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**PROPOSAL**

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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 1 June 2023

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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No. Cion doc.: COM(2023) 270 final

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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector

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Delegations will find attached document COM(2023) 270 final.

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Encl.: COM(2023) 270 final



Brussels, 1.6.2023  
COM(2023) 270 final

2023/0164 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector**

(Text with EEA relevance)

{SEC(2023) 201 final} - {SWD(2023) 145 final} - {SWD(2023) 146 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

This proposal concerns a modification of 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 and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council<sup>1</sup>.

Directive 2009/18/EC (hereinafter the Directive) provides for a system of safety investigations to learn lessons from maritime accidents and to prevent their reoccurrence. Maritime accidents falling within the scope of the Directive are investigated to improve maritime safety and to protect the marine environment.

As part of its regulatory fitness and performance programme (REFIT) and better regulation agenda, the Commission carried out an ex-post evaluation<sup>2</sup> and maritime transport fitness check<sup>3</sup> in 2018. These concluded that, even though the Directive has largely achieved its objectives and provided EU added value, it requires updating and some improvement. The general objective of the revision of the Directive is to improve maritime safety and the protection of the marine environment. The current EU regulatory framework should be updated in order to (i) maintain EU rules where necessary and proportionate; (ii) ensure their correct implementation; and (iii) eliminate any potential overlap of obligations and inconsistencies between related pieces of legislation. The overarching objective is to provide for a clear, simple and up-to-date legal framework that increases the overall level of safety.

For ships engaged in international voyages, which include voyages between Member States, international conventions and certain EU rules apply. The obligation to investigate marine casualties or navigation incidents finds its origin in the United Nations Convention on the Law of the Sea<sup>4</sup> (UNCLOS) that imposes an obligation on the flag State to conduct an investigation.

The International Maritime Organization (IMO) subsequently developed the Casualty Investigation Code<sup>5</sup>. The Code requires a safety investigation to be conducted into casualties involving the total loss of the ship or a death or severe damage to the environment. It also recommends that investigations be carried out into other marine casualties and incidents, by the flag State of a ship involved, if it is considered likely that it would provide information that could be used to prevent future accidents.

EU action in the field of maritime safety both complements and implements the international framework. The transposition of IMO rules into the EU legal system makes these provisions actionable before the European Court of Justice ensuring their uniform enforcement across the EU.

The Directive goes further than the IMO Casualty Code by obliging Member States to set up independent accident investigation bodies ('AIBs') and to stipulate in their national legislation that

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<sup>1</sup> OJ L 131, 28.5.2009, p. 114

<sup>2</sup> SWD(2018) 232 final

<sup>3</sup> SWD(2018) 228 final

<sup>4</sup> [https://www.un.org/depts/los/convention\\_agreements/convention\\_overview\\_convention.htm](https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm)

<sup>5</sup> Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code)

these AIBs are notified of marine casualties and incidents<sup>6</sup>. The AIBs should investigate accidents depending upon their severity, with “very serious marine casualties”<sup>7</sup> requiring an obligatory investigation. The types of vessels covered by the Directive is broader than that covered by the IMO text including fishing vessels of 15 metres in length and over and also pleasure yachts and pleasure craft in certain circumstances. The Directive also provides that a common methodology be followed in the conduct of investigations and specifies the conditions for carrying out parallel/joint investigations. The Directive requires AIBs to publish reports on the investigations carried out (safety investigation reports). They should also notify the Commission of marine casualties and incidents via a database (the European Marine Casualty Information Platform – EMCIP), established and maintained by the European Maritime Safety Agency<sup>8</sup> (EMSA) for this purpose.

The 2018 REFIT and maritime transport fitness check underlined the need to ensure consistency in the regulatory framework across Member States and the effective enforcement of international obligations in a uniform and harmonised way. Shortcomings in the current Directive and its implementation by Member States due to challenges with resources, staffing and expertise were widely reported as problematic.

Apart from the need to update the Directive to take account of legal, environmental and technological changes that have occurred in the time since its adoption, taking account of lessons learnt in its implementation is also necessary. In the ex post evaluation, the non-applicability of the maritime safety *acquis* to a certain category of vessels (fishing vessels) operating in EU waters and the significant safety concerns for this vessel type were also raised.

Considering the results of the ex-post evaluation and the Maritime Transport Fitness Check, and with the general objective of improving safety and environmental protection while simplifying the EU regulatory framework and helping Member States fulfil their international and EU regulatory responsibilities, a proposal to amend Directive 2009/18/EC has been prepared. The specific objectives of its revision are:

- The protection of fishing vessels, their crew and the environment. Smaller fishing vessels of less than 15 metres in length are not included within the current scope of the Directive, meaning that accidents involving fatalities and loss of vessels are not investigated in a systematic and harmonised way across the European Union.
- To clarify definitions and the legal text so that Member States accident investigation bodies investigate all accidents that need to be investigated in a timely and harmonised manner.
- To enhance the capacity of AIBs to conduct (and report on) accident investigations in a timely, expert and independent manner - including on renewable and low carbon fuels and technologies.

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<sup>6</sup> This obligation covers casualties and incidents that involve ships flying the flag of one of the Member States; or occur within Member States' territorial seas and internal waters; or involve other substantial interests of the Member States. The territorial sea, is a belt of coastal waters extending at most 12 nautical miles (22 km) from the baseline (usually the mean low-water mark) of a coastal state. Internal waters are those waters on the landward side of the baseline of a nation's territorial waters. Internal waters can include rivers and canals as well as ports and harbours.(Article 6 of the AI Directive)

<sup>7</sup> As defined by the IMO Code for the Investigation of Marine Casualties and Incidents – referred to in Article 3(2)(b) of the AI Directive .

<sup>8</sup> [www.emsa.europa.eu](http://www.emsa.europa.eu)

- To update a number of definitions and references to relevant EU legislation and IMO Regulations in order to ensure clarity and consistency.

- **Consistency with existing policy provisions in the policy area**

The proposal is fully consistent with Directive 2009/16/EC<sup>9</sup> on port State control and Directive 2009/21/EC<sup>10</sup> on flag State requirements. The three Directives - which are all being amended at the same time - must be coherent with each other and any proposed change to one must take into account the other two Directives and the broader international regulatory environment. The lesson learnt from safety investigations and the safety recommendations emanating therefrom can help flag States and the recognised organisations that act on their behalf to improve the safety profile of the vessels under their responsibility.

- **Consistency with other EU policies**

The proposal forms part of the Commission's REFIT programme and delivers on its Better Regulation agenda by ensuring that the existing legislation is simple and clear, does not create unnecessary burden and keeps pace with evolving political, societal and technological developments. This proposal for an amendment as well as those for the other maritime safety Directives are also part of and have significant interaction with the larger maritime safety *acquis* which includes elements such as the EU vessel traffic monitoring and information system (SafeSeaNet)<sup>11</sup>, the EMSA founding Regulation<sup>12</sup>, the fishing vessel safety Directive<sup>13</sup>, the EU legislation relating to Recognised Organisations<sup>14</sup>, the Marine Strategy Framework Directive<sup>15</sup> and other EU environmental legislation<sup>16</sup>.

This proposal is consistent with and contributes to the EU climate neutrality objective by 2050 as set out in Article 2(1) of Regulation (EU) 2021/1119<sup>17</sup> of the European Parliament and of the Council which establishes the EU framework for achieving climate neutrality.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis of the Amending Directive is Article 100(2) TFEU which provides for measures to improve transport safety and for specific provisions for sea transport.

