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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	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 - Analysis of the final compromise text with a view to agreement

I. INTRODUCTION

1. The Commission submitted this legislative proposal to the European Parliament and to the Council on 1 June 2023 as a part of the Maritime Safety Package¹.
2. The proposal concerns the update of the mandate of the European Maritime Safety Agency (EMSA) to better reflect the new tasks of the Agency in the areas of sustainability, decarbonisation, digitalisation, surveillance and maritime awareness.
3. Due to the substantial number of changes, it is proposed to repeal Regulation (EC) No 1406/2002² ('the Founding Regulation') and to replace it by a new legal act.

¹ 10160/23

² Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

4. The main objectives of the revision are to:
- better anchor and reflect the current tasks and objectives of the Agency so that it is legally mandated to fulfil these and support the Member States and the Commission with the necessary technical, operational and scientific assistance to ensure maritime safety and security, and the green and digital transition of the sector.
 - ensure that EMSA’s mandate is future proof by allowing enough flexibility to incorporate new tasks that address the evolving needs of the maritime sector; and
 - ensure that the Agency has adequate human and financial resources to fulfil its role.
5. The proposal was not accompanied by an impact assessment. However, it is complemented by a Commission Staff Working document, containing elements such as a description of current tasks and proposed expanded tasks, cost estimates and a summary report on the public consultation³.
6. On 20 September 2023, the European Economic and Social Committee adopted its opinion on the proposal⁴. On 23 June 2023, the European Committee of the Regions decided not to issue an opinion.
7. The Parliament, towards the end of its 9th term, adopted its first reading position on 12 March 2024 by 570 votes in favour, 20 against and 14 abstentions.
8. The Council agreed on a general approach on 18 June 2024.

³ 10133/23 ADD 1

⁴ OJ C, C/2023/873, 8.12.2023.

II. NEGOTIATIONS WITH THE EUROPEAN PARLIAMENT

9. At the beginning of the 10th parliamentary term, the European Parliament's Committee on Transport and Tourism (TRAN) appointed Mr Sérgio Humberto (EPP, Portugal) as rapporteur on 3 September. The TRAN Committee decided on 7 October 2024 to enter into interinstitutional negotiations.
10. An opening trilogue was held on 19 November 2024. The co-legislators agreed to start negotiations and granted a broad mandate to the technical level.
11. Between 11 December 2024 and 6 May 2025 there were 15 technical meetings organised to prepare the next trilogue. During this period the Shipping Working Party was informed almost on a weekly basis of the progress of negotiations and examined numerous compromise proposals and drafting suggestions that were prepared in the technical meetings with the Parliament.
12. On 14 May 2025, the Committee of Permanent Representatives gave the Presidency a comprehensive mandate in view of the trilogue on 20 May.

III. MAIN ELEMENTS OF THE FINAL COMPROMISE TEXT

13. Several outstanding issues remained for the trilogue, and the compromises reached on those points, as well as the final articulation of this compromise package are presented below.

14. In respect to the ‘technical part’ of the Regulation, the most difficult discussions focused on the issue of NOx. The Parliament noted that there are several pieces of legislation recently adopted which mention NOx emissions from ships (such as *FuelEU Maritime*⁵ or *MRV*⁶) and for this reason insisted that the Agency should have a clear legal base allowing it to assist the Commission and Member States in this area. However, since currently there are no obligations under EU law to develop "operational tools and services on the monitoring and collection of data in relation to nitrogen oxides (NOx)", the Presidency successfully argued in favour of retaining the general approach on this issue in Article 5(7). Given the political importance that the Parliament is attaching to this, and only as a part of the final package, the Presidency agreed to a more neutral wording in recital 25. The text no longer includes a specific reference to ‘NOx emissions from ships’, which was replaced by a more general reference to ‘air pollution’. This is fully in line with one of the main objectives of the Agency, as defined in Article 2, namely to work for “the prevention of and response to pollution caused by ships”. The reference to ‘air pollution’ in this recital is therefore not creating any new competences for the Agency and is in line with the articles.
15. For all other outstanding issues in the technical part (Articles 1 to 13), the compromise proposals prepared at technical level were confirmed during the trilogue, fully in line with the mandate:
- a) the safeguard relative to the potential impact of the Agency’s tasks on rights and responsibilities of Member States was kept in Article 1, para (4).
 - b) the references to alternative fuels in Articles 4 and 6 are limited to elements that are already included in existing legislation (*FuelEU Maritime*).

⁵ Regulation (EU) 2023/1805 of the European Parliament and of the Council of 13 September 2023 on the use of renewable and low-carbon fuels in maritime transport, and amending Directive 2009/16/EC (*FuelEU Maritime*)

⁶ Regulation (EU) 2023/957 of the European Parliament and of the Council of 10 May 2023 amending Regulation (EU) 2015/757 in order to provide for the inclusion of maritime transport activities in the EU Emissions Trading System and for the monitoring, reporting and verification of emissions of additional greenhouse gases and emissions from additional ship types (*MRV Regulation*)

- c) references to the MLC Convention⁷ limited to elements that are already included in existing legislation, namely Port State Control directive (Recital 14 and Article 5(9)).
- d) there is no direct reference to the concept of ‘MASS’ in the articles, while allowing the Agency to assist in the identification of risks related to the ‘development of technologies with advanced automation’ (Recital 19b and Article 5(8)).
- e) the new tasks introduced in the *general approach* related to restrictive measures (Article 8(4)(da)), oil and chemical pollution response (Article 5(1a)), recycling facilities (Article 10(3a)) were kept.
- f) there is only a limited reference to fishing gear in Recital 19b, but no provisions in the operative part of the text.
- g) a clarification was included in Article 10(1) on the fact that EMSA visits to Member States will only focus on the implementation of relevant Union law in the areas of *maritime safety and pollution prevention* and subject to the condition that the Commission delegates such a task to the Agency.

16. On the ‘governance part’ of the text (Articles 14 to 45), the most difficult discussions concerned the number of Commission representatives in the Management Board, the alert/warning system on Agency decisions contrary to the Framework Financial Regulation or the Staff Regulations and the issue of regional centres.
17. After extensive discussions, the Parliament finally decided to withdraw their request to have two observers in the Management Board of the Agency and, together with the Commission, argued strongly in favour of keeping the current number of Commission representatives in the Management Board (four). They also agreed that, if the Commission is opposing a Management Board decision with potential implications on the implementation of the Framework Financial Regulation or the Staff Regulations, the Board would still be able to adopt that decision with a four-fifths majority of the Member States, and not unanimity, as they had insisted until now.

⁷ Maritime Labour Convention, 2006, as amended, (MLC, 2006)

18. As anticipated, both the Commission and the Parliament opposed strongly the Council position in respect to the possibility of setting up regional centres, underlining that such a possibility already exists in current regulation. As a part of the final compromise package, and in order to ensure that other important elements for the Council would be kept in the text, the Presidency agreed to maintain this element in the regulation. There are several safeguards in place to ensure the concerns of Member States on possible financial implications are properly considered: any decision to create regional centres can only be taken by the Management Board, at the request of the Commission, and ‘with due regard to budgetary implications’. Moreover, such regional centres can be created only if this is necessary for the Agency to carry out its tasks.
19. With these limited concessions, the Presidency managed to secure the most important positions of the Council:
- a) the deletion of the provisions concerning the Executive Board
 - b) the deletion of the provisions concerning the fees (Articles 33 and 34).
 - c) adding the ‘geographical balance’ criterion for the selection of the executive director
 - d) keeping the voting rules as agreed in the *general approach* (except for the majority needed for the appointment of the executive director, which is now changed from a four-fifths majority to a two-thirds majority).
 - e) creating a mechanism allowing one third of the voting members of the Management Board to propose that the executive director would be removed from office.

IV. CONCLUSION

20. The Presidency invites the Committee of Permanent Representatives to analyse the compromise text resulting from the final trilogue, as set out in the Annex, with a view to agreement.
 21. Once the Chair of the European Parliament's TRAN Committee will have sent a letter to the Chair of the Committee of Permanent Representatives, confirming that the provisional agreement is also acceptable for the European Parliament and that no amendments will be proposed by the European Parliament at 2nd reading, the Council will be invited to adopt the new *Regulation on the European Maritime Safety Agency and repealing Regulation (EC) No 1406/2002*.
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2023/0163 (COD)

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

(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 Committee⁸,

~~Having regard to the opinion of~~**After consulting** the Committee of the Regions⁹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) A number of legislative measures have been adopted ~~at~~**by** the Union in order to enhance maritime safety and security, to promote the sustainability, by also preventing pollution, and the decarbonisation of shipping, and to facilitate the exchange of information and the digitalisation of the maritime sector. In order to be effective, such legislation should be

⁸ OJ C-, C/2023/873, 8.12.2023, p. -

⁹ OJ C-, , p. -

applied in a proper and uniform manner throughout the Union. That would ensure a level playing field, reduce the distortion of competition resulting from the economic advantages enjoyed by non-complying ships and would reward the serious maritime players.

