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Subject: ***Preparation of the Council meeting (Transport, Telecommunications and Energy) on 16 June 2011***

Proposal for a Regulation (EU) [.../....] of the European Parliament and of the Council amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency

- *General approach*

Introduction

1. On 28 October 2010, the Commission transmitted to the Council and the European Parliament the above-mentioned proposal.

Content of the proposal

2. The proposed Regulation aims at extending the European Maritime Safety Agency's (EMSA) tasks to reflect new needs and developments at Union and international level, in particular needs arising from the adoption of the so-called "third maritime package".

3. It also strives to adapt the governance structure of the Agency, in particular in the light of an external evaluation commissioned in 2007.

Work within Council bodies

4. The examination of the proposal by the Shipping Working Party started in November 2010, under the Belgian Presidency. The work has been pursued under the Hungarian Presidency, with a Belgian chair. In line with the Inter-Institutional Approach to Impact Assessment¹, the Shipping Working Party also examined the impact assessment at the first meeting devoted to the proposal.
5. The proposal was the subject of a progress report to the TTE Council on 31 March 2011. Two questions were put to Ministers in order to give some guidance for the examination of the proposal by the Council's preparatory bodies.
6. On 8 June 2011, the draft general approach was examined by Coreper, which was able to solve most of the outstanding issues. However, some delegations still maintain reservations on the text. The changes in the Annex to this report compared to the report to Coreper are indicated in **bold** and ~~strike through~~. They include corrections of a formal nature in recital (12c).

Work within the European Parliament

7. The European Parliament has only recently started the examination of this proposal. A rapporteur was nominated in December 2010 (Mr Fleckenstein, S&D-DE). A first exchange of views in the TRAN committee took place in April 2011.
8. The rapporteur's draft report is expected for June 2011, and the vote in plenary should take place in October or November.

¹ Better Regulation: Inter-Institutional Common Approach to Impact Assessment, doc. 14901/05 JUR 486 COMPET 263.

OUTSTANDING ISSUES

9. The United Kingdom maintains several reservations on the proposal. First and foremost, this delegation has expressed general concerns on the budgetary consequences of the new tasks to be attributed to EMSA, in particular on the 12 new posts to be created according to the Commission proposal (**footnote 23, p. 17, and footnote 28, p. 19**). The United Kingdom considers that the current text of recital (3) on the budgetary aspects does not give delegations sufficient guarantees that the new EMSA tasks will not imply an increase of the Agency's budget. Notably, it argues that the last sentence of recital (3) weakens the text of the recital and should be deleted (**footnote 6, p. 6**).
10. Secondly, the United Kingdom also questions the proposed accrued role of EMSA with respect to research, notably the three posts to be dedicated to that task (**footnote 21, p. 16**).
11. Thirdly, this delegation finds paragraph 2 of Article 2 too broadly formulated (**footnote 18, p. 15**) and has tabled some text proposals to make the provision more precise (**footnote 19, p. 15, and footnote 22, p. 16**).
12. Finally, as regards the establishment of regional centres provided for in Article 5(3), the United Kingdom would like to add a recital stating that general rules should be established for the setting up of such centres, in particular concerning the contribution each concerned Member State could provide (**footnote 39, p. 25**).
13. Germany has a substantial reservation on the whole proposal.
14. Italy has a general scrutiny reservation on the text.
15. Malta maintains a parliamentary scrutiny reservation.

16. The Commission has expressed concerns on certain aspects of the proposal, as modified during the discussions in the Council preparatory bodies. These concerns are reflected in the footnotes of the annexed text. Furthermore, the Commission has announced its intention to make statements, at the time of the adoption of the Regulation, on Article 2(2)(b), on Article 2(4)(cb), on Article 2a(2)(a) and (b) and on Article 2a(2)(f). Finally, the Commission maintains its traditional reservation on the general approach until the European Parliament has finalised its first reading.

CONCLUSION

17. The Council is invited to examine the text as set out in the Annex to this report, to resolve the outstanding issues and to adopt a general approach at its session on 16 June 2011.
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**Proposal for a
REGULATION (EU) [.../....] OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL
amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency
(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure⁴,

Whereas:

- (1) Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002⁵ established a European Maritime Safety Agency (hereinafter the Agency) for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships.

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ L 208 of 5.8.2002, p. 1.