- **Subsidiarity (for non-exclusive competence)**

As international accident investigation instruments in the maritime transport sector are an exclusive EU competence according to Article 3(2) TFEU, the subsidiarity principle does not apply, either to those

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<sup>9</sup> OJ L 131, 28.5.2009, p.57

<sup>10</sup> OJ L 131, 28.5.2009, p.132

<sup>11</sup> Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system (OJ L 208, 5.8.2002, p. 10)

<sup>12</sup> OJ L 208, 5.8.2002, p. 1

<sup>13</sup> OJ L 34, 9.2.1998, p. 1

<sup>14</sup> Regulation (EC) No 391/2009 on common rules and standards for ship inspection and survey organisations (OJ L 131, 28.5.2009, p.11) and Directive 2009/15/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ L131, 28.5.2009, p.47)

<sup>15</sup> OJ L 164, 25.6.2008, p. 19

<sup>16</sup> Such as Directive 92/43/EEC (the “Habitats Directive”), Directive 2009/147/EC (the ‘EU Birds Directive’), Directive (EU) 2019/904 (Single use Plastics Directive)

<sup>17</sup> OJ L 243, 9.7.2021, p. 1

instruments or to EU rules implementing those agreements. Even if this were not the case, Member States acting individually would not be able to tackle all the identified problems and, if they were to do so, it would lead to fragmentation of legislation and potential distortion of the internal market. To avoid such a fragmented legal framework, there is a need for EU action.

All Member States are concerned by the Directive as flag States, coastal States or substantially interested States.

- **Proportionality**

The proposal has been prepared to keep pace with the latest international developments and to address the results of the REFIT exercises mentioned above. The Commission has also carried out an impact assessment to identify assess and evaluate alternative measures to achieve the same objectives.

The objective of the proposed amendment is to improve maritime safety. This will be achieved by investigating casualties and learning from them to prevent similar accidents from happening in the future. Extending the scope to cover certain types of accidents involving smaller fishing vessels is considered proportionate. The additional costs necessary for AIBs to investigate very serious marine casualties (VSMCs) involving fishing vessels of less than 15 metres seem to be limited, especially, when compared to the potential safety improvements. The amendment will ensure that the current high level of safety is not compromised and should improve safety in the fishing sector.

- **Choice of the instrument**

As only several amendments are to be done with respect to Directive 2009/18/EC, an amending Directive is the most appropriate legal instrument.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

The fitness check showed that the key objectives of the Directive are being met overall and remain highly relevant. Without the Accident Investigation Directive, it is unlikely that the 16 AIBs established since 2009 would have been put in place. Indeed, before 2009 most States primarily conducted investigations for criminal prosecution purposes if they did so at all. The creation of AIBs has given a boost to accident investigations for safety reasons, with an emphasis on independence and the development of safety recommendations for accident prevention purposes. In addition, the evaluation concluded that the Directive provides a consistent framework for investigating maritime accidents and thus ensures that accident investigations are conducted in a uniform and harmonised way throughout the EU.

The obligatory nature of the Directive has led to a harmonised reporting of accidents and incidents, as a standard set of requirements has to be met. The overall conclusion of the evaluation based on the assessment of relevance, effectiveness, efficiency, coherence and EU added value was that the Directive has largely met expectations, achieving EU-wide benefits.

However, shortcomings in the current policy framework due to challenges with resources, staffing and expertise were widely reported as problematic.

- **Stakeholder consultations**

The main consultation activities included:

- Three rounds of interviews with EU-level representatives of key stakeholders organised by the consultant in charge of the external support study, running intermittently from February 2021 to November 2021, to gather specific information, particularly to support and refine the overall problem definition and possible policy options.
- A targeted stakeholder survey organised by the consultant in charge of the external support study, running from June to November 2021, to gather specific information, particularly to refine the problem definition, the baseline and, where possible the assessment of impacts of possible policy measures.
- Additional consultation activities organised by DG MOVE and the consultant in charge of the external support study to gather views from Member States and key stakeholders on the various policy measures, and also to validate the emerging and final results of the support study to the impact assessment aimed at quantifying the impacts. These activities took place during meetings of the EU Sectoral Social Dialogue Committee on maritime transport (16 April 2021, 23 September 2021 and 16 December 2021), the EU Sectoral Social Dialogue Committee on Sea Fisheries (29 January 2021, 8 March 2021 and 16 November 2021), the EU Sector Social Dialogue Committee on ports (19 November 2021), meetings of the Permanent Cooperation Framework of AIBs (10 March 2021, 18 June 2021, 29 August 2021, 22 September 2021 and 7 October 2021), an informal meeting of the EU/EEA Maritime Transport Directors (30 November 2021) and meetings of the of the EU Committee on Safe Seas and the Prevention of Pollution from Ships (17 May 2021 and 11 November 2021). A final validation workshop to validate the conclusions of the support study attended by Member State and industry representatives was also organised (20 January 2022).
- Considering the highly technical nature of the file, no open public consultation was carried out. However, the general public was offered the opportunity to provide any views on this initiative, via an announcement on DG MOVE's webpage and a dedicated functional mailbox. One contribution was received from a shipowner association relating to accident investigation which welcomed the administrative burden reduction and possible support to AIBs from EMSA.

The information collected from stakeholders was key in allowing the Commission to refine the design of the policy options to assess their economic, social and environmental impacts, compare them and determine which option would be likely to maximise the benefits/costs ratio for society and ensure a more effective and efficient mechanism to investigate maritime accidents across the EU. Findings from those processes complemented the desk research carried out as part of the external support study.

- **Collection and use of expertise**

This review builds primarily on the data collected during the 2018 ex post evaluation and the maritime transport fitness check mentioned previously.

In addition to the data gathered and the consultation, the preparation of this proposal required input from technical and legal experts on the concrete formulation of technical definitions and clear legal drafting. This expertise was gathered within the Commission, EMSA and the Permanent Cooperation Framework of AIBs. Details are provided in the staff working document accompanying the proposal.

- **Impact assessment**

The proposal is based on the results of an impact assessment which was informed by a support study carried out by an external consultant having specific knowledge in this area.

The impact assessment examined various policy options for revising the Directive, based on the following guiding principles:

- (1) The need for alignment with international instruments and for clarity on problematic or ambiguous definitions;
- (2) The scope of EMSA support to the Member States in fulfilling their reporting and investigation obligations under the Directive and international law;
- (3) The potential for addressing the specific problem of accidents involving smaller fishing vessels.

These principles are reflected in the policy objectives described below.

Option A proposes several changes to the Directive to improve maritime safety and pollution prevention. Under this option the scope would remain the same and the accident investigation bodies (now renamed ‘marine safety investigation Authorities’ in line with the IMO terminology) would continue to have the flexibility they currently have. On the issue of fishing vessels, this option proposes a non-regulatory measure whereby Member States will be recommended to report on VSMCs. This policy option along with all the others requires a quality management system (QMS) to be put in place to assure each investigation authority’s effective management of resources and the accuracy of safety investigation reports.

Option B seeks to balance greater harmonisation by means of more clearly stated definitions with a limited additional requirement for smaller fishing vessels. On fishing vessels, the Directive would be amended to oblige Member States to report all fatalities and vessel losses involving fishing vessels of less than 15 metres to the EMCIP. The alignment and clarification issues would be addressed by amending the Directive. On assisting Member State investigation authorities with conducting (and reporting on) accident investigations, the supporting role of EMSA is not enlarged beyond what is currently provided for in the existing legislation. The reporting burden on investigation authorities is somewhat lessened by broadening the range of competent authorities that can report to the database.

Option C is the most ambitious in terms of increased administrative and investigatory requirements for the investigation authorities. On fishing vessels, this option will oblige investigation authorities not only to report on fatalities and vessel losses of smaller fishing vessels but also to carry out at least a preliminary assessment to determine if lessons can be learnt and if a full investigation needs to be carried out. The impact assessment concluded that the most effective and hence the preferred policy option is Option C. Although option C has the highest additional costs, when considering costs versus benefits, Option C will have the greatest impact in terms of improving maritime safety.

This proposal is accompanied by an impact assessment report<sup>18</sup>, a draft of which was submitted to the Regulatory Scrutiny Board (RSB) in April 2022. The RSB issued a positive opinion and the impact assessment report was revised in line with the RSB recommendations, the RSB comments are addressed in the staff working document which accompanies this legislative proposal.

- **Application of the ‘one in, one out’ approach**

No additional administrative costs for businesses or citizens are expected.