- (2) The pursuit of those goals requires substantial technical work led by a specialised body. That is why it was necessary, as part of the second ‘Erika package’ in 2002, to establish, within the existing institutional framework and with respect for the responsibilities and rights of the Member States as flag, port and coastal States, a European agency for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships.
- (3) Regulation (EC) No 1406/2002 of the European Parliament and of the Council¹⁰ established the European Maritime Safety Agency (‘the Agency’) in order to assist the Commission and the Member States with the effective implementation at the Union level of the legislation in the areas of maritime safety and pollution prevention through appropriate visits to Member States for the monitoring of the relevant legislation and, **upon the request of the Member States, with their agreement and in accordance with their needs**, the provision of training and capacity building.
- (4) Following the establishment of the Agency in 2002, the Union legislation in the areas of maritime safety, sustainability and pollution prevention and maritime security expanded significantly resulting in five amendments to the Agency’s mandate.
- (5) Since 2013 the Agency continued to expand significantly its tasks either through the activation of relevant ancillary tasks prescribed in Article 2a of Regulation (EC) No 1406/2002 or through requests for technical assistance to the Commission and the Member States especially in the area of decarbonisation and digitalisation of the maritime

¹⁰ Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

sector. In addition, amendments to Directives 2005/35/EC¹¹, 2009/16/EC¹², 2009/18/EC¹³ and 2009/21/EC¹⁴ of the European Parliament and of the Council have a direct impact on the tasks of the Agency. Those Directives provide in particular for the performance of tasks by the Agency relating to ship source pollution, the port State control regime at the Union level, the Member States activities concerning the investigations related to maritime accidents in Union waters and the obligations of the Member States as flag States.

- (6) In addition, the ~~administrative and financial~~ governance of the Agency needs to be aligned to the inter-institutional agreement on the governance of decentralised agencies¹⁵ and the framework financial regulation for the decentralized bodies of the Union¹⁶.
- (7) Due to the substantial number of changes in view of the above developments, it is appropriate to repeal Regulation (EC) No 1406/2002 and replace it by a new legal act.
- (8) The Agency was initially established with the objective of contributing to the establishment of a high level of maritime safety across the Union while also assisting the pollution prevention from ships and later also from oil and gas installations. While ~~these~~ those objectives were further strengthened with the addition of promoting maritime security, the Agency's focus, during recent years, on support to regulatory developments in the area of decarbonisation and digitalisation of shipping merit the addition of those areas in the overall objectives of the Agency enabling it to contribute to the goals of the twin, green and digital, transition of the industry. Likewise, the crucial role of the Agency in the

¹¹ 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, including criminal penalties, for pollution offences (OJ L 255, 30.9.2005, p. 11).

¹² Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

¹³ 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 (OJ L 131, 28.5.2009, p. 114).

¹⁴ Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ L 131, 28.5.2009, p. 132).

¹⁵ https://european-union.europa.eu/system/files/2022-06/joint_statement_on_decentralised_agencies_en.pdf

¹⁶ Commission Delegated Regulation (EU) 2019/715– of 18 December 2018 on the framework financial Regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council, (OJ L 122, 10.5.2019 p. 1).

provision of a maritime awareness picture in the sea, through satellite images and the operation of remotely piloted aircraft systems, justifies the addition of a relevant overall objective for the Agency.

- (9) These objectives should define the areas of the Agency's engagement in supporting the Commission and the Member States with technical and operational assistance in order to implement the Union's policies in the maritime domain.
- (10) For the proper achievement of ~~these~~**those** objectives, it is appropriate that the Agency carries out specific tasks in the area of maritime safety, **environmental** sustainability, decarbonisation of the maritime sector, maritime security and cybersecurity, maritime surveillance and maritime crises and the promotion of the digitalisation and facilitation of exchanges of data in the maritime domain. **In order to focus on specific challenges and to warrant the cost-efficiency of the tasks the Agency is carrying out, the Management Board has the right to prioritize certain tasks and activities in the annual and multiannual planning.**
- (11) In addition to the specific tasks, the Agency should provide horizontal, technical support, upon request by the Commission or the Member States, for the implementation of any task that falls under the remit of its competences and objectives, stemming from future needs and developments at the Union level. Such additional tasks shall be subjected to a consideration of the available human and financial resources, which the Management Board of the Agency should take into account before deciding to include them in the Single Programming Document of the Agency as part of its annual or multiannual work program. This is necessary to ensure that certain tasks which constitute the core of the Agency could be prioritised if needed.
- (12) The Agency is at the forefront of the technical expertise in the areas of its competence and thus it should provide training and capacity building activities to the Member States **upon their request, with their agreement and in accordance with their needs and use**~~with the development of common core curricula courses and the use of~~ the most technologically advanced tools in their delivery.
- (13) This technical expertise of the Agency should be further cultivated by conducting research in the maritime field and contributing to the relevant Union's activities in the area. The Agency should contribute **in close cooperation with the Management Board** with a

proactive approach to the objectives of enhancing maritime safety, security, decarbonisation of shipping and prevention of pollution by ships. In this regard, the Agency could ~~issue~~**propose to the Commission** relevant non-binding guidance, recommendations or manuals that could assist the Commission, the Member States and/or the maritime industry in attaining these objectives.

- (14) As regards maritime safety, the Agency should develop a proactive approach in determining safety risks and challenges on the basis of which it should— present to the Commission every three years a report on the progress on maritime safety. Moreover, the Agency should continue assisting the Commission and the Member States in the implementation of the relevant Union legislation, especially in the areas of flag and port State obligations, the accident investigation of marine accidents, the passenger ship safety legislation, Recognised Organisations and marine equipment. ~~Finally~~**Recognising the evolving nature of maritime safety**, the Agency ~~should have a proactive role in assisting the deployment of~~**could, upon prior approval by the Management Board, support the Commission and the Member States in emerging areas related to maritime autonomous and automated surface ships while also****safety, without prejudice to the competences of Member States in those areas.** It is **also** important to collect further ~~data~~**statistics** in the area of the training and certification for seafarers and, **upon the request of the Management Board, on the implementation of relevant international conventions regarding the onboard working and living conditions of seafarers including, as appropriate, the Maritime Labour Convention (MLC, 2006), with the aim of assisting in improving the attractiveness of the seafaring profession and developing appropriate strategic responses to recruit and retain seafarers in activity. Special attention should be given to the work already carried out by international organisations, in order to avoid duplication.**
- (15) Since the last substantial amendment of the Regulation in 2013, there have been significant legislative developments in the maritime sector with regards to sustainability **such as pollution prevention and response, environmental protection and decarbonization.** In addition to the tasks that the Agency's mandate covered until now, such as the prevention of pollution from ships and oil and gas installations, mainly through the operation of CleanSeaNet, the Agency should continue assisting the Commission in the implementation

of Directive (EU) 2019/883 of the European Parliament and of the Council¹⁷ by reflecting this task in its updated mandate. Moreover, there is an increased need for the Agency to continue assisting in the implementation of the shipping related elements of Directives 2008/56/EC¹⁸ and (EU) 2016/802¹⁹ of the European Parliament and of the Council. ~~Those two areas together with the engagement of the Agency in the collection, analysis and sharing of data in relation to nitrogen oxides (NOx) emissions from ships are of importance for promoting sustainability in the maritime sector for which The Agency~~ should deliver a report on the progress made every three years. **Recognising the evolving nature of the sector, the Agency could, upon prior approval by the Management Board, support the Commission and the Member States in emerging areas related to environmental protection and air pollution, without prejudice to the competences of Member States in those areas.**

- (15a) **In the context of the Agency’s assistance to the Commission and Member States in the implementation of Directive 2008/56/EC of the European Parliament and of the Council (Marine Strategy Framework Directive), the Agency should, where appropriate, conduct further research in issues related to obtaining a good environmental status of marine waters, spills of plastic pellets and underwater radiated noise.**
- (16) In the area of decarbonisation of the shipping sector, efforts to limit global maritime emissions through the International Maritime Organisation (IMO) are under way and should be encouraged, including the rapid implementation of the ~~initial~~**revised** IMO Strategy on Reduction of Greenhouse Gas Emissions from Ships, adopted in 2018. ~~Discussions are undergoing on the means to implement in practice such ambition, including on a revision of the initial strategy~~**2023**. At the Union level, a set of policies and ~~legislative proposals~~**legislation** to support the decarbonisation and further promote the

¹⁷ Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC (OJ L 151, 7.6.2019, p. 116).

¹⁸ 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).

¹⁹ Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (OJ L 132, 21.5.2016, p. 58).

sustainability of the maritime sector has been developed, as reflected in particular in the European Green Deal, the Sustainable and Smart Mobility Strategy, the “Fit for 55” package and the Zero Pollution Strategy. As a result, the need to reduce greenhouse gas emissions from the maritime sector should be reflected in the mandate of the Agency.

- (17) In this regard, while the Agency should continue assisting the Commission and the Member States in the implementation of Regulation (EU) 2015/757 of the European Parliament and of the Council²⁰ it should further assist in the implementation of the new regulatory measures to decarbonise the shipping sector, as stemming from the Fit for 55 legislative package, such as the Regulation ~~[-.]~~**(EU) 2023/1805** on the use of renewable and low-carbon fuels in maritime transport²¹ and the shipping-related elements of Directive 2003/87/EC of the European Parliament and of the Council²² establishing a scheme for greenhouse gas emission allowance trading within the Community. **That includes monitoring and reporting on the impacts of EU ETS Maritime and FuelEU Maritime on port traffic, port evasion and traffic shift to transshipment ports in third countries, at the detriment of EU ports.** The Agency should continue to be at the forefront of expertise at Union level to assist in the transition of the sector into renewable and low carbon fuels by conducting research **relevant for the implementation and development of Union legislation** ~~and providing guidance on the~~ uptake and deployment of sustainable alternative sources of power for ships, ~~including~~**such as zero emission technologies, onshore power supply to ships, or solar or wind-assisted propulsion, as defined in FuelEU Maritime,** and in relation to the deployment of energy efficiency ~~and wind propulsion assistance~~ solutions, **such as speed optimisation.** In order to monitor progress in the area of decarbonisation of the shipping sector, the Agency should report to the

²⁰ Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (OJ L 123, 19.5.2015, p. 55).

²¹ ~~Directive 2003/87/EC~~**Regulation (EU) 2023/1805** of the European Parliament and of the Council of 13 October 2023 ~~establishing a system for greenhouse gas emission allowance trading within the Union~~**September 2023 on the use of renewable and low-carbon fuels in maritime transport,** and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32)**2009/16/EC (OJ L 234, 22.9.2023, p. 48):**

²² **Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).**

Commission on the greenhouse gas reduction efforts and any recommendations that might have every three years.