- (2) In accordance with Article 22 of Regulation (EC) No 1406/2002, the Administrative Board of the Agency commissioned an independent external evaluation on the implementation of that Regulation in 2007. Based on this evaluation, it issued recommendations regarding changes to Regulation (EC) No 1406/2002, to the Agency and its working practices in June 2008.
- (3) Based on the findings of the external evaluation, the recommendations by the Administrative Board and the multi-annual strategy, some provisions of Regulation (EC) No 1406/2002 should be clarified and updated. Furthermore, the Agency should receive a number of new core and ancillary tasks reflecting the development of the maritime safety policy at Union and international level. Considerable screening and redeployment efforts are necessary to guarantee cost and budget efficiency. Staffing needs for new core and ancillary tasks should, as **a matter of principle** ~~far as possible~~, be covered through internal redeployment by the Agency. At the same time, the Agency should receive, where appropriate, funding from other parts of the EU budget, in particular from the neighbourhood policy instrument. The delivery of any new core and ancillary tasks by the Agency will be undertaken within the limits of the current Financial Perspective and the Agency's budget without prejudice to the negotiations and decisions on the future multiannual financial framework. **As this Regulation is not a financing decision, the Budgetary Authority should decide on any additional resources for the Agency in the framework of the annual budgetary procedure.**⁶
- (4) Some provisions regarding the specific governance of the Agency should be clarified. Taking into account the special responsibility of the Commission for the implementation of Union policies enshrined by the Treaty, the Commission should provide policy guidance to the Agency in the performance of its tasks while fully respecting the legal status of the Agency and the independence of its Executive Director as established by Regulation (EC) No 1406/2002.

⁶ UK has a reservation on this recital and suggests in particular the deletion of “as a matter of principle” and of the last sentence.

- (4a) Any reference to relevant legal acts of the Union should be understood to refer to acts in the field of maritime safety, maritime security, prevention of, and response to, pollution caused by ships as well as response to marine oil pollution caused by oil and gas installations.
- (4b) For the purposes of this Regulation, "*maritime security*" is to be understood – in accordance with Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security⁷ – as the combined preventative measures to protect shipping and port facilities from threats of intentional unlawful acts. The security objective should be achieved by adopting appropriate measures in the field of maritime transport policy without prejudice to the rules of the Member States in the field of national security, defence and public security, and in combating financial crimes against the State.
- (5) The Agency should act in the interest of the Union. This should include the situation when the Agency is tasked to act outside the territory of the Member States in its fields of competence.
- (5a) The Agency should provide technical assistance to the Member States which should facilitate the establishment of the necessary national capacity to implement the Union *acquis*.
- (5b) The Agency should provide operational assistance to the Member States and the Commission. This should include services such as SafeSeaNet, CleanSeaNet, LRIT Data Centre and Thetis.
- (6) The Agency should enhance its assistance to the Commission regarding research activities related to its field of competences. However, double work with the existing Union research framework should be avoided. In particular, the Agency should not be in charge of the management of research projects.

⁷ OJ L 129, 29.4.2004, p. 6.

- (7) After the expiry of the Union framework for cooperation in the field of accidental or deliberate marine pollution set up by Decision 2850/2000/EC of the European Parliament and of the Council of 20 December 2000⁸, the Agency should continue some of the activities previously carried out under the expired framework by drawing in particular on the expertise within the Consultative Technical Group for marine pollution preparedness and response. The activities of the Agency in this field should not relieve coastal States of their responsibility to have appropriate pollution response mechanisms in place and should respect existing cooperation arrangements between Member States or groups of Member States in this field.
- (8) Recent events highlighted the risks of offshore oil and gas exploration and production activities to maritime transport and the marine environment. The use of the Agency's response capabilities should be explicitly extended to cover response to pollution originating from such activities.
- (8a) The Agency has established and recognised valuable expertise and tools in the fields of maritime safety, maritime security, prevention of and response to pollution caused by ships. This expertise and these tools can be relevant for other EU activities related to the Union maritime transport policy. The Agency should therefore assist the Commission and the Member States upon request in the development and implementation of such EU activities provided that the Agency's Administrative Board has approved this in the context of the Agency's annual work programme. Such activities should be subject to a detailed cost/benefit analysis and should not be detrimental to the Agency's core tasks.

⁸ OJ L 332, 28.12.2000, p. 1.