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<sup>18</sup> SWD(2023)145



- **Regulatory fitness and simplification**

The initiative has a REFIT dimension in terms of alignment and simplification of safety legislation, of improving the safety profile in particular of the small fishing vessel segment and of assisting Member State AIBs in fulfilling their reporting and investigative functions.

In addition, the preferred policy option includes elements of simplification as it will increase the efficiency of the national AIBs by providing clarity on when they need to carry out investigations, AIBs will no longer have to carry out preliminary assessment of serious casualties and the AIBs can delegate to other competent authorities the possibility to input data to the EMCIP database. EMSA's provision of top-up assistance to those AIBs that request operational support should also improve the quality and quantity of investigations carried out as well as increase their harmonisation and standardisation across the EU.

- **Fundamental rights**

The proposal has no consequences for the protection of fundamental rights.

#### **4. BUDGETARY IMPLICATIONS**

The estimated additional annual costs for the EU budget amount to around EUR 1.88 million per annum in 2030 and EUR 1.93 million per annum in 2050. The budget impact of the proposal is described in more detail in the Legislative Financial Statement annexed to this proposal for information. The budget impact of the proposal is already included in the Commission's Proposal for a Regulation of the European Parliament and of the Council on the European Maritime Safety Agency and repealing Regulation (EC) No 1406/2002.

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

#### **5. OTHER ELEMENTS**

- **Monitoring, evaluation and reporting arrangements**

Adequate monitoring and reporting arrangements have been identified. EMSA plays an important role in this process, as the Agency is in charge of the development and operation of electronic data systems for maritime transport.

The implementation can be monitored by means of Commission and/or EMSA monitoring of EMCIP database to verify that investigations are being carried out in a timely and effective manner and that the marine casualty or incident notification data as provided for in Annex II of the Directive and the safety investigation reports are uploaded to the database. EMSA also carries out cycles of visits to Member States to verify operations on the ground as part of EMSA's support role to the Commission<sup>19</sup>. Member States will have to have a quality management system (QMS) to certify its organisation, policies, processes, resources and documentation are appropriate to achieve its objectives. This will have to be certified and subsequently subject to periodic audit. Investigation authorities will have to share with

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<sup>19</sup> EMSA carries out such visits under Article 3 of Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency as part of its core tasks; therefore no additional costs are expected to arise.

Commission/EMSA the results of the annual audits carried out by the accredited body such that the investigation authority can retain its QMS certification.

Given that the full cycle of envisaged EMSA implementation visits is scheduled to last 5 years<sup>20</sup>, it is proposed that the evaluation cycle of the Directive is set at ten-year intervals.

- **Explanatory documents (for directives)**

Explanatory documents are not required as the proposal aims to simplify and clarify the existing regime.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 of the draft amending Directive forms its main part and contains amendments to numerous provisions of Directive 2009/18/EC.

### ***Compliance with IMO Casualty Investigation Code***

A number of definitions and references are updated to take account of changes in the international regulatory environment. Specifically, the reference to the IMO Casualty Investigation Code is updated, a number of definitions found in Article 3 of the Directive which are to be understood in accordance with the definitions contained in the IMO Casualty Investigation Code are also updated and the reference to serious casualty which has been removed from the IMO Casualty Code and referred to in Article 3(3) is deleted. Several other changes are made in the legal provisions following the IMO Casualty Code in particular the change of the title of the “investigative body” to “marine safety investigation Authority”.

The substantive changes to the directive are set out herebelow.

### ***Purpose and scope***

In point 2, Article 2 (d) is deleted, the scope of the Directive is hereby partially extended to all fishing vessels including those of less than 15 meters in length.

### ***Definitions***

Point 3 also update a number of definitions which have been problematic or refer to outdated EU legislation. Firstly, the references to ‘ro-ro ferry’ and ‘high-speed passenger craft’ are updated to take account in changes in EU legislation, the length of a fishing vessel is specified as the length overall in accordance with Article 2 of Regulation (EU) 2017/1130. The issue of non-fatal injury which subsequently results in death some time after the marine occurrence which caused it is also addressed. To provide clear guidance until when an investigation should be started and thereby ensure a harmonised approach across the Union, the Directive is amended to include a clear deadline (i.e. 30 days after the accident occurred, as in other transport modes).

### ***Obligation to investigate and investigation Authorities***

Point 5 makes changes to the obligation to investigate and provides that, in relation to a very serious marine casualty (loss of the vessel and/or a fatality) involving a fishing vessel of less than 15 metres in

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<sup>20</sup> As provided for in the EMSA Methodology for visits to Member States, <http://emsa.europa.eu/implementation-tasks/visits-and-inspections/items.html?cid=89&id=3065>

length, Member States are obliged to at least carry out a preliminary assessment to determine if a safety investigation should be carried out.

Furthermore, as the concept of a serious casualty has been abolished at IMO level, the attendant obligation to carry out a preliminary assessment of such casualties required by the Directive is also abolished. Finally, the Directive is amended to provide guidance in relation to accidents which take place involving ships in port.

Point 8 provides that Member States must establish a quality management system (QMS) for their marine safety investigation Authority. This measure should improve the quality of the accident investigations, the management of available resources having regard to the workload and especially the reports written. A similar obligation exists in relation to the Flag State administration under Article 8(1) of Directive 2009/21/EC on flag state requirements.

### ***European database for marine casualties***

Point 14 relates to the reporting obligations of Member States as regards the European Maritime Casualty Information Platform (EMCIP). There are two changes, firstly it specifies their obligations regarding VSMCs involving fishing vessels of less than 15 metres in length. Secondly, the Directive is adapted so that all marine casualties and incidents other than VSMCs can be notified to EMCIP by a duly designated competent authority of a Member State other than the marine safety investigation Authority. Currently only the marine safety investigation Authority can notify to EMCIP and this is seen as a resource burden by some Member States. In addition, EMSA and the Commission should be able to input data to the EMCIP database. This will free up the investigation authorities to concentrate on their investigative functions and make allowance for the fact that investigation authorities do not always have access to this kind of data management, as the relevant statistics are collected, used and managed by other competent authorities in the same Member State.

### ***Support and training by EMSA***

Point 15 sets out the possibilities for EMSA to provide support to the EU Member States investigation authorities to better discharge their responsibilities under the Directive. Many AIBs lack sufficient resources to have an expert on every specialised discipline. On the basis of this provision EMSA could make available a pool of experts of different disciplines who could be of service to any requesting investigation authority. Similarly, specialised equipment can be very expensive and most AIBs do not have the budget to own such equipment outright. Therefore EMSA could provide specialised tools and equipment, which can be lent or provided to the investigation authorities. This way, the equipment can be centrally sourced instead of every investigation authority having to act. This would provide for Union wide economies of scale.

As regards training EMSA could take a role in raising awareness of developments, disseminating information, and organising discussions and training courses on subjects such as renewable and low carbon fuels, new digital technologies and relevant developments at the IMO level. In addition, EMSA could provide dedicated training on the use of investigative technologies, equipment and on new technologies relating to the developments in maritime transport.

### ***Amending powers***

Point 17 states that while the reference to the IMO Casualty Code refers to the most up to date version this is however subject to the standard non-regression clause. This means that if there are changes at the international level, the standards in the EU instrument are at least maintained at the current level.

***Implementation review and repeal of other EU legislation***

Point 18 provides that the Commission will produce a review of the implementation of the amended Directive 10 years after adoption, this takes account of the time necessary for transposition and the fact that an EMSA review cycle of visits to Member States typically takes no less than 5 years.