- (18) In the area of maritime security, the Agency should continue to provide technical assistance to the Commission inspections in the framework of Regulation 725/2004 of the European Parliament and of the Council ²³ on enhancing ship and port facility security. Given that the number of ~~cybersecurity~~**cyber security** incidents in the maritime sector has gone up significantly in recent years, the Agency should assist Union efforts to **prevent cyber security incidents and enhance cyber resilience**~~against cybersecurity incidents~~ in the maritime sector by facilitating the exchange of best practices and information on cyber security incidents between the Member States.
- (19) The Agency should continue to host the vessel monitoring and information system established under Directive 2002/59/EC of the European Parliament and of the Council²⁴ together with other systems underpinning the establishment of a maritime awareness picture. In this regard, the Agency should continue to play a vital role in the management of the maritime security component of Copernicus programme and should continue making use of available state-of-the-art technology, such as remotely piloted aircraft systems providing to Member States and other Union bodies a useful tool for surveillance and monitoring. In addition to these services, the Agency has demonstrated its strategic role in providing maritime situational awareness supporting various crises, such as the COVID-19 and Russia's war of aggression against Ukraine. As a result, the Agency should operate a centre, open 24 hours per day and 7 days per week, which should assist the Commission and the Member States with such emergency situations.
- (19a) **The Union is facing new geopolitical challenges, resulting in additional threats to maritime safety and the marine environment. The Agency's existing capacities for providing maritime situational awareness, including surveillance of ships' movements, should support coastal Member States through, inter alia, the monitoring and notification of suspicious ship-to-ship transfers and incidents of illegally**

²³ Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security, OJ L 129 of 29.4.2004, p. 6

²⁴ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p. 10).

interfering with, switching off or otherwise disabling of the shipborne AIS, and facilitating the exchange of information based on the Union Maritime Information and Exchange System ('SafeSeaNet'), which enables the receipt, storage, retrieval and exchange of information for the purpose of maritime safety, port and maritime security, marine environment protection and the efficiency of maritime traffic and maritime transport. This would support coastal Member States to address the challenges posed by the "dark fleet" or "shadow fleet", as defined in IMO Assembly resolution A.1192(33).

- (19b) **As part of the Agency's task to provide maritime situational awareness and analytical data, it should support Member States, the Commission and Union bodies, as appropriate, in monitoring ship movements, including for ships using technologies with advanced automation, and hazards to navigation. Such hazards to navigation, which may also have an environmental impact, could include for example containers lost and drifting at sea, as well as larger pieces of lost or discarded fishing gear.**
- (20) Digitalisation of data is part of technological progress in the area of data collection and communication with a view to helping to bring down costs and making efficient use of human resources. The deployment and operation of Maritime Autonomous Surface Ships (MASS) and the digital and technological developments provide a wide range of new opportunities in terms of data collection and management of integrated systems. This creates opportunities for the potential digitalisation, automation and standardisation of several processes, which would allow for the facilitation of safety, security, sustainability and efficiency of maritime operations, including surveillance mechanisms, at Union level, reducing in parallel the administrative burden to the Member States. In this regard, the Agency should, among others, facilitate and promote the use of electronic certificates, the collection, recording and evaluation of technical data, the systematic exploitation of existing databases, including their cross-fertilisation through the use of innovative IT and artificial intelligence tools, and, ~~where appropriate, the development of additional~~ **could also contribute to the maritime domain of the common European mobility data space, with the aim to reduce administrative burden for Member States. In this work the Agency should take into account the need for any tool or system to be user friendly and interoperable databases with already existing technical solutions in order not to create unnecessary costs for Member States or the industry.**

- (21) In order to properly carry out the tasks entrusted to the Agency, it is appropriate that its officials should carry out visits to the Member States in order to monitor the overall functioning of the Union maritime safety and pollution prevention system. The Agency should also carry out inspections in order to assist the Commission in the assessment of the effective implementation of Union law.
- (22) ~~In the context~~**To contribute to the relevant work of the technical bodies** of the IMO, the International Labour Organisation (ILO) and the Paris Memorandum of Understanding on Port State Control, signed at Paris on 26 January 1982– ('Paris MoU'), the Commission and the Member States may ~~need ask~~ **request** technical assistance and ~~expertise~~**regarding matters of Union competence**. Likewise, the Commission may also need the technical assistance of the Agency in supporting third countries in the maritime domain, in particular with capacity building and pollution prevention and response means. ~~The Management Board of the Agency~~**Support to third countries** should be ~~tasked with adopting a strategy for international relations of~~**subject to a consideration of the available human and financial resources and should not be detrimental to the Agency concerning matters under its competence, as part of the single programming document's priorities**.
- (23) National authorities carrying out coast guard functions are responsible for a wide range of tasks, which may include maritime safety, security, search and rescue, border control, fisheries control, customs control, general law enforcement and environmental protection. **In accordance in particular with the revised EU maritime security strategy (EUMSS) and its action plan**, the Agency, the European Border and Coast Guard Agency, established by Regulation (EU) 2019/1896 of the European Parliament and of the Council²⁵, and the European Fisheries Control Agency, established by Regulation (EU) 2019/473 of the European Parliament and of the Council²⁶, should therefore strengthen their cooperation, within their mandate, both with each other and with the national authorities carrying out coast guard functions, **for example through the European**

²⁵ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

²⁶ Regulation (EU) 2019/473 of the European Parliament and of the Council of 19 March 2019 on the European Fisheries Control Agency (OJ L 83, 25.3.2019, p. 18).

Coastguard Functions Forum, in order to increase maritime situational awareness and to support coherent and cost-efficient action.

- (24) The implementation of this Regulation should not affect the division of competence between the Union and the Member States or the obligations of Member States under international conventions such as the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the International Convention for the Prevention of Pollution from Ships, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, and other relevant international maritime instrument.
- (25) In order to streamline the decision-making process in the Agency, **an efficient and effective** ~~and to contribute to enhancing efficiency and effectiveness, a two-level~~ governance structure should be introduced. To that end, the Member States and the Commission should be represented on a Management Board vested with the necessary powers, including the power to establish the budget and approve the programming document. The Management Board should give general orientations for the Agency's activities and be more closely involved in the monitoring of the Agency's activities, with a view to reinforcing supervision on administrative and budgetary matters. ~~A smaller Executive~~ **The Management Board should be set up have the possibility to establish advisory or working groups** with the task of preparing the meetings of the Management Board in an appropriate manner and supporting its decision-making process. ~~The powers of the Executive Board should be defined in a mandate to be adopted by the Management Board and should, where necessary, include opinions and provisional as well as the follow-up and the implementation of its decisions subject to final endorsement by the Management Board.~~ The Agency should be headed by an Executive Director.
- (26) In order to guarantee the transparency of the Management Board's decisions, representatives of the sectors concerned ~~should~~ **could** attend **parts of** its meetings, but without the right to vote. The representatives of the various stakeholders should be appointed by the Commission on the basis of their representativeness at Union level.
- (27) In order to perform its tasks properly, the Agency should have legal personality and an autonomous budget funded mainly through a contribution by the Union and through ~~fees and~~ charges paid by third countries or other entities. The Agency's independence and

impartiality should not be compromised by any financial contribution that it receives from Member States, ~~or third countries or other entities~~. In order to ensure independence in its daily management and in the opinions, recommendations and decisions which it issues, the Agency's organisation should be transparent and the Executive Director should have full responsibility. The Agency's staff should be independent and should be employed on both short-term and long-term contracts in order to maintain its organisational knowledge and business continuity, while keeping a necessary and ongoing exchange of expertise with the maritime sector. The expenditure of the Agency should include staff, administrative, infrastructure and operational expenses.

- (28) With regard to the prevention and management of conflicts of interest, it is essential that the Agency acts impartially, demonstrates integrity and establishes high professional standards. There should never be any legitimate reason to suspect that decisions might be influenced by interests conflicting with the role of the Agency as a body serving the Union as a whole or by private interests or affiliations of any member of the Management Board which would create, or have the potential to create, a conflict with the proper performance of the official duties of the person concerned. The Management Board should therefore adopt **and make publicly available** comprehensive rules on conflicts of interests.
- (29) A broader strategic perspective in relation to the activities of the Agency would facilitate the planning and management of its resources in a more effective manner and would contribute to a higher quality of its outputs. That is confirmed and reinforced by Delegated Regulation (EU) 2019/715. Therefore, a single programming document containing the annual and multi-annual work programmes should be adopted and updated periodically by the Management Board, following proper consultation of the relevant stakeholders.
- (30) When the Agency is asked to conduct a new task ~~not specifically provided for in its mandate or certain tasks~~ for which a consideration and an analysis of the impact on its resources, in human and budgetary terms, is necessary according to its mandate, the Management Board should include such tasks in the programming document only after such an analysis. That analysis should identify the necessary resources with which the Agency could deliver upon those new tasks and whether the existing tasks of the Agency are negatively affected **or should be reoriented**.

- (31) The Agency should be properly resourced to carry out its tasks and granted an autonomous budget. It should be mainly financed by a contribution from the general budget of the Union. The Union budgetary procedure should be applicable to the Union contribution and to any other subsidies chargeable to the general budget of the Union. The auditing of accounts should be undertaken by the Court of Auditors of the Union.
- (31a) In order to achieve financial savings, the Agency should, where appropriate, cooperate closely with other Union institutions, agencies and bodies, especially those that have their seat in the same Member State.**
- ~~(32) Fees improve the funding of an agency and may be considered for specific services, falling under the scope of its competencies, rendered by the Agency to third countries or the industry. Any fees levied by the Agency should cover its costs for providing the respective services.~~
- ~~(33) In order to ensure uniform conditions for the implementation of this Regulation with regards to fees and charges, 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 Council²⁷.~~
- (34) Over the past years, as more decentralised agencies have been created, transparency and control over the management of Union funding allocated to them has improved, in particular as regards the budgetisation of fees, financial control, power of discharge, pension scheme contributions and the internal budgetary procedure (code of conduct). Similarly, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council²⁸ should apply without restriction to the Agency, which should accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of

²⁷ ~~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 L55, 28.2.2011, p. 13)~~

²⁸ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)²⁹.