- (8b) As regards classification societies, most classification societies deal with both seagoing and inland waterway vessels. Based on the Agency's experience with classification societies for seagoing vessels, the Agency could provide relevant information to the Commission with regard to classification societies for inland waterway vessels and thus allow for efficiency gains.
- (8c) As regards the interface between ~~maritime~~ transport information systems ~~and inland waterway transport information systems~~, the possible action by the Agency is limited to the ~~ancillary task to~~ **should** assist the Commission and the Member States by exploring, **with competent authorities for the River Information Services System**, the possibility of sharing information between such systems, ~~without prejudice to the competence of national authorities and international organisations~~.
- (8d) The Agency could assist the Commission and the Member States in the development and implementation of the future EU e-Maritime initiative, which aims at improving the efficiency of the European maritime transport sector by facilitating the use of advanced information technologies.
- (8e) It is recalled that according to the case-law of the Court of Justice, and in order to respect the principle of institutional balance, a power to adopt decisions of general application cannot be conferred on an agency.
- (9) [...]
- (10) [...]

- (10a) When publishing information on port State control in accordance with Directive 2009/16/EC, the Commission and the Agency should build upon the expertise and experience under the Paris Memorandum of Understanding to ensure consistency.
- (10b) The Union has acceded to the following regional organisations, whose activities are also covered by the Agency's objectives: the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention as revised in 1992) (Council Decision 94/157/EC of 21 February 1994⁹); the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention) (Council Decision 77/585/EEC of 25 July 1977¹⁰), and its 1995 revision (approved by Council Decision 1999/802/EC of 22 October 1999¹¹) and to a number of protocols thereof; the Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances (Bonn Agreement) (Council Decision 84/358/EEC of 28 June 1984¹²); the Convention for the protection of the marine environment of the North-East Atlantic (OSPAR Convention) (Council Decision 98/249/EC of 7 October 1997¹³); the Cooperation Agreement for the protection of the coasts and waters of the north-east Atlantic against pollution, signed on 17 October 1990 (Lisbon Agreement) (Council Decision 93/550/EEC of 20 October 1993¹⁴), with its Additional Protocol, signed on 20 May 2008, which have not yet entered into force (Council Decision 2010/655/EU of 19 October 2010¹⁵). The Union is also negotiating accession to the Convention on the Protection of the Black Sea Against Pollution, signed in April 1992 (Bucharest Convention). The Agency should therefore provide technical assistance to Member States and the Commission to take part in the relevant work of these bodies.

⁹ OJ L 73, 16.3.1994, p. 19.

¹⁰ OJ L 240, 19.9.1977, p. 1.

¹¹ OJ L 322, 14.12.1999, p. 32.

¹² OJ L 188, 16.7.1984, p. 7.

¹³ OJ L 104, 3.4.1998, p. 1.

¹⁴ OJ L 267, 28.10.1993, p. 20.

¹⁵ OJ L 285, 30.10.2010, p. 1.

- (10ba) The assistance of the Agency to the Member States and to the Commission with regard to the relevant work of international and regional organisations should be without prejudice to the relationship between these organisations and the Member States resulting from Member States memberships of these organisations.
- (10c) In addition to the aforementioned regional organisations, a number of other regional, sub-regional and bilateral coordination and cooperation arrangements exist with regard to pollution response. When providing operational assistance with regard to pollution response to third countries sharing a regional sea basin with the Union, the Agency should act taking into account these arrangements.
- (10d) The Union shares the following regional sea basins with neighbouring countries: the Mediterranean Sea, the Black Sea and the Baltic Sea. The Agency should provide operational assistance with regard to pollution response to these countries upon request by the Commission.
- (11) [...]
- (12) [...]
- (12a) In order to ensure that the legal acts of the Union in the fields of maritime safety as well as prevention of pollution caused by ships are correctly implemented in practice, the Agency should assist the Commission by carrying out visits to Member States. These visits to the national administrations should allow the Agency to gather all necessary information to present a comprehensive report to the Commission for its further assessment. These visits should be conducted in the spirit of the principles referred to in Article 4(3) of the Treaty on European Union and should be conducted in such a way so as to minimize the administrative burden to the national maritime administrations. Furthermore these visits should be carried out in accordance with a set procedure including standard methodology as adopted by the Administrative Board.