Point 19 provides for the repeal of Commission Regulation (EU) No 1286/2011 of 9 December 2011 adopting a common methodology for investigating marine casualties and incidents. The IMO adopted Guidelines to assist investigators in the implementation of the Casualty Investigation Code (Resolution A.1075(28)) in 4 December 2013, which provide a detailed methodology for the investigation of marine casualties and incidents. There is therefore no longer a need for the common methodology set out in Commission Regulation (EU) No 1286/2011.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector**

(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 Committee<sup>21</sup>,

Having regard to the opinion of the Committee of the Regions<sup>22</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2009/18/EC of the European Parliament and of the Council<sup>23</sup> establishes the fundamental principles governing the investigation of accidents in the maritime transport sector and provides for a system of safety investigations. Maritime accidents falling within the scope of that Directive are investigated by independent investigative bodies established in the Member States to improve maritime safety, as well as to protect the marine environment, by learning from past accidents to prevent their reoccurrence in the future.
- (2) Since the entry into force of Directive 2009/18/EC, there have been changes in the international regulatory environment and technological developments. Those changes and developments as well as the experience gained in the implementation of Directive 2009/18/EC should be taken into account.
- (3) Directive 2009/18/EC refers to a number legal texts adopted by the International Maritime Organization (IMO) which have been abrogated, amended or revised since its entry into force. The ‘IMO Code for the Investigation of Marine Casualties and Incidents’ (IMO Resolution A.849(20) of 27 November 1997) which has been revoked by the ‘Code of the International Standards and Recommended practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code)’ (Resolution MSC 255(84) of 16 May 2008)

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<sup>21</sup> OJ C , , p. .

<sup>22</sup> OJ C , , p. .

<sup>23</sup> OJ L 131, 28.5.2009, p. 114

with Resolution A.1075(28) Guidelines to Assist Investigators in the Implementation of the Casualty Investigation Code MSC.255(84)).

- (4) The IMO Casualty Investigation Code introduces new definitions, such as the definition of ‘marine safety investigation Authority’, while others concepts are deleted, such as ‘serious casualty’. Those changes should be incorporated into Directive 2009/18/EC.
- (5) Directive 2009/18/EC also refers to IMO Circular MSC/MEPC. 3/Circ.3 of 2008 which was superseded by Circular MSC/MEPC. 3/circ.4/rev.1 Reports on Marine Casualties and Incidents Revised Harmonized Reporting Procedures of 18 November 2014.
- (6) The IMO Guidelines to Assist Investigators in the Implementation of the Casualty Investigation Code (A.1075(28)) adopted on 4 December 2013 provide practical advice for the systematic investigation of marine casualties and incidents and allow the development of effective analysis and preventive action. Those guidelines should be included in Directive 2009/18/EC.
- (7) Fishing vessels less than 15 metres in length are at present excluded from the scope of Directive 2009/18/EC, therefore the conduct of maritime accident investigations involving such fishing vessels is non-systematic and non-harmonised. Such vessels are more prone to capsizing and members of the crew falling overboard is relatively common. Therefore, there is a need to protect those fishing vessels, their crew and the environment by introducing a preliminary assessment of very serious marine casualties involving fishing vessels less than 15 metres long to determine whether the authorities should open a safety investigation.
- (8) Some definitions provided in Directive 2009/18/EC are not clear. The definition of the length of a fishing vessel should be set out especially when there is a distinction on the approach and the obligations of the marine safety investigation authorities based on the length of the fishing vessel.
- (9) The IMO Casualty Code refers an even or a sequence of events which has occurred ‘directly in connection with the operations of a ship’. This concept is the subject of significant divergence and should be clarified. That divergence impacts on the actions of the accident investigation authorities particularly as regards accident in ports, the possibilities of joint investigations and the gathering of accident and investigation data.
- (10) The IMO Casualty Code provides that when a very serious marine casualty occurs the marine authority is obliged to carry out an investigation. However, there is no guidance on the time within which a death has to take place following the accident so that the death gives rise to a very serious marine casualty and therefore be investigated. Therefore Directive 2009/18/EC should provide such guidance.
- (11) The available staff, as well as the operational resources of the Member States’ marine safety investigation authorities vary distinctly, resulting in ineffective and inconsistent reporting on and investigation of marine casualties. Therefore, the Commission, with the assistance of the European Maritime Safety Agency (EMSA) should provide highly specialised analytical support during an individual investigation (soft skills), as well as analytical tools and equipment (hardware).
- (12) In light of what has been stated, EMSA should organise trainings on specific techniques and on new developments and technologies which can be relevant for accident investigation in the future. Such training should focus, among others, on renewable and low carbon fuels, which are particularly relevant in view of the “Fit for 55 package”, and automation, as well as on the General Data Protection Regulation (GDPR) rules.

- (13) To improve the quality of accident investigations, the Member States should develop a quality management system (QMS) for the marine safety investigation authorities.
  - (14) In order to ensure uniform conditions for the implementation of the provisions of this Directive regarding the list of IMO texts in its scope, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council (<sup>24</sup>).
  - (15) In view of the full monitoring cycle of visits to Member States by EMSA to monitor the implementation of this Directive, the Commission should evaluate the implementation of this Directive no later than [*ten years after its date of entry into force referred to in Article 23*] and report to the European Parliament and the Council thereon. Member States should cooperate with the Commission to gather all the information necessary for the evaluation.
  - (16) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of improving the maritime safety and the protection of the marine environment, to lay down rules on the investigation of accidents in the maritime transport. This Directive does not go beyond what is necessary in order to achieve the objectives pursued in accordance with Article 5(4) of the Treaty on European Union.
  - (17) Directive 2009/18/EC should therefore be amended accordingly,
- HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Amendments to Directive 2009/18/EC**

Directive 2009/18/EC is amended as follows:

- (1) In Article 1, paragraph 2 is replaced by the following:

‘2. Investigations pursuant to this Directive shall not have the aim of determining liability or apportioning blame. However, Member States shall ensure that the marine safety investigation Authority (hereinafter referred to as the ‘investigation authority’) does not refrain from fully reporting the causes of a marine casualty or incident because fault or liability may be inferred from the findings.’
- (2) Article 2 (2) is amended as follows
  - (a) point (b) is replaced by the following:

‘(b) ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts and pleasure craft unless they are used for commercial purposes.’
  - (b) Point (d) is deleted
- (3) Article 3 is replaced by the following:

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<sup>24</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

## **Definitions**

For the purposes of this Directive:

1. ‘IMO Casualty Investigation Code’ shall mean the Code of the international standards and recommended practices for a safety investigation into marine casualty or marine incident annexed to Resolution MSC.255(84) of the IMO Maritime Safety Committee, in its up-to-date version;
2. ‘IMO Guidelines to assist investigators in the implementation of the Casualty Investigation Code’ shall mean the guidelines adopted in the IMO Assembly by Resolution A.1075(28) on 4 December 2013;
3. the following terms shall be understood in accordance with the definitions contained in the IMO Casualty Investigation Code:
  - (a) ‘marine casualty’;
  - (b) ‘very serious marine casualty’;
  - (c) ‘marine incident’;
  - (d) ‘marine safety investigation’;
  - (e) ‘marine safety investigation Authority’;
  - (f) ‘marine safety investigating State’;
  - (g) ‘substantially interested State’;
  - (h) ‘serious injury’;
4. ‘IMO guidelines on the fair treatment of seafarers in the event of a maritime accident’ shall mean the guidelines as annexed to Resolution LEG.3(91) of the IMO Legal Committee of 27 April 2006 and as approved by the Governing Body of the International Labour Organisation in its 296th session of 12 to 16 June 2006;
5. the terms ‘ro-ro ferry’ and ‘high-speed passenger craft’ shall be understood in accordance with the definitions contained in Article 2 of Directive (EU) 2017/2110<sup>25</sup>;
6. ‘Voyage data recorder’ (hereinafter referred to as ‘VDR’) shall be understood in accordance with the definition contained in Resolution MSC.333(90) of the IMO Maritime Safety Committee in its up-to-date version;
7. ‘safety recommendation’ shall mean any proposal made, including for the purposes of registration and control, by:
  - (a) the investigation authority of the State conducting, or leading, the safety investigation on the basis of information derived from that investigation; or where appropriate,

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<sup>25</sup> Directive (EU) 2017/2110 of the European Parliament and of the Council of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC (OJ L 315, 30.11.2017, p. 61).