- (35) Since the objectives of this Regulation, namely to establish a specialised body that can assist the Commission and the Member States in the application and monitoring of the Union legislation in the field of maritime safety, as well as with the evaluation of its effectiveness, cannot be sufficiently achieved by the Member States but can rather, by reason of the cooperation to be done, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (36) It is necessary for the proper functioning of the Agency to implement certain principles regarding the governance of the Agency in order to comply with the Joint Statement and Common Approach agreed by the Inter-Institutional Working Group on EU decentralised agencies in July 2012, the purpose of which is to streamline the activities of agencies and increase their performance.
- (37) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (38) The European Maritime Safety Agency established by Regulation (EC) No 1406/2002 remains the same legal person and will continue all its activities and procedures.

²⁹ OJ L 136, 31.5.1999, p. 15.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND OBJECTIVES

Article 1

Establishment, subject matter and scope

1. This Regulation ~~provides comprehensive rules on the tasks, functioning and governance of~~**establishes** the European Maritime Safety Agency ~~established by Regulation (EC) No 1406/2002~~ (‘the Agency’) **and provides comprehensive rules on the Agency’s tasks, functioning and governance.**
2. The Agency shall assist the Member States and the Commission in the effective application and implementation of Union law related to maritime transport across the Union. To that end, the Agency shall cooperate with the Member States and the Commission and provide them with technical, operational and scientific assistance within the scope of the Agency’s objectives and tasks set out in Article 2 and Chapters II and III.
3. By providing the assistance referred to in paragraph 2, the Agency shall in particular provide support to the Member States and the Commission to apply the relevant Union legal acts properly while contributing to the overall efficiency of maritime traffic and maritime transport as set out in this Regulation, so as to facilitate the achievement of the Union’s objectives in the maritime transport domain.
4. Any assistance provided by the Agency **and any task set out in Articles 4 to 11** shall ~~be without prejudice to~~**not infringe upon Member States’** rights and responsibilities ~~of the Member States as flag, port or coastal States.~~

Article 2

Objectives of the Agency

1. The **main** objectives of the Agency shall be ~~the promotion and establishment of~~**to ensure** a high, uniform and effective level of maritime safety aiming ~~towards zero~~**at a maximum reduction of** accidents, maritime security, the reduction of greenhouse gas emissions from

ships and the sustainability of the maritime sector as well as the prevention of and response to pollution caused by ships and the response to marine pollution caused by oil and gas installations.

2. Further objectives of the Agency shall be **to support the promotion of digitalisation and the reduction of administrative burden in** the maritime sector by facilitating the electronic transmission of data supporting simplification and the provision of integrated maritime surveillance and awareness systems and services to the Commission and the Member States.

CHAPTER II

TASKS OF THE AGENCY

Article 3

Horizontal technical support

1. The Agency shall assist the Commission:
 - (a) in the control of the effective implementation of relevant binding legal acts of the Union, falling under the objectives of the Agency, in particular by carrying-out the visits and inspections as referred to in Article 10. In this regard, the Agency may address suggestions to the Commission for possible improvements;
 - (b) in the preparatory work for updating and developing relevant legal acts of the Union falling under the objectives of the Agency, in particular in accordance with the development of international law;
 - (c) in the performance of any other task assigned to the Commission in legislative acts of the Union regarding the objectives of the Agency.
2. The Agency shall work with the Member States to:
 - (a) organise, where appropriate, relevant capacity building and training activities in fields which fall under the objectives of the Agency and are the responsibility of the Member States. In this regard, the Agency shall establish appropriate capabilities with the aim to develop, implement and coordinate training activities relevant to the

objectives of the Agency, ~~including through the development of common core curricula courses, seminars, conferences, workshops as well as web-based, e-learning and other innovative and advanced training tools.~~ The details of such Training activities provided ~~outside formal education~~ shall be developed in close consultation with the Member States and the Commission and approved by the Management Board in accordance with Article 17 of this Regulation, while fully respecting Article 166 of the Treaty on the Functioning of the European Union (TFEU);

- (b) develop technical solutions, including the provision of relevant operational services, and provide technical assistance, to building up the necessary national capacity for the implementation of relevant legal acts of the Union pertinent to the objectives of the Agency.

- 3. The Agency shall promote and facilitate cooperation between Member States and between them and the Commission in the implementation of the Union legislation by promoting the exchange and dissemination of experiences and good practices.
- 4. The Agency shall contribute, at the Commission's request, or on its own initiative, subject to ~~the~~**prior** approval of the Management Board in accordance with Article 17, to maritime research activities at the Union level ~~consistent with~~**when needed to fulfil** the objectives of the Agency.— In this regard, the Agency shall assist the Commission and the Member States in identifying key research themes, without prejudice to other research activities at the Union level, and in ~~analyzing~~**analysing** ongoing and completed research projects relevant to the objectives of the Agency. Where appropriate, subject to the applicable rules on intellectual property and security considerations, the Agency ~~may~~**shall** disseminate the results of its research and innovation activities, following approval by the Commission, as part of its contribution to creating synergies between the research and innovation activities of other Union bodies and the Member States.
- 5. Where required for the implementation of its tasks, the Agency ~~shall~~**may** undertake studies, involving the Commission and where applicable, through consultation steering groups, the Member States, and where appropriate, the social partners and industry representatives with expertise in the relevant topics.
- 6. On the basis of the research and studies conducted by the Agency, but also on the basis of the experience gained through its own activities, especially the visits and inspections, and

exchange of information and good practices with the Member States and the Commission, the Agency may ~~issue, after prior consultation~~ **provide, in agreement** with the Commission **and the Management Board**, relevant non-binding recommendations, ~~guidelines~~ **guidance** or manuals to support ~~and facilitate~~ Member States, and where appropriate the industry, in the implementation of the Union legislation.

Article 4

Tasks relating to maritime safety

1. The Agency shall monitor progress on the safety of maritime transport in the Union, conduct risk ~~analysis~~ **analyses** on the basis of the available data and develop safety risk assessment models to identify safety challenges and risks. Every three years it shall present to the Commission a report on progress on maritime safety with possible technical recommendations that could be addressed at the Union or the international level. ~~In this regard, the Agency shall in particular analyse and propose relevant guidance or recommendations~~ in relation to potential safety risks stemming from the **development, uptake and deployment of sustainable alternative sources of power for ships, including zero emission technologies as defined in Regulation (EU) 2023/1805 [FuelEU Maritime]** and onshore power supply to ships at berth.
2. The Agency shall assist the Commission and the Member States in the implementation of Directive 2009/21/EC. In particular, the Agency shall **organise, where appropriate and based on Member States' requests for support, relevant training activities for flag State inspectors and flag state surveyors referred to in Article 4c of that Directive. It shall also develop and, maintain the inspection database in and update a digital interoperable portal in** accordance with ~~{Article 6, as well as the ships information database in accordance with Article 6a}~~ **of that Directive,** ~~and establish the electronic reporting tool referred to in {Article 9b} of that Directive, maintain the public website referred to in Article 8(2e) and may provide to the Commission recommendations on the basis of the data collected.~~

The Agency shall ~~assist the Commission in participating as an observer in the International Maritime Organisation auditing process according to [Article 7] of Directive 2009/21/EC. The Agency shall also develop relevant tools and services assisting the~~

Member States, upon their request, on fulfilling their obligations under Directive 2009/21/EC.

~~The Agency shall also provide a common capacity building scheme for flag State surveyors and flag State inspectors of the Member States, referred to in [Article 4e] of the aforementioned Directive.~~

3. The Agency shall assist the Commission in the ~~development and~~, maintenance **and update** of the ~~databases~~**database and the validation tool** provided for in Articles 24 and 24a of Directive 2009/16/EC **and support Member States**. On the basis of the data collected, the Agency shall assist the Commission in the analysis of the relevant information and the publication of information concerning ships and companies with low and very low performance pursuant to Directive 2009/16/EC.

The Agency shall ~~develop~~**provide** relevant tools and services assisting the Member States, upon their request, on fulfilling their obligations under Directive 2009/16/EC.

The Agency shall also ~~provide~~**develop** a professional ~~development and training program~~**programme** for port State control inspectors of the Member States **in cooperation with Member States and as agreed within the Paris Memorandum of Understanding on Port State Control ('Paris MoU')**, as provided for in ~~[Article 22 (7)]~~**in Article 22(7)** of the aforementioned Directive 2009/16/EC.

4. The Agency shall assist the Commission in the development and maintenance of the database provided for in Article 17 of Directive 2009/18/EC. On the basis of the data collected, the Agency shall compile a yearly overview of marine casualties and incidents. The Agency shall, ~~if requested by~~**at the request of the safety investigation authorities of** the concerned Member States and ~~where~~**assuming that** no conflict of interest arises, provide operational support to ~~these~~**those** Member States **in the conduct of their concerning** safety investigations. The Agency shall also carry out an analysis of safety investigation reports with a view to identify added value at Union level in terms of any relevant lessons to be drawn.

The Agency shall provide a ~~professional development and~~**regular** training ~~program~~**according** to the ~~competent~~**needs of Member States'** marine safety ~~accident~~ investigation authorities.