- (12b) Furthermore, the Agency should assist the Commission by carrying out inspections of recognised organisations in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations. These inspections may also take place in third countries. The Commission and the Agency should ensure that the concerned Member States are duly informed. In addition, the Agency should carry out the inspections tasks with regard to the training and certification of seafarers in third countries under Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers, which the Commission has delegated to the Agency. Details of the technical assistance provided by the Agency to the maritime security inspections carried out by the Commission in accordance with Commission Regulation (EC) No 324/2008 of 9 April 2008 laying down revised procedures for conducting Commission inspections in the field of maritime security¹⁶ should not be covered by this Regulation.
- (12bb) In order to ensure a fair and transparent procedure for the appointment of the Executive Director, the selection procedure to be followed should be in accordance with the Commission guidelines for the selection and nomination of Directors for agencies of the EU. These guidelines foresee that all nationals of the Member States of the European Union can submit their application.

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

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

¹⁶ OJ L 98, 10.4.2008, p. 5.

At all stages of the selection procedure and appointment for the post of the Executive Director of EMSA, all parties involved should ensure that the personal data of the candidates are processed as required by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹⁷.

(12c) While the Agency is mainly financed through a contribution from the EU, the Agency has also revenues resulting from fees and charges relating to its services. These fees and charges refer in particular to the operation of the EU LRIT Data Centre and are applied in accordance with the Council ~~Conclusions~~ **Resolutions** adopted on 1 and 2 October 2007 and 9 December 2008 related to the establishment of the EU LRIT Data Centre and in particular ~~to~~ **with** the paragraphs related to the financing of LRIT reports.

(13) [...]

(14) [...]

(15) Regulation (EC) No 1406/2002 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

¹⁷ OJ L 8, 12.1.2001, p. 1.

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

Regulation (EC) 1406/2002 is hereby amended as follows:

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

'Article 1
Objectives

1. This Regulation establishes a European Maritime Safety Agency ('the Agency') for the purpose of ensuring a high, uniform and effective level of maritime safety, maritime security, prevention of, and response to, pollution caused by ships as well as response to marine oil pollution caused by oil and gas installations.
2. To that end, the Agency shall cooperate with the Member States and the Commission and provide them with technical, operational and scientific assistance in the fields mentioned in paragraph 1 within the limits of the core tasks set out in Article 2 and, as and when applicable, the ancillary tasks in Article 2a, in particular in order to help the Member States and the Commission to apply the relevant legal acts of the Union properly. As regards the field of response to pollution, the Agency shall provide operational assistance only upon the request of the affected State(s).
3. [...]

Article 2
Core tasks of the Agency

1. In order to ensure that the objectives set out in Article 1 are met in the appropriate manner, the Agency shall perform the tasks listed in this Article.

- ¹⁸2. The Agency shall assist the Commission:
 - (a) in the preparatory work for updating and developing relevant legal acts of the Union, in particular in line with the development of international legislation;¹⁹

 - (b) in the effective implementation of relevant legal acts of the Union, in particular by carrying-out visits and inspections as referred to in Article 3 of this Regulation and by providing technical assistance to the Commission in the performance of the inspection tasks assigned to it pursuant to Article 9(4) of Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security²⁰. In this regard, it may address suggestions to the Commission for any possible improvements of those legal acts;

 - (c) [...]

 - (d) [...]

 - (e) [...]

¹⁸ UK considers the wording of the whole paragraph too general.

¹⁹ UK suggests the addition of the following text at the end: "without prejudice to the relationship between international organisations and Member States resulting from Member States' membership of these organisations".

²⁰ OJ L 129, 29.4.2004, p. 6.

- (f) in the analysis of ongoing and completed research projects relevant to the objectives of the Agency;²¹
- (g) in the performance of any other task assigned to the Commission in legislative acts of the Union regarding the objectives of the Agency.²²

3. The Agency shall work with the Member States to:

- (a) organise, where appropriate, relevant training activities in fields which are the responsibility of the Member States;
- (b) develop technical solutions, including the provision of relevant operational services, and provide technical assistance, to the building up of the necessary national capacity for the implementation of relevant legal acts of the Union;
- (c) support with additional means in a cost efficient way, through the EU Civil Protection Mechanism established by Decision 2007/779/EC, Euratom, pollution response actions in case of pollution caused by ships as well as marine oil pollution caused by oil and gas installations, when such a request has been presented by the affected Member State under the authority of which the cleaning operations are conducted, without prejudice to the responsibility of coastal States to have appropriate pollution response mechanisms in place while respecting existing cooperation between Member States in this field.