- (b) the Commission, acting on the basis of an abstract data analysis and the results of safety investigations carried out;
  - 8. 'length of a fishing vessel' shall be understood in accordance with the definition contained in Article 2 of Regulation (EU) 2017/1130<sup>26</sup>;
  - 9. 'fatal injury' means an injury which is sustained by a person in an accident and which results in his or her death within 30 days of the date of the accident.'
- (4) Article 4 is amended as follows:
- (a) in paragraph 1, point (a) is replaced by the following:  
'(a) independent of criminal or other parallel investigations held to determine liability or to apportion blame and that investigation authorities are able to report on the results of a marine safety investigation without direction or interference from any persons, organisations or parties who may be affected by its outcome.'
  - (b) in paragraph 2, point (b) is replaced by the following:  
'(b) coordination of the activities of their respective investigation authorities to the extent necessary to attain the objective of this Directive.'
- (5) Article 5 is replaced by the following:

*Article 5*

**Obligation to investigate**

1. Each Member State shall ensure that a safety investigation is carried out by the investigation authority referred to in Article 8 after very serious marine casualties:
  - (a) involving a ship flying its flag, irrespective of the location of the casualty;
  - (b) occurring within its territorial sea and internal waters as defined in UNCLOS, irrespective of the flag of the ship or ships involved in the casualty; or
  - (c) involving a substantial interest of the Member State, irrespective of the location of the casualty and of the flag of the ship or ships involved.
2. In the case of a fishing vessel of less than 15 metres in length, the investigation authority shall carry out a preliminary assessment of the very serious marine casualty to determine whether or not to conduct a safety investigation.

Where the investigation authority decides not to undertake a safety investigation of a very serious marine casualty involving a fishing vessel of less than 15 metres the reasons for that decision shall be recorded and notified in accordance with Article 17(3).

3. In the decisions referred to in paragraph 2, the investigation authority shall take into account the evidence available as well as the potential for the findings of the safety investigation to lead to the prevention of future casualties and incidents. In the case of any other marine casualty or incident, the investigation authority shall decide whether or not to undertake a safety investigation.

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<sup>26</sup> Regulation (EU) 2017/1130 of the European Parliament and of the Council of 14 June 2017 defining characteristics for fishing vessels (OJ L 169, 30.6.2017, p.1)

4. The scope and practical arrangements for the conduct of safety investigations shall be determined by the investigation authority of the lead investigating Member State in cooperation with the equivalent authorities of the other substantially interested States, in such manner as appears to it most conducive to achieving the objective of this Directive, and with a view to preventing future casualties and incidents.

5. When carrying out safety investigations, the investigation authority shall follow the IMO Guidelines to assist investigators in the implementation of the Casualty Investigation Code. Investigators may depart from these guidelines where this can be justified as necessary, in their professional judgement to achieve the aims of the investigation. The Commission may adapt the guidelines for the purposes of this Directive, taking into account any relevant lessons drawn from safety investigations, in accordance with the procedure referred to in Article 19.

6. When deciding if a marine casualty or incident occurring alongside, moored or in dock, involving shore or port workers, occurred “directly in connection with the operations of a ship” and therefore is subject to a safety investigation, particular consideration shall be given to the involvement and relevance of the ship’s structure, equipment, procedures, crew and ship management to the activity being undertaken.

7. A safety investigation shall be started without delay after the marine casualty or incident occurs and, in any event, no later than two months after its occurrence.

8. If in the course of a marine safety investigation it becomes known or is suspected that an offence is committed under Articles 3, 3bis, 3ter or 3quarter of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988, the investigation authority shall immediately inform the maritime security authorities of the Member State or Member States and of any third country concerned are informed.’

(6) Article 6 is replaced by the following:

*‘Article 6*

**Obligation to notify**

A Member State shall require, in the framework of its legal system, that its investigation authority be notified without delay, by the responsible authorities and/or by the parties involved or both, of the occurrence of all casualties and incidents falling within the scope of this Directive.’

(7) Article 7 is amended as follows:

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

‘The conduct of parallel safety investigations into the same marine casualty or incident shall be strictly limited to exceptional cases. In such cases, Member States shall notify the Commission of the reasons for conducting such parallel investigations. Member States conducting parallel safety investigations shall cooperate with each other. In particular, the investigation authorities involved shall exchange any pertinent information gathered in the course of their respective investigations, in particular in order to reach, as far as possible, shared conclusions.’

(b) the following paragraph 1a is inserted:

‘1a. During the conduct of the marine safety investigation, substantially interested States should assist to the extent practical, the marine safety investigating Member

State(s) with access to relevant information for the marine safety investigation. The investigator or investigators carrying out a marine safety investigation should also be granted access to Government surveyors, coastguard officers, ship traffic service operators, pilots and other marine personnel of the substantially interested State.’

(8) Article 8 is replaced by the following:

*‘Article 8*

**Marine safety investigation Authorities**

1. Member States shall ensure that marine safety investigations are conducted under the responsibility of an impartial, permanent marine safety investigation Authority, endowed with the necessary powers, with sufficient means and financial resources and by suitably qualified investigators, competent in matters relating to marine casualties and incidents to undertake marine safety investigations into marine casualties and marine incidents.

Neither the appropriate appointment of investigators with necessary specialist skills to form part of a marine safety investigation on a temporary basis, nor the use of consultants to provide expert advice on any aspect of a marine safety investigation are precluded.

In order to carry out a safety investigation in an unbiased manner, the investigation authority shall be independent in its organisation, legal structure and decision-making of any party whose interests could conflict with the task entrusted to it.

Landlocked Member States which have neither ships nor vessels flying their flag will identify an independent focal point to cooperate in the investigation pursuant to Article 5(1)(c).

2. The investigation authority shall ensure that individual investigators have a working knowledge of, and practical experience in, those subject areas pertaining to their normal investigative duties. Additionally, the investigation authority shall ensure ready access to appropriate expertise, as necessary.

3. The activities entrusted to the investigation authority may be extended to the gathering and analysis of data relating to maritime safety, in particular for prevention purposes, insofar as these activities do not affect its independence or entail responsibility in regulatory, administrative or standardisation matters.

4. Member States, acting in the framework of their respective legal systems, shall ensure that the investigators of its investigation authority, or of any other investigation authority to which it has delegated the task of marine safety investigation, where appropriate in collaboration with the authorities responsible for the judicial inquiry, be provided with any information pertinent to the conduct of the marine safety investigation and therefore be authorised to:

- (a) have access to any relevant area or casualty site as well as to any ship, wreck or structure including cargo, equipment or debris;
- (b) ensure immediate listing of evidence and controlled search for and removal of wreckage, debris or other components or substances for examination or analysis;
- (c) require examination or analysis of the items referred to in point (b), and have free access to the results of such examinations or analysis;

- (d) have free access to, copy and have use of any relevant information and recorded data, including VDR data, pertaining to a ship, vessel traffic service recordings, voyage, cargo, crew or any other person, object, condition or circumstance;
- (e) have free access to the results of examinations of the bodies of victims or of tests made on samples taken from the bodies of victims;
- (f) require and have free access to the results of examinations of, or tests made on samples taken from, people involved in the operation of a ship or any other relevant person;
- (g) interview witnesses in the absence of any person whose interests could be considered as hampering the safety investigation;
- (h) obtain survey records and relevant information held by the flag State, the owners, classification societies or any other relevant party, whenever those parties or their representatives are established in the Member State;
- (i) call for the assistance of the relevant authorities in the respective States, including flag-State and port-State surveyors, coastguard officers, vessel traffic service operators, search and rescue teams, pilots or other port or maritime personnel;

5. The investigation authority shall be enabled to respond immediately on being notified at any time of a casualty, and to obtain sufficient resources to carry out its functions independently. Its investigators shall be afforded status giving them the necessary guarantees of independence.

6. The investigation authority may combine its tasks under this Directive with the work of investigating occurrences other than marine casualties on condition that such investigations do not endanger its independence.

