necessary steps for their implementation. He/she shall respond to any requests for assistance from a Member State in accordance with Article 10(2)(c);
- (b) he/she shall decide to carry out the visits and inspections provided for in Article 3, after consultation of the Commission and following the methodology for visits established by the Administrative Board in accordance with Article 10(2)(g);
- (ba) he/she may enter into administrative arrangements with other bodies working in the Agency's fields of activities provided that the draft arrangement has been submitted for consultation to the Administrative Board and provided that the Administrative Board does not object within four weeks.;

(b) in paragraph 2, point (d) is replaced by the following:

(d) he/she shall organise an effective monitoring system in order to be able to compare the Agency's achievements with its objectives and tasks as laid down in this Regulation. To this end, he/she shall establish, in agreement with the Commission and the Administrative Board, tailored performance indicators allowing for an effective assessment of the results achieved. He/she shall ensure that the Agency's organisational structure will be regularly adapted to the evolving needs within the available financial and human resources. On this basis the Executive Director shall prepare a draft general report each year and submit it for consideration by the Administrative Board. The report shall include a dedicated section concerning the financial execution of the detailed plan for the Agency's pollution preparedness and response activities and give an update of the status of all actions funded under that plan. He/she shall establish regular evaluation procedures that meet recognised professional standards;';

(c) in paragraph 2, point (g) is deleted;

(d) paragraph 3 is replaced by the following:

'(3) The Executive Director shall, as appropriate, report to the European Parliament and the Council on the carrying out of his/her tasks.

In particular, he/she shall present the state of play with regard to the preparation of the multiannual strategy and the annual work programme.'.

(8) Article 16 is replaced by the following:

'Article 16

Appointment and dismissal of the Executive Director and the Heads of Department

1. The Executive Director shall be appointed and dismissed by the Administrative Board. The appointment shall be made for a period of five years on grounds of merit and documented administrative and managerial competence, as well as documented experience in the fields referred to in Article 1 after hearing the opinion of the observer as referred to in Article 10. The Executive Director shall be appointed from a list of at least three candidates proposed by the Commission after an open competition, following publication of the post in the *Official Journal of the European Union*, and elsewhere, of a call for expression of interest. The candidate selected by the Administrative Board may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members. The Administrative Board shall deliberate on dismissal at the request of the Commission or of one third of its members. The Administrative Board shall take its decisions on appointment or dismissal by a four-fifths majority of all members with the right to vote.

2. The Administrative Board, acting on a proposal from the Commission, taking into account the evaluation report may extend once the term of office of the Executive Director for not more than four years. The Administrative Board shall take its decision by a four-fifths majority of all members with the right to vote. The Administrative Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within a month before the extension of his/her term of office, the Executive Director may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members. If the term of office is not extended, the Executive Director shall remain in office until the appointment of his/her successor.
3. The Executive Director may be assisted by one or more Heads of Department. If the Executive Director is absent or indisposed, one of the Heads of Department shall take his/her place.
4. The Heads of Department shall be appointed on grounds of merit and documented administrative and managerial skills, as well as professional competence and experience in the fields referred to in Article 1. The Heads of Department shall be appointed or dismissed by the Executive Director after having received a positive opinion of the Administrative Board.'

(9) Article 18 is amended as follows :

(a) in paragraph 1, point (c) is replaced by the following:

'(c) fees and charges for publications, training and/or any other services provided by the Agency.';

(b) paragraph 3 is replaced by the following:

'3. The Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following year, on the basis of activity-based budgeting, and shall forward it to the Administrative Board, together with a draft establishment plan.';

(c) paragraphs 7 and 8 are replaced by the following:

'7. The statement of estimates shall be forwarded by the Commission to the European Parliament and the Council (the "budgetary authority") together with the draft general budget of the European Union.

8. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 314 TFEU, together with a description of and justification for any difference between the Agency's statement of estimates and the subsidy to be charged to the general budget.';

(d) paragraph 10 is replaced by the following:

'10. The budget shall be adopted by the Administrative Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly, together with the annual work programme.'.

(10) Article 22 is replaced by the following:

"Article 22

Evaluation

1. At regular intervals and at least every five years, the Administrative Board shall commission an independent external evaluation on the implementation of this Regulation. The Commission shall make available to the Agency any information the latter considers relevant to that evaluation.

2. The evaluation shall assess the impact of this Regulation as well as the utility, relevance, achieved added value and effectiveness of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level. It shall, in particular, address the possible need to modify the Agency's tasks. The Administrative Board shall issue specific terms of reference in agreement with the Commission, following consultations with the parties involved.

3. The Administrative Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission. Both the evaluation findings and recommendations shall be forwarded by the Commission to the European Parliament and the Council and shall be made public. An action plan with a timetable shall be included, if appropriate.';

(11) The following Article is inserted:

'Article 22a

Progress report

By...⁺, and taking into account the evaluation report referred to in Article 22, the Commission shall submit a report to the European Parliament and the Council setting out how the Agency has undertaken the additional responsibilities assigned by this Regulation with a view to identifying further efficiency gains and, if necessary, the case for modifying its objectives and tasks.'

(12) Article 23 is deleted.

⁺ OJ: please insert a date: 5 years after the entry into force of this Regulation.

Article 2
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...

For the European Parliament
The President

For the Council
The President