²¹ UK questions the necessity of an accrued role for EMSA in this area and the 3 posts that would be needed. COM, stressing the fact that research is already included in the current Regulation, proposes the following text, which is a slightly modified version of the Commission's initial proposal: "this shall include the substantiated suggestion of possible regulatory follow-up measures resulting from specific research projects and of key themes for further research at Union level".

²² UK considers the provision to be too broad, and suggests the addition of the following text at the end: "notably legislation applicable to classification societies, the safety of passenger ships, as well as that applicable to the safety, training, certification and watchkeeping of ships' crews, including the verification of compliance of third countries with the requirements of the 1978 International Convention on Standards of Training, Certification and Watchkeeping, and of the measures taken to prevent fraud involving certificates of competency".

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

- (a) in the field of traffic monitoring covered by Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring system²⁴, the Agency shall in particular promote cooperation between riparian States in the shipping areas concerned, as well as develop and operate the Long-Range Identification and Tracking of Ships European Data Centre and the Community Maritime Information Exchange System SafeSeaNet as referred to in Articles 6b and 22a of that Directive as well as the International Long-Range Identification and Tracking information data exchange system in accordance with the commitment made in the International Maritime Organisation;

- (b) in the field of the investigation of maritime accidents in accordance with Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector²⁵; the Agency shall, if requested by the relevant Member States and assuming that no conflict of interest arises, provide operational support to these Member States concerning investigations related to serious or very serious maritime accidents and it shall carry out analysis of accident investigation reports with a view to identify added value at Union level in terms of any relevant lessons to be drawn;

²³ UK has a reservation on the budgetary consequences of the proposal.

²⁴ OJ L 208 of 5.8.2002, p.10.

²⁵ OJ L131 of 28.5.2009, p.114.

- (c) in providing objective, reliable and comparable statistics, information and data, to enable the Commission and the Member States to take the necessary steps to improve their actions and to evaluate the effectiveness of existing measures. Such tasks shall include the collection, recording and evaluation of technical data, the systematic exploitation of existing databases, including their cross-fertilisation, and, where appropriate, the development of additional databases. On the basis of the data collected, the Agency shall assist the Commission in the publication of information relating to ships pursuant to Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control²⁶.
- (ca) in improving the identification and pursuit of ships making unlawful discharges in accordance with Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements²⁷;
- (cb) in providing technical assistance necessary for the Member States and the Commission to contribute to the relevant work of the technical bodies of IMO, ILO as far as shipping is concerned, the Paris Memorandum of Understanding on Port State Control and relevant regional organisations to which the Union has acceded, with regard to matters of Union competence.

²⁶ OJ L 131 of 28.5.2009, p. 57.

²⁷ OJ L 255 of 30.9.2005, p.11.

²⁸5. The Agency may, upon the request of the Commission, provide technical assistance, including the organisation of relevant training activities, as regards relevant legal acts of the Union, to States applying for accession to the Union, and, where applicable, to European Neighbourhood partner countries and to countries taking part in the Paris Memorandum of Understanding on Port State Control.

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

²⁸ UK has a reservation on the budgetary consequences of the proposal.

Article 2a
Ancillary tasks of the Agency

1. In addition to the core tasks referred to in Article 2, the Agency shall assist the Commission and the Member States, as appropriate, in the development and implementation of the Union activities as set out in paragraphs 2 and 3 related to the Agency's objectives, insofar as the Agency has established and recognised expertise and tools. The ancillary tasks set out in this Article shall:
 - (a) create substantiated added value,
 - (b) avoid duplication of efforts,²⁹
 - (c) be in the interest of the Union maritime transport policy,
 - (d) not be detrimental to the Agency's core tasks and
 - (e) not infringe upon Member States' rights and obligations, in particular³⁰ as flag states, port states and coastal states.

²⁹ COM would prefer to revert to the former wording "aim at avoiding duplication of efforts".

³⁰ COM would like to delete the words "in particular".