5. The Agency shall assist the Commission and the Member States in the implementation of Directives 2009/45/EC³⁰ and 2003/25/EC of the European Parliament and of the Council³¹ and Council Directive 98/41/EC³². The Agency shall, in particular, develop and maintain a database for recording measures as provided for in Article 9 of Directive 2009/45/EC and Article 9 of Directive 98/41/EC and assist the Commission in the assessment such measures.
6. The Agency shall facilitate the cooperation and the exchange of information between the Commission and the Member States for the assessment of the recognised organisations that carry out survey and certification tasks in accordance with Article 8(1) of Regulation (EC) No 391/2009³³. In particular, the Agency shall:
- (a) provide to the Commission an opinion on its assessment of the recognised organisations under Article 8(1) of Regulation (EC) No 391/2009;
 - (b) provide to the Member States appropriate information in the context of the inspections conducted to support the Commission's assessment under Article 8 (1) of Regulation (EC) No 391/2009 in order to support the monitoring and oversight of the recognised organisations according to Article 9 of Directive 2009/15/EC of the European Parliament and of the Council³⁴-supporting the Member States in the discharge of their Union and international obligations as flag States. In this regard, the Agency shall assist the Commission **and the Member States** in the ~~managing of the high level group on flag State matters under~~ **[implementation of Article 9(1)]^{9a}** of Directive 2009/21/EC-;

³⁰ Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (OJ L 163, 25.6.2009, p. 1).

³¹ Directive 2003/25/EC of the European Parliament and of the Council of 14 April 2003 on specific stability requirements for ro-ro passenger ships (OJ L 123, 17.5.2003, p. 22).

³² Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community (OJ L 188, 2.7.1998, p. 35).

³³ 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 (OJ L 131, 28.5.2009, p. 11).

³⁴ Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ L 131, 28.5.2009, p. 47).

(c) ~~provide, on its own initiative or at the Commission's request, a recommendation and technical assistance to the Commission on possible remedial measures or the imposition of fines to the recognised organisations in accordance with Article 5 and 6 of Regulation (EC) No 391/2009 and the corresponding advance notice requirements.~~

7. The Agency shall assist the Commission in the implementation of Directive 2014/90/EU of the European Parliament and of the Council³⁵ by providing its technical assessment on safety **and environmental** aspects, providing recommendations with lists of the respective design, construction and performance requirements and testing standards, developing and maintaining the database provided for in Article 35(4) of that Directive and facilitating cooperation between notified assessment bodies acting as the technical secretariat for their coordination group.
8. The Agency shall assist the Commission and the Member States in the identification of safety risks related to the development of ~~maritime autonomous and automated surface ships (MASS), and assist the Member States by facilitating, through research and the development of relevant digital tools, guidance and manuals for the approval of MASS projects and/or operation~~**technologies with advanced automation.**
9. The Agency shall ~~gather and analyse data~~**statistics** on seafarers provided and used in accordance with Directive (EU) 2022/993 of the European Parliament and of the Council³⁶ **on seafarer training** . It may also ~~gather and, upon request of the Management Board, analyse data~~**statistics** on the ~~implementation of the Maritime Labour Convention, 2006 (MLC, 2006)~~**MLC 2006 related deficiencies identified during port State control inspections carried out under Directive 2009/16/EC** with the aim of assisting in the improvement of the onboard working and living conditions of seafarers.-
- 9a. **After prior approval by the Management Board, the Agency may support the Commission and the Member States on emerging areas related to maritime safety, as**

³⁵ Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (OJ L 257, 28.8.2014, p. 146).

³⁶ ~~Directive (EU) 2022/993 of the European Parliament and of the Council of 8 June 2022 on the minimum level of training of seafarers (OJ L 169, 27.6.2022, p. 45).~~

appropriate and without prejudice to the competences of Member States in those areas.

Article 5

Tasks relating to environmental sustainability

1. The Agency shall, in a ~~cost-efficient way~~**cost-efficient way**, support the Member States with additional pollution response means, **including those to be developed for sustainable alternative fuels**, in case of pollution caused by ships as well as marine pollution caused by oil and gas installations. The Agency shall so act on request of the affected Member State under the authority of which the cleaning operations are conducted. Such assistance is without prejudice to the responsibility of coastal States to have appropriate pollution response mechanisms in place and shall respect existing cooperation between Member States in this field. The operational means that the Agency provides to the Member States shall take into account and cater for the transition of the sector to the use of sustainable alternative sources of power for ships. As appropriate, requests for mobilisation of anti-pollution actions shall be relayed through the Union Civil Protection Mechanism established by Decision No 1313/2013/EU of the European Parliament and of the Council³⁷.
- 1a. **The Agency shall prepare and update a risk assessment for all European sea basins which shall serve as a basis for the location of the Agency's oil and chemical pollution response vessels for supporting the Member States in marine environment pollution response activities.**
2. The Agency shall assist the Commission and the Member States with the detection of possible pollution and pursuit of ships making illegal discharges in accordance with Directive 2005/35/EC. The Agency shall in particular assist with the implementation of Articles [10, 10a, 10b, 10c and 10d] of that Directive by:

³⁷ Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).

- (a) developing and maintaining the necessary information system (CleanSeaNet), as part of the Union Maritime Information and Exchange System (SafeSeaNet), and databases;
- (b) collecting, analysing and disseminating the relevant information on the implementation and enforcement of Directive 2005/35/EC;
- (c) providing capacity building to the competent national authorities and facilitating the exchange of best practices;
- (d) developing and maintaining the online external reporting channel for receiving and handling information on potential illegal discharges communicated by the crew and shall relay such information to the Member State or Member States concerned, **while ensuring the necessary protection of persons who report potential infringements and of their personal data.**

2a. The Agency shall cooperate with other Union agencies, such as EFCA, in line with the tripartite working arrangements referred to in Article 12(2).

3. The Agency shall provide the CleanSeaNet service and any other tools to assist the Commission and the Member States, upon ~~the~~**the request of the Commission or a Member State**, to monitor the extent and environmental impact of marine oil pollution caused by oil and gas installations.

4. The Agency shall assist the Commission and the Member States in the implementation of Directive (EU) 2019/883 on port reception facilities for the delivery of waste from ships: ~~In particular, the Agency shall assist the Commission in,~~ **including** the development and, maintenance **and update** of the inspection database provided for in Article 14 of that Directive.

5. The Agency shall assist the Commission and the Member States in the context of the implementation of Directive 2008/56/EC **of the European Parliament and of the Council (Marine Strategy Framework Directive)**, by contributing to the objective of achieving good environmental status of marine waters with its shipping-related elements and in exploiting the results of existing tools such as the Integrated Maritime Services. ~~In this regard, the Agency shall conduct further research in issues related to lost containers,~~

~~including plastic pellets, and underwater noise and provide recommendations to the Commission and the Member States.~~

6. The Agency shall assist the Commission and the Member States, **upon the request of the Commission or a Member State**, including with operational tools and services, in the implementation of the shipping-related elements of Directive (EU) 2016/802. In this ~~regard~~**respect**, the Agency ~~shall also enhance and maintain a~~**also maintains the inspection** database ~~providing assistance to the~~**to assist** Member States ~~on targeting and prioritising appropriately ships for inspections based on~~**in assessing** the risk of ~~non compliance with~~**ships' non-compliance with the provisions of** that Directive.
- ~~7. The Agency shall assist the Commission and the Member States, upon their request, with appropriate operational tools and services on the monitoring and collection of data in relation to nitrogen oxides (NOx) emissions from ships.~~
8. The Agency shall assist the Commission and the Member States in the implementation of Regulation (EU) No 1257/2013 of the European Parliament and of the Council³⁸~~by issuing appropriate guidance and~~ through the collection and analysis of data on compliance with the provisions of that Regulation.
- 8a. After prior approval by the Management Board, the Agency may support the Commission and the Member States on emerging areas related to environmental sustainability, as appropriate and without prejudice to the competences of Member States in those areas.**
9. The Agency shall every three years present to the Commission a report on the progress made in reducing the environmental impact of maritime transport at the Union level.

³⁸ Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (OJ L 330, 10.12.2013, p. 1).

Article 6

Tasks relating to decarbonisation

1. ~~The Agency shall monitor progress on the operational and technical measures undertaken to increase the energy efficiency of ships and the deployment of sustainable alternative fuels, energy and power systems for ships, including onshore power supply and wind propulsion assistance, to reduce greenhouse gas emissions from ships.~~
2. The Agency shall provide technical assistance to the Commission and the Member States, upon ~~their~~ **the request of the Commission or a Member State**, in relation to **operational and technical measures as well as** regulatory efforts to reduce greenhouse gas emissions from ships. In this regard, the Agency may utilize any operational tools or services pertinent to the task. The Agency shall in particular research, analyse and propose **to the Commission, after prior consultation of the Member States**, relevant guidance or recommendations in relation to the uptake and deployment of sustainable alternative fuels, energy and power systems for ships, ~~including~~ **such as zero emission technologies, onshore power supply and wind, or solar or wind-assisted propulsion, as defined in FuelEU Maritime**, ~~assistance~~ as well as in relation to energy efficiency measures, **such as speed optimisation.**
3. The Agency shall assist the Commission and the Member States in the implementation of Regulation (EU) ~~[... on the use of renewable and low-carbon fuels in maritime transport]~~ **2023/1805**. In particular, the Agency shall assist the Commission with the ~~development~~ and maintenance of the FuelEU database and other relevant IT tools as referred to in ~~[Article 16]~~ **19** of that Regulation, in the development of the appropriate monitoring tools, guidance and risk-based targeting tools to facilitate **implementation**, verification and enforcement activities, **in particular** provided for in ~~[Article 15 ter]~~ **of 18** of that Regulation and with the analysis of the relevant data and the preparation of the reporting under ~~[Article 28]~~ **30** of that Regulation.
4. The Agency shall assist the Commission and the Member States in the implementation of Regulation (EU) 2015/757. In particular, the Agency shall assist the Commission with the development, update and maintenance of relevant IT tools, databases and guidance for the purposes of implementing that Regulation and facilitating enforcement activities, assist the Commission with the analysis of relevant data reported under that Regulation, and support

the Commission in its activities to comply with the obligations under Article 21 of that Regulation.