7. By [*date of transposition*] each Member State shall develop, implement and maintain a quality management system for its investigation authority. Such quality management system shall be certified in accordance with the applicable international quality standards.’

(9) in Article 9 point (a) is replaced by the following:

‘(a) all witness evidence and other statements, accounts and notes taken or received by the investigation authority in the course of the safety investigation;’

(10) Article 10 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall, in close cooperation with the Commission, establish a permanent cooperation framework enabling their respective investigation authorities to cooperate among themselves to the extent necessary to attain the objective of this Directive.’

(b) paragraph 3 is amended as follows:

(a) the introductory paragraph and point (a) are replaced by the following:

‘3. Within the permanent cooperation framework, the investigation authorities in the Member States shall agree, in particular, upon the best modalities of cooperation in order to:’

‘(a) Enable investigation authorities to share installations, facilities and equipment for the technical investigation of wreckage and ship’s equipment and other objects relevant

to the safety investigations, including the extraction and evaluation of information from VDRs and other electronic devices.’

(b) Points (h) and (i) are replaced by the following:

‘(h) promote cooperation with the investigation authorities of third countries and with the international maritime accidents investigation organisations in the fields covered by this Directive;

(i) provide investigation authorities conducting safety investigations with any pertinent information.’

(11) Article 14 is replaced by the following:

#### *Article 14*

### **Accident reports**

1. Safety investigations carried out under this Directive shall result in a published report presented in a format defined by the competent investigation authority and in accordance with the relevant sections of Annex I.

2. Investigation authorities shall make every effort to make the report referred to in paragraph 1, including its conclusions and any possible recommendations, available to the public, and especially to the maritime sector, within 12 months of the date of the casualty. If it is not possible to produce the final report within that time, an interim report shall be published within 12 months of the date of the casualty.

3. The investigation authority of the lead investigating Member State shall send a copy of the final or interim report to the Commission. The investigating authority shall take into account the possible technical observations of the Commission on final reports not affecting the substance of the findings for improving the quality of the report in the way most conducive to achieving the objective of this Directive.’

(12) Article 15 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that safety recommendations made by the investigation authorities are duly taken into account by the addressees and, where appropriate, are given an adequate follow-up in accordance with Union and international law.’

(b) paragraph 2 is replaced by the following:

‘2. Where appropriate, an investigation authority or the Commission shall make safety recommendations on the basis of an abstract data analysis and of the overall results of safety investigations carried out.’

(13) in Article 16, first paragraph is replaced by the following:

‘Without prejudice to its right to give an early alert, the investigation authority of a Member State shall, at any stage of a safety investigation, if it takes the view that urgent action is needed at Union level to prevent the risk of new casualties, inform the Commission without delay of the need to give an early alert.’

(14) Article 17 is amended as follows:

- (a) The following new paragraph 2a is inserted:  
‘2a. Member States shall notify the Commission on all marine casualties and incidents in accordance with the format in Annex II. In the case of fishing vessels of less than 15 metres in length only the reporting of very serious marine casualties is required.’
- (b) paragraph 3 is replaced by the following:  
‘3. The investigation authorities of the Member States shall notify all very serious marine casualties to EMCIP. The Member States may decide upon and nominate the competent national authority or authorities to report on all other marine casualties and incidents. When the Commission is aware of a marine casualty or incident, it shall also report thereon to EMCIP.’

- (15) the following new Article 17a is inserted:

*‘Article 17a*

**Training and operational support**

1. The Commission shall facilitate the development of capacities as well as the sharing of knowledge within and between the investigation authorities through the provision of training on new legal and technological developments, specific techniques and tools and technologies relating to ships, their equipment and operations.
2. Upon request of the investigation authorities of the Member States, and assuming that no conflict of interest arises, the Commission shall provide operational support to these Member States in the conduct of their safety investigations. Such support include the provision of specialised analytical tools or equipment, as well as expertise.’

- (16) Article 19 is replaced by the following:

*‘Article 19*

**Committee procedure**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.’

- (17) in Article 20 the fourth paragraph is replaced by the following:

‘Amendments to the IMO Casualty Investigation Code may be excluded from the scope of this Directive pursuant to Article 5 of Regulation (EC) No 2099/2002.’

- (18) Article 23 is replaced by the following:

*‘Article 23*

**Implementation review**

The Commission shall by *[OP: Please insert a date: ten years from the date of entry into force of this amending Directive]* submit a report to the European Parliament and the Council on the implementation of, and compliance with, this Directive.’

(19) in Article 24, the following paragraph 3 is added:

‘3. Commission Regulation (EU) No 1286/2011 is repealed.’

#### *Article 2*

#### **Transposition**

1. Member States shall adopt and publish, by *[OP: Please insert a date: one year from the date of entry into force of this amending Directive]* the laws, regulations and administrative provisions necessary to comply with this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 3*

#### **Entry into force**

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

#### *Article 4*

#### **Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT 'AGENCIES'

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector

#### 1.2. Policy area(s) concerned

Mobility and Transport – Maritime

#### 1.3. The proposal relates to

- a new action
- a new action following a pilot project/preparatory action<sup>27</sup>
- the extension of an existing action
- a merger of one or more actions towards another/a new action

#### 1.4. Objective(s)

##### 1.4.1. General objective(s)

The general objective of amending Directive 2009/18/EC is to improve maritime safety and improve the protection of the marine environment by contributing towards Sustainable Development Goal (SDG) 3 (“Ensure healthy lives and promote well-being for all at all stages”) and SDG 14 (“Conserve and sustainably use the oceans, seas and marine resources for sustainable development”).

##### 1.4.2. Specific objective(s)

The specific objectives of its revision are to:

Protect fishing vessels, their crew and the environment. Smaller fishing vessels of less than 15 meters in length are not included within the current scope of the Directive. This means that accidents involving fatalities and loss of vessels for this vessel segment are not investigated in a systematic and harmonised way across the European Union;

Clarify definitions and the legal text so that Member States accident investigation authorities investigate all accidents that need to be investigated in a timely and harmonised manner;

Enhance the capacity of accident investigation authorities to conduct (and report on) accident investigations in a timely, expert and independent manner - including as regards renewable and low carbon fuels and technologies.

<sup>27</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.



### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The proposal is expected to provide a harmonised approach to the safety investigations and to thereby improve the quality of the investigations through better training, better coordinated and resourced investigations and the use by Member States accident investigation authorities of a quality management system. The results of investigations are used to make safety recommendations to prevent the reoccurrence of accidents to save lives and to prevent pollution.

The proposal is also expected to increase the protection of fishing vessels, their crew and the environment by leading to a decrease in the lives lost and injuries sustained.

### 1.4.4. *Indicators of performance*

*Specify the indicators for monitoring progress and achievements.*

The effectiveness of the proposed Directive, with respect to the specific objective no. 1, will be determined based on the number of fatalities and very serious injuries, the number of vessels lost and the number of cases of pollution at sea, and their evolution over time submitted in the European Maritime Casualty Information Platform (EMCIP).

The effectiveness of the proposed Directive, with respect to the specific objective no. 2, will be determined based on the data reported to EMCIP, on the horizontal analyses performed by EMSA and the discussions in workshops as well as on the number of infringements procedures in the next years.

The effectiveness of the proposed Directive, with respect to the specific objective no. 3, will be determined based on the horizontal analysis performed by EMSA and on the results of the annual audits of the Quality Management System which will be shared with the Commission.

## 1.5. **Grounds for the proposal/initiative**

### 1.5.1. *Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

EMSA will be required to organise additional trainings in relation to renewable and low carbon fuels (risks, use on board, ship protections, etc.), in support of the initiatives part of the “Fit for 55” package, but also on: human element, conduct of an automated ship, safety analysis (to encourage Member States to better use casualty data), forensic (photos, sampling, etc.), occurrences (fire, navigational accidents, damage to equipment, occupational activities, etc.) and GDPR rules.