2. The Agency shall assist the Commission:

- (a) in the context of the implementation of the Marine Strategy Framework Directive³¹, by contributing to the objective of achieving good environmental status of marine waters with its shipping related elements and in exploiting the results of existing tools such as SafeSeaNet and CleanSeaNet;
- (b) providing technical assistance in relation to greenhouse gas emissions from ships, in particular in following-up ongoing international developments;
- (c) as concerns the "Global Monitoring for Environment and Security" (GMES), in promoting the use of GMES data and services for maritime purposes, within the GMES governance framework;
- (d) in the development of a Common Information Sharing Environment for the European maritime domain;
- (e) with respect to mobile offshore gas and oil installations, in examining IMO requirements and in gathering basic information on potential threats to maritime transport and the marine environment. This assistance shall not include any inspection activities or any activities specifically related to the exploration or exploitation of mineral resources;
- (f) by providing relevant information with regard to classification societies for inland waterway vessels in accordance with Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels and repealing Council Directive 82/714/EEC³². **This information shall also be part of the reports referred to in Article 3(4) and (5).**

³¹ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive), OJ L 164, 25.6.2008, p. 19.

³² OJ L 389, 30.12.2006, p. 1.

3. The Agency shall assist the Commission and the Member States:

- (a) in the examination of the feasibility and the implementation of policies and projects such as Motorways of the Sea, the European maritime transport space without barriers, including the Blue Belt concept, and e-Maritime, in particular by exploring additional functionalities to SafeSeaNet, without prejudice to the role of the High Level Steering Group established in accordance with Directive 2002/59;
- (b) by exploring **with competent authorities for the River Information Services System** the possibility of sharing information between **this system and** maritime transport information systems ~~and inland waterway transport information systems~~ on the basis of the report provided for in Article 15 of Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC³³.

³³ OJ L 283, 29.10.2010, p. 1.

Article 3³⁴

Visits to Member States and inspections

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

[...]³⁵

2. The Agency shall inform the Member State concerned in good time of the planned visit, the names of the authorised officials, and the date on which the visit starts and its expected duration. The Agency officials delegated to carry out such visits shall do so on presentation of a decision in writing from the Executive Director of the Agency specifying the purpose and the aims of their mission.
3. In addition, the Agency shall carry out inspections on behalf of the Commission as required by legal acts of the Union regarding organisations recognised by the Union in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations³⁶ and the training and certification of seafarers in third countries in accordance with Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers (recast)³⁷.
4. At the end of each visit or inspection, the Agency shall draw up a report and send it to the Commission and to the Member State concerned.

³⁴ COM reservation on the definition of the visits policy by the Administrative Board, which it proposed should be decided through comitology provisions.

³⁵ COM reservation on the deletion of the phrase "The national authorities of the Member States shall facilitate the work of the Agency's staff.", which is already in the current Regulation.

³⁶ OJ L 131 of 28.5.2009, p. 11.

³⁷ OJ L 323 of 3.12.2008, p. 33.

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

1a) In Article 4, paragraphs 3 and 4 are replaced by the following:

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

4. The information collected in accordance with this Regulation by the Commission and the Agency shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data³⁸ and the Agency shall take the necessary measures to ensure the safe handling and processing of confidential information.'

³⁸ OJ L 8, 12.1.2001, p. 1.

2) In Article 5:

(a) paragraph 1, the word “Community” is replaced by the word “Union”;

(b) paragraph 3 is replaced by the following:

3. At the request of the Commission, the Administrative Board may decide, with the agreement of the Member States concerned and with due regard to budgetary implications, including any contribution the Member States concerned may provide, to establish the regional centres necessary in order to carry out, in the most efficient and effective way, some of the Agency's tasks. When taking such a decision, the Administrative Board shall define the precise scope of activities of the regional centre.³⁹

4. [...]'

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

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

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

³⁹ UK suggests adding the following text to the recitals: “Before any regional centres of the Agency are set up, general rules should be established to clarify what requirements need to be met and what contribution the Member State concerned must provide.”

- (ca) examine and adopt a multi-annual strategy for the Agency covering a period of five years ahead taking into account the opinion of the Commission and the views of the representatives of the Member States in the Administrative Board;
 - (cb) examine and adopt the multi-annual staff policy plan of the Agency;
 - (cc) consider draft administrative arrangements, as referred to in Article 15(2)(ba)';
- (b) point (g) is replaced by the following:
- '(g) define a policy for the visits to be carried out pursuant to Article 3. In the event the Commission expresses, within 15 days from the date of adoption of the policy, its disagreement, the Administrative Board shall re-examine the policy and adopt it, possibly amended, in second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States';
- (c) point (i) is replaced by the following:
- '(i) exercise disciplinary authority over the Executive Director and the Heads of Department referred to in Article 16;';
- (d) point (l) is replaced by the following:
- '(l) review the financial execution of the detailed plan referred to in point (k) and the budgetary commitments provided for in Regulation (EC) No 2038/2006 of the European Parliament and of the Council⁴⁰.'