5. The Agency shall assist the Commission and the Member States in the implementation of Directive 2003/87/EC, as relevant to the maritime sector. In particular, the Agency shall assist the Commission with the development of the appropriate IT implementation tools, monitoring tools, guidance and risk-based targeting tools to facilitate verification, enforcement and implementation activities related to Directive 2003/87/EC, as relevant to the maritime sector, while exploiting the results of existing relevant tools, services and databases.
- 5a. **Such assistance shall also include monitoring and reporting on potential impacts on port traffic, port evasion and traffic shift to the neighbouring container transshipment ports, to the detriment of EU ports.**
6. The Agency shall every three years present to the Commission a report on the progress made in achieving the decarbonisation of maritime transport at the Union level. Where possible, the report shall include technical analysis on identified issues that could to be addressed at the Union level. **The report shall be made publicly available on the Agency's website in a searchable format.**

Article 7

Tasks relating to maritime security and cybersecurity

1. The Agency shall provide 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.
2. The Agency shall assist the Commission and the Member States, **upon the request of the Commission or a Member State**, together with any other relevant Union body, ~~in developing resilience against cybersecurity incidents in the maritime sector in particular by~~ **providing technical guidance**, facilitating the exchange of best practices and information on cyber **resilience and cyber** security incidents between the Member States.

Article 8

Tasks relating to maritime surveillance and maritime crises

1. The Agency shall provide to the Commission and the Member States, upon ~~their~~**the** request **of the Commission or a Member State**, maritime surveillance and communication services based on state-of-the-art, including space-based and ground infrastructure and sensors mounted on any kind of platform, improving maritime situational awareness **including with regard to geopolitical challenges**.
2. In the field of traffic monitoring covered by Directive 2002/59/EC, the Agency shall in particular promote cooperation between riparian States in the shipping areas concerned, as well as, develop, maintain and operate the European Union Long-Range Identification and Tracking (**LRIT**) of Ships European Data Centre and the Union Maritime Information and Exchange System (SafeSeaNet) as referred to in Articles 6b and 22a of that Directive as well as the International ~~Long-Range Identification and Tracking~~**LRIT** information data exchange system in accordance with the commitment made in the IMO.
3. The Agency shall provide, upon request and without prejudice to national and Union law, relevant vessel positioning and Earth observation data to the Commission, the competent national authorities and relevant Union bodies within their mandate in order to facilitate measures against threats of piracy and of intentional unlawful acts as provided for in applicable Union law or under internationally agreed legal instruments in the area of maritime transport, subject to applicable data protection rules and in accordance with administrative procedures ~~to be~~**as** established by ~~the High Level Steering Group~~**established in accordance with** Directive 2002/59/EC, ~~as appropriate~~. The provision of ~~long-range identification and tracking~~**LRIT** of ships data shall be subject to the consent of the flag State concerned.
4. The Agency shall operate a ~~center~~**centre** available 24 hours a day and 7 days a week providing, upon request and without prejudice to national and Union law, to the Commission, the competent national authorities, without prejudice to their rights and responsibilities as flag, coastal and port States, and to relevant Union bodies, within their mandate, maritime situational awareness and analytical data, as appropriate, supporting them in:
 - (a) safety, security and pollution at sea;

- (b) situations of emergency at sea;
- (c) the implementation of ~~any~~ Union legislation requiring the monitoring of ship movements **and hazards to navigation**;
- (d) measures against threats of piracy and of **other** intentional unlawful acts as provided for in applicable Union law or under internationally agreed legal instruments in the area of maritime transport;
- (da) the implementation of the Union restrictive measures adopted under Article 29 of the TEU or Article 215 TFEU that fall under the remit of the competences of the Agency.**
- ~~(e) the deployment of MASS and their interaction with conventional ships.~~

The provision of such information shall be subject to applicable data protection rules and in accordance with ~~administrative procedures~~ **guidelines** to be ~~established~~ **issued** by the High Level Steering Group established in accordance with Directive 2002/59/EC, as appropriate. The provision of ~~long-range identification and tracking~~ **LRIT** of ships data shall be subject to the consent of the flag State concerned.

5. The Agency shall within its field of competence contribute to a timely response to and mitigation of crises by assisting, upon request, the Member States and the Commission with the execution of contingency plans and by facilitating the exchange of information and best practices.
6. The Agency shall assist the Commission in the operation of the maritime surveillance component of the Copernicus Security Service within the governance and financial framework of the Copernicus programme.
7. The Agency shall assist the Commission and the Member States in the development and maintenance of the voluntary Common Information Sharing Environment (CISE), an interoperability solution, with the aim of facilitating information exchange between different systems used by civil and military authorities with responsibility in the maritime domain complementing the information already available through the mandatory information systems.

Article 9

Tasks relating to digitalisation and simplification

1. The Agency shall, where appropriate, collect and provide, in the areas of Union law within the Agency's competence, objective, reliable and comparable statistics, information and data, to ~~enable the Commission and the Member States to take the necessary steps to improve their actions and to evaluate the effectiveness and cost-efficiency of existing measures.~~ Such tasks shall include the facilitation and promotion of electronic certificates, ~~the collection, recording and evaluation of technical data, the systematic~~ **the exploitation** of existing databases, ~~including their cross-fertilisation through~~ **and** the use of innovative IT and artificial intelligence tools, ~~and, where appropriate, the development of additional interoperable databases.~~ In this regard, the Agency shall also contribute to the maritime domain of the common European mobility data space by exploring links with systems of other transport modes.
2. The Agency shall assist the Commission in the implementation of the Regulation (EU) 2019/1239 of the European Parliament and of the Council³⁹, with the following tasks:
 - (a) to develop, ~~make available~~ and maintain the common IT components and services of the European Maritime Single Window environment ('EMSWe')— under the responsibility of the Commission;
 - (b) to maintain the EMSWe Data Set, the Message Implementation Guide and the templates of the digital spreadsheets;
 - (c) to provide **non-binding** technical guidance to the Member States for the implementation of the EMSWe.
 - (d) to facilitate ~~the better~~ re-use and ~~the~~ sharing of data exchanged in the EMSWe using SafeSeaNet.
3. The Agency shall provide ~~technical~~ assistance, **including training**, to the Member States, upon their request and without prejudice to **the existing technical solutions for their**

³⁹ Regulation (EU) 2019/1239 of the European Parliament and of the Council of 20 June 2019 establishing a European Maritime Single Window environment and repealing Directive 2010/65/EU (OJ L 198, 25.7.2019, p. 64).

registries or their rights and obligations as flag States, in the digitalization of their registries and their procedures facilitating the uptake of electronic certificates **and the reduction of administrative burden.**

- 3a. When developing IT tools and other technical solutions the Agency shall always take cybersecurity into account.**

Article 10

Visits to Member States and inspections

1. In order to assist the Commission in fulfilling its duties under the TFEU, and in particular the assessment of the effective implementation of relevant Union law **in the areas of maritime safety and pollution prevention**, the Agency shall carry out visits to Member States, **if the Commission delegates such a task to the Agency**, in accordance with a methodology established by the Management Board. Such methodology shall take into account an integrated approach by each visit aiming to verify more than one piece of legislation each time pertinent to the function of flag, port or coastal State of the examined Member State during the visit.
 2. The Agency shall inform the Member State concerned, **in accordance with the methodology referred to in paragraph 1**, ~~in good time~~ of the planned visit, the names of the authorised officials, and the date on which the visit starts and its expected duration. The Agency officials delegated to carry out such visits shall do so on presentation of a decision in writing from the Executive Director of the Agency specifying the purpose and the aims of their mission.
 3. The Agency may carry out inspections on behalf of the Commission as required by binding legal acts of the Union, **including as regards** ~~regarding~~ organisations recognised by the Union in accordance with Regulation (EC) No 391/2009, and as regards the training and certification of seafarers in third countries in accordance with Directive (EU) 2022/993, **if the Commission delegates such a task to the Agency.**
- 3a. The Agency may also carry out site inspections on behalf of the Commission in accordance with Regulation (EU) 1257/2013 on recycling facilities in third countries, if the Commission delegates this task to the Agency.**

4. ~~The Agency may also carry out inspections on behalf of the Commission as required by any other binding legal act of the Union if the Commission decides to delegate such a task to the Agency.~~
5. 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. The report would follow the template previously established by the Commission.
6. Where appropriate, and in any case when a cycle of visits or inspections is concluded, the Agency shall analyse reports from that cycle with a view to identifying horizontal findings and general conclusions on the effectiveness and cost-efficiency of the measures in place. The Agency shall present this analysis to the Commission **and Member States** for further discussion ~~with Member States~~ in order to draw any relevant lessons and facilitate the dissemination of good working practices.

CHAPTER III

OTHER TASKS OF THE AGENCY REGARDING INTERNATIONAL RELATIONS AND EUROPEAN COAST GUARD COOPERATION

Article 11

International relations

1. The Agency shall provide technical assistance necessary for the Member States and the Commission, upon ~~their~~**the request of the Commission or a Member State**, to contribute to the relevant work of the technical bodies of the IMO, the International Labour Organisation as far as shipping is concerned, ~~and the Paris Memorandum of Understanding on Port State Control ('Paris MoU') and relevant regional organisations to which the Union has acceded,~~ with regard to matters of Union competence.