EMSA will also provide operational tools and equipment during an individual investigation such as ROV (remotely operator submersible), RPAS (aerial drones), Robots (e.g. to access damaged areas, enclosed spaces, etc.), VDR (voyage data recorder) facilities, software such as MADAS (Marine Accident Data Analysis Suite); ad-hoc resources (scientific laboratories, tank testing); ad-hoc services (3D simulation for fire, loss of containers, etc.). This support will build upon the existing services provided by EMSA in different areas (as seen above aerial drones, submersible drones, satellite imagery training etc.) and will be provided on a first come, first served basis. In the longer term, and depending on experience in implementation, the EMSA resources would be adapted accordingly.

EMSA will also offer highly specialised analytical support during individual VSMC (Very Serious Marine Casualty) Investigations of ‘standard’ and ‘high level’ experts from EMSA,

these could include but are not limited to behavioural analysts, psychologists and other specialists.

By 2025, 2 FTEs will be needed to provide operational and analytical support to the new tasks of EMSA.

- 1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

Reasons for action at European level (ex-ante)

EU action ensures a level playing field for shipowners, ports and between Member States. Harmonisation of investigations at EU level is essential in this respect. Given the international nature of maritime transport and the need for a coordinated and harmonised approach to maritime safety, EU action will avoid the development of a potentially incompatible or sub-optimal patchwork of national measures with differing requirements and targets.

Expected generated Union added value (ex-post)

An EU level intervention has brought benefits which would not have been possible at national level or at IMO level alone. The obligation to create an independent Accident Investigation Body was regarded by the majority of stakeholders as the main added value of the Directive and almost half of EU maritime accident investigation bodies were created as a response to the Directive. The Directive brings EU legislation in line with IMO regulation and goes beyond what is required at IMO level and is world leading in terms of a harmonised reporting of accidents and incidents.

- 1.5.3. *Lessons learned from similar experiences in the past*

Following the 2018 REFIT ex-post evaluation and Maritime Transport Fitness Check, shortcomings of the current policy framework with issues of resources, staffing and expertise have been reported as problematic. Resource constraints limit some Member State Accident Investigation Bodies (AIBs) in discharging their responsibilities in a correct and timely manner. This is particularly the case for those Member States with small fleets and limited maritime transport activity where the establishment of a permanent dedicated AIB was seen as a disproportionate burden. Furthermore, the capacity of Member States to fulfil their international obligations as a flag, port or coastal State in relation to the various Directives is under strain. Resources, staffing and expertise issues were widely reported as problematic for AIBs. The Fitness Check made a number of recommendations relevant to accident investigation including the better use of resources at national and EU level, including the pooling of resources building on the role and support provided by EMSA and exploiting the efficiency gains offered by digitalisation and information sharing.

The results of the ex-post evaluation are reflected in the impact assessment accompanying this initiative as summarised in Table 1.

- 1.5.4. *Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

The proposed revision is a key deliverable of the Communication from the Commission on a Sustainable and Smart Mobility Strategy, which sets out the EU vision for the transport system of the future. The strategy announced that the Commission is planning to initiate a major

review of existing legislation on flag State responsibilities, port State control and accident investigation in 2021 (under Flagship 10 - Enhancing transport safety and security).

The proposed revision will create synergies with other pieces of EU regulatory framework, notably the Directive 2009/16/EC on port State control and Directive 2009/21/EC on compliance with flag State requirements.

The proposal is compatible with the current Multiannual Financial Framework, although it will require reprogramming within Heading 1 as regards the annual contribution to EMSA (budgetary offsetting by a compensatory reduction of programmed spending under CEF Transport (02 03 01)). The budget impact of the current proposal is already included in the budget for the Commission proposal for a Regulation of the European Parliament and of the Council on the European Maritime Safety Agency and repealing Regulation (EC) No 1406/2002.

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

1.5.5. *Assessment of the different available financing options, including scope for redeployment*

The budgetary impact of this initiative refers to the additional resources necessary for the increasing role of EMSA to facilitate the investigation of casualties (i.e. provide highly specialised analytical support during an individual investigation, provide analytical tools and equipment during an individual investigation, share knowledge or organise training on specific techniques/tools and new developments) under the proposed Directive. These are new tasks for EMSA that will become permanent, while existing tasks will not decrease or be partly phased out. The additional need of human resources cannot be met by redeployment, while the additional budgetary needs will be met through offsetting by existing programmes managed by DG MOVE under the current multiannual financial framework.

The increase in appropriations for EMSA will be offset by a compensatory reduction of programmed spending under CEF Transport (02 03 01). The budget impact of the current proposal is already included in the budget for the Commission proposal for a Regulation of the European Parliament and of the Council on the European Maritime Safety Agency and repealing Regulation (EC) No 1406/2002.

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

## 1.6. Duration and financial impact of the proposal/initiative

### limited duration

- Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- Financial impact from YYYY to YYYY

### unlimited duration

- Implementation with a start-up period from YYYY to YYYY [*n.a.*],
- followed by full-scale operation.

## 1.7. Method(s) of budget implementation planned<sup>28</sup>

### Direct management by the Commission through

- executive agencies

### Shared management with the Member States

### Indirect management by entrusting budget implementation tasks to:

- international organisations and their agencies (to be specified);
- the EIB and the European Investment Fund;
- bodies referred to in Articles 70 and 71;
- public law bodies;
- bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;
- bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

### Comments

Management of the proposed Directive will be done overall by the Commission services assisted by the European Maritime Safety Agency as appropriate.

Member States will be required to transpose the provisions of the Directive by the respective deadline.

<sup>28</sup> Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: <https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx>

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

The Commission will be overall accountable for implementing the proposed Directive as well as for reporting to the European Parliament and the Council on the Member States' implementation and compliance.

The Commission and/or EMSA will be monitoring the EMCIP database to verify that investigations are being carried out in a timely and effective manner and that the reports are uploaded to the database, including for fishing vessels below 15 meters for which data and safety gaps are identified. The indicators that will be specifically monitored drawing on EMCIP database will be the number of fatalities and very serious injuries, the number of vessels lost and the number of cases of pollution at sea, and their evolution over time. All these indicators will be monitored by type of vessel involved. The number of safety recommendations published as a result of the investigations and their follow up will also be monitored.

EMSA, on behalf of the Commission, also carries out visits to Member States to verify operations on the ground.

Member States will need to have a Quality Management System to certify its organisation, policies, processes, resources and documentation are appropriate to achieve its objectives. This will have to be certified and subsequently subject to annual audit. AIBs will have to share with Commission/EMSA the results of the annual audits carried out by the accredited body such that the AIB can retain its QMS certification.

EMSA will continue to carry out horizontal analyses, giving an indication of how the legislation is functioning and identifying gaps and what can be done to address them, and report to the Commission and Member States, through among others discussions in workshops.

Lastly, ten years after the end of the implementation date of the legislation, the Commission services should carry out an evaluation to verify to what extent the objectives of the initiative have been reached.

### **2.2. Management and control system(s)**

#### *2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

The Commission will be overall accountable for implementing the proposed Directive as well as for reporting to the European Parliament and the Council on its efficiency and implementation. The Commission will be assisted by EMSA as appropriate in IT services and developing the IT tools necessary for the reporting, monitoring and verification provisions of the proposed Directive, as well as organising trainings. Member States will be required to carry out the transposition of the Directive in their national legislation by the deadline mentioned in the Directive. Enforcement activities will be carried out as part of the existing investigations.

2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

While the Commission will be overall accountable for implementing the proposed Directive as well as for reporting to the European Parliament and the Council on the Member States' implementation and compliance, the European Maritime Safety Agency will be responsible for the performance of its operations and for the implementation of its internal control framework. It will be required to develop IT tools and modules, as well as to provide trainings, and the Member States will be required to carry out investigations and reporting.

EMSA is best placed to carry out reporting and assessment of compliance tasks, as this will be technical work, requiring strong expertise in data management, (particularly also as EMSA manages the EMCIP database) as well as in-depth understanding of complex technical matters related to electronic certificates and training.