⁴⁰ OJ L 394, 30.12.2006, p. 1.

(e) a new point (m) is added:

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

4) Article 15 is amended as follows:

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

' (a) he/she shall prepare the multi-annual strategy of the Agency and submit it to the Administrative Board after consultation of the Commission at least 8 weeks before the relevant Board meeting, taking into account views and suggestions made by members of the Administrative Board;

(aa) he/she shall prepare the multi-annual staff policy plan of the Agency and submit it to the Administrative Board after consultation of the Commission at least 4 weeks before the relevant Board meeting;

(ab) he/she shall prepare the annual work programme and the detailed plan for the Agency's pollution preparedness and response activities, and submit them to the Administrative Board after consultation of the Commission at least 8 weeks before the relevant Board meeting, taking into account views and suggestions made by members of the Administrative Board. He/she shall take the necessary steps for their implementation. He/she shall respond to any requests for assistance from a Member State in accordance with Article 10(2)(c);

(b) he/she shall decide to carry out the visits and inspections provided for in Article 3, after consultation of the Commission and following the policy for visits established by the Administrative Board according to Article 10(2)(g);

(ba) he/she may enter into administrative arrangements with other bodies working in the Agency's fields of activities provided that the draft arrangement has been submitted for consultation to the Administrative Board and provided that the Board does not object within 4 weeks.'

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

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

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

(d) paragraph 3 is replaced by the following:

'(3) The Executive Director shall, upon invitation by the European Parliament or the Council, report on the carrying out of his/her tasks.'

- 5) Article 16 is replaced by the following:

'Article 16

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

1. The Executive Director shall be appointed and dismissed by the Administrative Board. The appointment shall be made for a period of five years on grounds of merit and documented administrative and managerial competence, as well as documented experience in the fields referred to in Article 1 after hearing the opinion of the observer as referred to in Article 10. The Executive Director shall be appointed from a list of at least three candidates proposed by the Commission after an open competition, following publication of the post in the Official Journal of the European Union, and elsewhere, of a call for expression of interest. The candidate selected by the Administrative Board may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members. The Administrative Board shall deliberate on dismissal at the request of the Commission or of one third of its members. The Administrative Board shall take its decisions on appointment or dismissal by a four-fifths majority of all members with the right to vote.
2. The Administrative Board, acting on a proposal from the Commission, taking into account the evaluation report may extend once the term of office of the Executive Director for not more than three years. The Administrative Board shall take its decision by a four-fifths majority of all members with the right to vote. The Administrative Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within a month before the extension of his/her term of office, the Executive Director may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members. If the term of office is not extended, the Executive Director shall remain in office until the appointment of his/her successor.

3. The Executive Director may be assisted by one or more Heads of Department. If the Executive Director is absent or indisposed, one of the Heads of Department shall take his/her place.
4. The Heads of Department shall be appointed on grounds of merit and documented administrative and managerial skills, as well as professional competence and experience in the fields referred to in Article 1. The Heads of Department shall be appointed or dismissed by the Executive Director after having received a positive opinion of the Administrative Board.'
- 6) In Article 18(1), point (c) is replaced by the following:
 - '(c) fees and charges for publications, training and/or any other services provided by the Agency.'
- 7) Article 22 is replaced by the following:
 - '1. At regular intervals and at least every five years, the Administrative Board shall commission an independent external evaluation on the implementation of this Regulation. The Commission shall make available to the Agency any information the latter considers relevant to that evaluation.
 2. The evaluation shall assess the impact of this Regulation as well as the utility, relevance and effectiveness of the Agency and its working practices. The Administrative Board shall issue specific terms of reference in agreement with the Commission, following consultations with the parties involved.
 3. The Administrative Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission. Both the evaluation findings and recommendations shall be forwarded by the Commission to the European Parliament and the Council and shall be made public. An action plan with a timetable shall be included, if appropriate.'

8) Article 23 is deleted.

[...]

Article 2

Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in all Member States in accordance with the Treaties.

Done at Brussels, [...]

For the European Parliament

The President

[...]

For the Council

The President

[...]