For the purpose of carrying out these tasks in an efficient and effective manner, the Executive Director may decide to locate staff in ~~the Union delegations in third countries~~**delegation to the United Kingdom**, subject to the appropriate agreements with the European External Action Service, **in order to support Member States and the**

European Commission in activities related to their participation to the work of the International Maritime Organisation. That decision requires the prior consent of the Commission and of the Management Board. That decision shall specify the scope of the activities to be carried out by the located staff in a manner that avoids unnecessary costs and duplication of administrative functions of the Agency.

2. The Agency may, upon the request of the Commission, provide technical assistance, including the organisation of relevant training activities, as regards relevant legal acts of the Union, to States applying for accession to the Union, and, where applicable, to European Neighbourhood partner countries and to countries taking part in the Paris MoU.
3. The Agency may, upon the request of the Commission or the European External Action Service, or both, **or the Member States**, provide assistance in case of pollution caused by ships as well as marine pollution caused by oil and gas installations affecting third countries sharing a regional sea basin with the Union. The Agency shall provide the assistance in line with the Union Civil Protection Mechanism established by Decision No 1313/2013/EU, and with the conditions applicable to Member States as referred to in Article 5 (1) of this Regulation applied by analogy to the third countries. Those tasks shall be coordinated with the existing regional cooperation arrangements related to marine pollution.
4. Without prejudice to Article 24, the Agency may provide, upon the request of the Commission, technical assistance to third countries for matters falling under its competence.
5. The Agency may enter into administrative arrangements and cooperation with other Union bodies working in the matters falling within the scope of the Agency's competence following the approval of the Commission. Such arrangements and cooperation shall be subject to the **favourable** opinion of the ~~Commission~~**Management Board** and periodical reporting to it.
6. The Management Board shall adopt, **as part of the single programming document**, a strategy for international relations of the Agency concerning matters under its competence. ~~That strategy shall be in line with the Commission's political priorities and shall aim at assisting the Commission and the European External Action Service in fulfilling such~~

priorities. It shall be included in the programming document of the Agency, with a specification of associated resources.

Article 12

European cooperation on coast guard functions

1. The Agency shall, in cooperation with the European Border and Coast Guard Agency, established by Regulation (EU) 2019/1896, and the European Fisheries Control Agency, established by Regulation (EU) 2019/473, each within their mandate, support national authorities carrying out coast guard functions at national and Union level and, where appropriate, at international level by:
 - (a) sharing, fusing and analysing information available in ship reporting systems and other information systems hosted by or accessible to those agencies, in accordance with their respective legal bases and without prejudice to the ownership of data by Member States;
 - (b) providing surveillance and communication services based on state-of-the-art technology, including space-based and ground infrastructure and sensors mounted on any kind of platform;
 - (c) building capacity by drawing up guidelines and recommendations and by establishing best practices as well as by providing training and exchange of staff;
 - (d) enhancing the exchange of information and cooperation on coast guard functions including by analysing operational challenges and emerging risks in the maritime domain;
 - (e) sharing capacity by planning and implementing multipurpose operations and by sharing assets and other capabilities, to the extent that ~~these~~**those** activities are coordinated by those agencies and are agreed to by the competent authorities of the Member States concerned.
2. Without prejudice to the powers of the Management Board of the Agency set out in Article 15, the precise forms of cooperation on coast guard functions between the Agency, the European Border and Coast Guard Agency and the European Fisheries Control Agency shall be determined in a working arrangement, in accordance with their respective

mandates and the financial rules applicable to those agencies. Such an arrangement shall be approved by the management Board of the Agency, the Administrative Board of the European Fisheries Control Agency and the management board of the European Border and Coast Guard Agency.

3. The Commission shall, in close cooperation with the Member States, the Agency, the European Border and Coast Guard Agency and the European Fisheries Control Agency, make available a practical handbook on European cooperation on coast guard functions. That handbook shall contain guidelines, recommendations and best practices for the exchange of information. The Commission shall adopt the handbook in the form of a recommendation.
4. The tasks set out in this Article shall not be detrimental to the Agency's tasks referred to in Articles 4 to 12 and shall not infringe upon Member States' rights and obligations, in particular as flag States, port States or coastal States.

Article 13

Communication and dissemination

The Agency may engage in communication activities on its own initiative in the fields within its mandate **in order to promote its work and disseminate relevant guidance**. Communication activities shall ~~not be detrimental to~~ **be supportive** to the rest of the tasks referred to in the Articles 4 to 12 and shall be carried out in accordance with relevant communication and dissemination plans adopted by the Management Board. Those plans, based on an analysis of needs, shall be regularly updated by the Management Board.

CHAPTER IV

ORGANISATION OF THE AGENCY

Article 14

Administrative and management structure

The Agency's administrative and management structure shall comprise:

- (a) a Management Board, which shall exercise the functions set out in Article 16;

- (b) ~~an Executive Board, which shall exercise the functions set out in Article 21;~~
- (c) an Executive Director, who shall exercise the duties set out in Article 23.

Article 15

Composition of the Management Board

1. The Management Board shall be composed of one representative of each Member State and four representatives of the Commission, all with voting rights.

The Management Board shall also include ~~as well as~~ of four professionals from the sectors most concerned, as referred to in Article 2, appointed by the Commission, without the right to vote.

All Management Board members shall be appointed on the basis of their degree of relevant experience and expertise in the areas referred to in Article 2. The Member States and the Commission shall each strive for a balanced representation between men and women on the Management Board. One of the four professionals shall be a representative of the Permanent Cooperation Framework of accident investigation bodies in accordance with Article 10 of Directive 2009/18/EC.

2. Each Member State and the Commission shall appoint their members of the Management Board as well as an alternate who will represent the member in his or her absence.
3. The duration of the term of office shall be four years. The term of office may be renewed.
4. Each member and alternate shall sign a written statement at the time of taking office declaring that he or she is not in a situation of conflict of interests. Each member and alternate shall update his or her statement in the case of a change of circumstances with regard to any conflict of interests. The Agency shall publish the statements and updates on its website.

Article 16

Functions of the Management Board

1. In order to ensure that the Agency carries out its tasks, the Management Board shall:

- (a) give the general and strategic orientations for the Agency's activities;
- (b) adopt each year, by a two-thirds majority of its members with voting rights, after having received the opinion of the Commission and in accordance with Article 17, the single programming document of the Agency;
- (c) adopt, by a two-thirds majority of its members with voting rights, the annual budget and the staff establishment plan of the Agency and exercise other functions in respect of the Agency's budget pursuant to Chapter VI;
- (d) adopt, by a two-thirds majority of its members with voting rights, the consolidated annual activity report on the Agency's activities and forward it each year by 1 July to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States. The report shall be made public;
- (e) adopt the financial rules applicable to the Agency in accordance with Article 25;
- (f) deliver an opinion, **by a two-thirds majority of its members with voting rights**, on the Agency's final accounts-;
- (g) establish the methodology for the visits to be carried out pursuant to Article 10. In the event that the Commission expresses, within 15 days from the date of adoption of the methodology, its disagreement, the Management– Board shall re-examine and adopt it, possibly amended, in second reading either with a two- thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States;
- (h) consider and approve administrative arrangements, ~~as referred to in~~ **in accordance with** Article 11 (5);
- (i) adopt an anti-fraud strategy, proportionate to fraud risks taking into account the costs and benefits of the measures to be implemented;
- (j) adopt **and make publicly available the** rules for the prevention and management of conflicts of interest in respect of its members and publish annually on its website the declaration of interests of the Management Board members;

- (ja) **adopt rules and procedures on transparency as regards lobbying activities and the involvement of third entities in the preparation of reports or other documents issued by the Agency, especially those concerning such third entities, to be published on its website;**
- (k) adopt and regularly update the communication and dissemination plans referred to in Article 13, based on an analysis of needs;
- (l) **adopt its rules of procedure, by a two-thirds majority of its members with voting rights and make them publicly available;**
- ~~(m) appoint the members of the Executive Board, by a two-third majority of its members with voting rights, in accordance with Article 21;-~~
- ~~(n) adopt a mandate for the tasks of the Executive Board referred to in Article 21;-~~
- (o) in accordance with paragraph 2, exercise, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment⁴⁰ ;
- (p) adopt implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 (2) of the Staff Regulations;
- (q) appoint, provide guidance and monitor the performance of– the Executive Director and where relevant extend his or her term of office or remove him or her from office, **by a two-thirds majority of its members with voting rights**, in accordance with Article 22;
- (r) establish procedures for decision-making by the Executive Director;

⁴⁰ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1)

- (s) if appropriate, appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment of Other Servants, who shall be totally independent in the performance of his or her duties;
- (t) ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO);
- (u) take all decisions on the establishment of the Agency's internal structures **by a two-thirds majority of its Members with voting rights**, including the set-up of advisory or working groups **without decision-making powers** and, where necessary, their modification, **having regard to sound budgetary management**;
- (ua) **authorise, by a two-thirds majority of its members with voting rights, the arrangements for the participation of third countries in the work of the Agency, in accordance with Article 24;**
- ~~(v) decide on the services that the Agency may offer against fees and charges and adopt a framework model for the financial apportionment of the fees and charges payable as referred to in Article 26 (3), point (c). In the event that the Commission expresses, within 15 days from the date of adoption of the Management Board's decision concerning the services offered against fees or the framework model, its disagreement, the Management Board shall re-examine and adopt it, possibly amended, in second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States;~~
- (w) adopt an efficiency gains and synergies strategy;
- ~~(x) adopt a strategy for cooperation with third countries or international organisations, or both, referred to in Article 11 (6). In the event that the Commission expresses, within 15 days from the date of adoption of the strategy, its disagreement, the Management Board shall re-examine and adopt it, possibly amended, in second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States;~~

- (y) adopt the internal security rules of the Agency referred to in Article 41;
- (z) appoint the data protection officer of the Agency.