Member States are best placed to carry out the enforcement of the proposed Directive, notably by continuing investigating marine accidents and reporting when is necessary.

DG MOVE will apply the necessary controls in line with the supervision strategy adopted in 2017 on the DG's relations with decentralised agencies and joint undertakings. Under the strategy, DG MOVE monitors performance indicators for the implementation of the budget, the audit recommendations and administrative matters. A report is provided by the Agency on a bi-annual basis. The controls performed on the supervision of the Agency as well as on the related financial and budgetary management are in accordance with DG MOVE's Control Strategy, updated in 2022.

The additional resources put at the disposal of EMSA will be covered by EMSA's internal control and risk management system that is aligned with the relevant international standards and includes specific controls to prevent conflict of interests and ensure the protection of whistle-blowers.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

Under the proposed Directive, additional financing will be provided only to EMSA, which will be required to develop IT tools and modules, as well as provide trainings.

EMSA has full responsibility for the implementation of their budget, while DG MOVE is responsible for the regular payment of the contributions established by the Budgetary Authority. The expected level of risk of error at payment and at closure is similar to that attached to the budget subsidies provided to the Agency.

The additional tasks resulting from the proposed revision are not expected to generate specific additional controls. Therefore, the cost of control for DG MOVE (measured against the value of funds managed) is expected to remain stable.

### 2.3. Measures to prevent fraud and irregularities

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

The proposed Directive contains several provisions specifically targeted at preventing fraud and irregularities. Member States will have to have a Quality Management System (QMS) to certify its organisation, policies, processes, resources and documentation are appropriate to achieve its objectives. This will have to be certified and subsequently subject to annual audit. Accident Investigation Bodies (AIBs) will have to share with Commission and/or EMSA the results of the annual audits carried out by the accredited body such that the AIB can retain its QMS certification.

EMSA applies the anti-fraud principles of decentralised EU Agencies, in line with the Commission approach. In March 2021, the Agency adopted an updated Anti-Fraud Strategy, based on the methodology and guidance for anti-fraud strategy presented by OLAF as well as on the Anti-Fraud Strategy of DG MOVE. It provides a framework addressing the issues of prevention, detection and conditions for investigations of fraud at Agency level. EMSA continuously adapts and improves its policies and actions to promote the highest level of integrity of EMSA staff, support effective prevention and detection of fraud risk and establish the appropriate procedures to report and handle potential fraud cases and their outcomes. Furthermore, EMSA adopted in 2015 its Conflict of Interest policy for the Management Board.

EMSA cooperates with the Commission services on matters relating to preventing fraud and irregularity. The Commission will ensure that this cooperation will continue and will be strengthened.

## 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. <sup>29</sup>	from EFTA countries <sup>30</sup>	from candidate countries and potential candidates <sup>31</sup>	From other third countries	other assigned revenue
1	02 10 02	Non-diff.	YES	NO	NO	NO

- New budget lines requested

<sup>29</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>30</sup> EFTA: European Free Trade Association.

<sup>31</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./non-diff.	from EFTA countries	from candidate countries and potential candidates	from other third countries	other assigned revenue
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO



### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	1	Single Market, Innovation and Digital
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European Maritime Safety Agency (EMSA)			Year 2025	Year 2026	Year 2027	Year 2028-2034	TOTAL
Title 1:	Commitments	(1)	0.171	0.342	0.342	2.394	<b>3.249</b>
	Payments	(2)	0.171	0.342	0.342	2.394	<b>3.249</b>
Title 2:	Commitments	(1a)					
	Payments	(2a)					
Title 3:	Commitments	(3a)	0.036	1.637	1.880	13.160	<b>16.713</b>
	Payments	(3b)	0.036	1.637	1.880	13.160	<b>16.713</b>
<b>TOTAL appropriations for EMSA</b>	Commitments	=1+ 1a +3a	0.207	1.979	2.222	15.554	<b>19.962</b>
	Payments	=2+ 2a +3b	0.207	1.979	2.222	15.554	<b>19.962</b>

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

<b>Heading of multiannual financial framework</b>	<b>7</b>	'Administrative expenditure'
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EUR million (to three decimal places)

		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: <.....>									
• Human Resources									
• Other administrative expenditure									
<b>TOTAL DG &lt;.....&gt;</b>	Appropriations								

<b>TOTAL appropriations under HEADING 7 of the multiannual financial framework</b>	(Total commitments = Total payments)								
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EUR million (to three decimal places)

		Year 2025	Year 2026	Year 2027	Year 2028-2034	TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework</b>	Commitments	0.207	1.979	2.222	15.554	<b>19.962</b>
	Payments	0.207	1.979	2.222	15.554	<b>19.962</b>

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

3.2.2. *Estimated impact on EMSA's appropriations*

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Amounts in EUR million (to three decimal places)

Indicate objectives and outputs  ↓			Year N		Year N+1		Year N+2		Year N+3		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL	
	OUTPUTS																	
	Type <sup>32</sup>	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 <sup>33</sup> ...																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
<b>TOTAL COST</b>																		

Where applicable, amounts reflect the sum of the Union contribution to the agency and other revenue of the agency (fees and charges).

<sup>32</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>33</sup> As described in point 1.4.2. 'Specific objective(s)...'

### 3.2.3. Estimated impact on EMSA's human resources

#### 3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places) Where applicable, amounts reflect the sum of the Union contribution to the agency and other revenue of the agency (fees and charges).

	Year <b>2025</b>	Year <b>2026</b>	Year <b>2027</b>	Year <b>2028-2034</b>	<b>TOTAL</b>
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Temporary agents (AD Grades)	0.171	0.342	0.342	2.394	<b>3.249</b>
Temporary agents (AST grades)					
Contract staff					
Seconded National Experts					

<b>TOTAL</b>	<b>0.171</b>	<b>0.342</b>	<b>0.342</b>	<b>2.394</b>	<b>3.249</b>
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The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

Staff requirements (FTE):

	Year <b>2025</b>	Year <b>2026</b>	Year <b>2027</b>	Year <b>2028-2034</b>	<b>TOTAL</b>
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Temporary agents (AD Grades)	2	2	2	2	<b>2</b>
Temporary agents (AST grades)					
Contract staff					
Seconded National Experts					

<b>TOTAL</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>
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The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

EMSA will start preparing the recruitment as soon as the proposal is adopted. The costs are estimated based on the assumption that the 2 FTEs are recruited as of 1st July 2025. So only 50% of the HR costs are needed for the first year.

### 3.2.3.2. Estimated requirements of human resources for the parent DG

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full amounts (or at most to one decimal place)*

		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)	
<b>• Establishment plan posts (officials and temporary staff)</b>							
20 01 02 01 and 20 01 02 02 (Headquarters and Commission's Representation Offices)							
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
10 01 05 01 (Direct research)							
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>34</sup></b>							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the Delegations)							
Budget line(s) (specify) <sup>35</sup>	- at Headquarters <sup>36</sup>						
	- in Delegations						
<b>01 01 01 02</b> (AC, END, INT – Indirect research)							
10 01 05 02 (AC, END, INT – Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>							

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary

<sup>34</sup> AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in Delegations.

<sup>35</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

<sup>36</sup> Mainly for the EU Cohesion Policy Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime Fisheries and Aquaculture Fund (EMFAF).

with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

Description of the calculation of cost for FTE units should be included in the Annex V, section 3.

3.2.4. *Compatibility with the current multiannual financial framework*

- The proposal/initiative is compatible with the current multiannual financial framework.
- The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

The tasks allocated to EMSA will require reprogramming of the budget line for the annual contribution to the Agency (02 10 02) under the current multiannual financial framework. The increase in appropriations for EMSA will be offset by a compensatory reduction of programmed spending under CEF Transport (02 03 01) under the current multiannual financial framework. The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

- The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>37</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

<sup>37</sup> See Articles 12 and 13 of Council Regulation (EU, Euratom) No 2093/2020 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027.



**3.3. Estimated impact on revenue**

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on other revenue

please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>38</sup>						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article .....								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

<sup>38</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.