2. The Management Board shall adopt, in accordance with Article 110(2), of the Staff Regulations, a decision based on Article 2 (1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may, by way of a decision, temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

Article 17

Annual and multi-annual programming

1. By 30 November each year the Management Board shall adopt a single programming document containing multi-annual and annual programming, based on a draft put forward by the Executive Director, taking into account the opinion of the Commission. It shall forward it to the European Parliament, the Council and the Commission.

In the event that the Commission expresses, within 15 days from the date of adoption of the single programming document, its disagreement with the document, the Management Board shall re-examine the single programming document and adopt it, possibly amended, within a period of two months, in second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States.

2. The single programming document shall become definitive after final adoption of the general budget and if necessary shall be adjusted accordingly.
3. The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be

financed and an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be coherent with the multi-annual work programme referred to in paragraph 7. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year. Annual or multi- annual programming, or both, shall include the strategy for relations with third countries or international organisations referred to in Article 11 and the actions linked to this strategy.

4. The Management Board shall amend the adopted annual work programme when a new task is given to the Agency. The inclusion of such a new task shall be subject to an analysis of the human and budgetary resources implications and may be subject to a decision to postpone other tasks.

5. **Notwithstanding the right of the Management Board to prioritize certain tasks and activities in the annual and multiannual planning**, the Management Board shall examine and approve, in the framework of the preparation of the Single Programming Document, Commission's or Member States' requests for technical assistance, as referred to in Article 3 (1), point (c), Article 3 (2), point (b), Article ~~5(5) to (8)~~ **4 (2), (9) and (9a)**, Article ~~8(6)~~ **5 (6), (8) and (8a)**, **Article 7 (2), Article 8 (6)** and (7), Article 9 (3), Article 10 ~~(4)~~**(3a)** and Article 11 (2) and (4). The approval of such requests shall:
 - (a) not be detrimental to the other tasks of the Agency;
 - (b) shall avoid duplication of efforts;
 - (c) shall be subject to an analysis of the human and budgetary resources implications;
and
 - (d) may be subject to a decision to postpone other tasks.

6. Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.

7. The multi-annual work programme shall set out overall strategic programming including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff.
8. The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 41.

Article 18

Chairperson of the Management Board

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among its members with voting rights. The Chairperson and the Deputy Chairperson shall be elected by a majority of two thirds of the members of the Management Boards with voting rights.
2. The Deputy Chairperson shall automatically take the place of the Chairperson if he or she is prevented from attending to Chairperson's duties.
3. The terms of office of the Chairperson and Deputy Chairperson shall be four years. Their term of office may be renewed once. If, however, their membership of the Management Board ends at any time during their term of office, their term of office shall automatically expire on that date.

Article 19

Meetings of the Management Board

1. Meetings of the Management Board shall be conducted in accordance with its rules of procedure and convened by its Chairperson.
2. The Executive Director of the Agency shall take part in the deliberations except when his or her participation may lead to a conflict of interests, as decided by the Chairperson, or when the Management Board is to take a decision, in accordance with Article 35.

3. The Management Board shall hold an ordinary meeting twice a year. In addition, it shall meet on the initiative of the Chairperson or at the request of the Commission or of one-third of the Member States.
4. When a matter of confidentiality or a conflict of interest arises, the Management Board may decide to examine specific items on its agenda without the members concerned being present. This shall not affect the right of the Member States and of the Commission to be represented by an alternate or by any other person. Detailed rules for the application of this provision shall be laid down in the Management Board's rules of procedure.
5. The Management Board may invite any person whose opinion can be of interest to attend **specific agenda items** of its meetings as an observer.
6. The members of the Management Board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.
7. The secretariat for the Management Board shall be provided by the Agency.

Article 20

Voting rules of the Management Board

1. The Management Board shall take its decisions by absolute majority of its members with voting rights, except if provided otherwise in this Regulation.
2. **In the event that the Commission raises serious concerns on a decision proposal presented to the Management Board on matters related to the Framework Financial Regulation for decentralised regulatory agencies⁴¹ and the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union⁴², the Management Board shall postpone the adoption of the decision. Within**

⁴¹ **Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council, OJ L 122, 10.5.2019, p. 1–38**

⁴² **Regulation No 31 (EEC), 11 (EAEC) laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 45, 14.6.1962, p. 1385 as amended by Regulation (EU) No 423/2014 of the European Parliament and of the**

15 days, the Management Board shall re-examine and adopt it, possibly amended, in second reading either with a two-thirds majority, including the Commission representatives, or by a four fifths majority of The decisions referred to in Article 16(1) points (e) to (e) and points (i), (j), (n), (o), (p), (q), (t), (u) and in Article 16(2) may only be taken if the representatives of the Commission cast a positive vote. For the purposes of taking the decisions referred to in Article 16(1), point (b), the positive vote of the representative of the Commission shall only be required on the elements of the decision not related to the annual and multi-annual working programme of the Agency. Member States.

3. Each member shall have one vote. The Executive Director of the Agency shall not vote.
4. In the absence of a member, his or her alternate shall be entitled to exercise the member's right to vote.
5. The rules of procedure shall establish more detailed voting arrangements, including the conditions for a member to act on behalf of another member.

Article 21

Executive Board

1. ~~The Management Board shall be assisted by an Executive Board.~~
2. ~~The Executive Board shall:~~
 - (a) ~~supervise the implementation of the decisions of the Management Board on administrative and budgetary management;~~
 - (b) ~~prepare decisions to be adopted by the Management Board;~~
 - (c) ~~ensure, together with the Management Board, adequate follow-up to the findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of OLAF and of the EPPO;~~

Council of 16 April 2014 adjusting with effect from 1 July 2012 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto, OJ L 129, 30.4.2014, p. 12–18

3. ~~When necessary, because of urgency, the Executive Board may take certain provisional decisions on behalf of the Management Board, in particular on administrative management matters, including the suspension of the delegation of the appointing authority powers and budgetary matters.~~
4. ~~The Executive Board shall be composed of the Chairperson of the Management Board, one representative of the Commission to the Management Board and three other members appointed by the Management Board from among its members with the right to vote. The Chairperson of the Management Board shall also be the Chairperson of the Executive Board. The Executive Director shall take part in the meetings of the Executive Board, but shall not have the right to vote.~~
5. ~~The term of office of members of the Executive Board shall be four years with the possibility to be renewed. The term of office of members of the Executive Board shall end when their membership of the Management Board ends.~~
6. ~~The Executive Board shall hold at least one ordinary meeting every three months. In addition, it shall meet on the initiative of its Chairperson or at the request of its members.~~
7. ~~The Management Board shall lay down the rules of procedure of the Executive Board.~~

CHAPTER V

EXECUTIVE DIRECTOR

Article 22

Appointment, extension of the term of office and removal from office

1. The Executive Director shall be appointed by the Management Board on ~~the basis~~**grounds** of merit and ~~skills~~**of documented competence and experience relevant for the maritime sector**, from a list of candidates proposed by the Commission following an open and transparent selection procedure which shall respect the principle of gender balance **and geographical balance**.

- 1a. **Before appointment, the candidate selected by the Management Board shall be invited to make a statement to the competent committee of the European Parliament and to answer questions posed by its members.**
2. For the purpose of concluding the contract of the Executive Director, the Agency shall be represented by the Chairperson of the Management Board.
3. The term of office of the Executive Director shall be five years. In due time before the end of that period, the Commission shall undertake an assessment that takes into account an evaluation of the Executive Director's performance and the Agency's future tasks and challenges **and submit it to the Management Board for information together with the proposal for mandate renewal.**
4. The Management Board, acting on a proposal from the Commission, taking into account the assessment referred to in paragraph 3, may extend once the term of office of the Executive Director, for not more than five years. **The Management Board shall inform the European Parliament and the Council about its intention to extend the Executive Director's mandate. Before the Management Board takes a decision to extend the mandate, the Executive Director may be invited to make a statement to the competent committee of the European Parliament and to answer questions posed by its members.**
5. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post.
6. The Executive Director may be removed from office only upon a decision of the Management Board acting on a proposal ~~from~~ **which can be submitted by either the Commission or at least one third of the voting members of the Management Board.**
7. The Executive Director shall be engaged as a temporary agent of the Agency under Article 2(a) of the Conditions of Employment of Other servants.

Article 23

Tasks and responsibilities of the Executive Director

1. The Executive Director shall manage the Agency in accordance with the decisions of the Management Board and shall be accountable to the Management Board.

2. Without prejudice to the powers of the Commission, ~~and the Management Board, and the Executive Board~~, the Executive Director shall be independent in the performance of the duties and shall neither seek nor take instructions from any government nor from any other body.
3. The Executive Director shall report to the European Parliament on the performance of his/her duties when invited to do so. The Council may invite the Executive Director to report on the performance of his/her duties.
4. The Executive Director shall be the legal representative of the Agency.
5. The Executive Director shall be responsible for the implementation of the tasks assigned to the Agency by this Regulation. In particular, the Executive Director shall:
 - (a) ensure the sustainable and efficient– day-to-day– administration of the Agency;
 - (b) organise, direct and supervise the operations and the staff of the Agency within the limits of the decisions of the Management Board;
 - (c) prepare and implement the decisions adopted by the Management Board.
 - (d) prepare draft financial rules applicable to the Agency for adoption by the Management Board;
 - (e) draw up estimates of the Agency's revenue and expenditure, in accordance with Article 27, and implementing the budget in accordance with Article 28.
 - (f) prepare the draft single programming document and submit it for adoption to the Management Board after consulting the Commission at least four weeks before the relevant Management Board meeting;
 - (g) implement the single programming document, assessing progress compared to the relevant indicators and report to the Management Board on its implementation;
 - (h) prepare the Agency's consolidated annual activity report and present it to the Management Board for assessment and adoption;
 - (i) respond to any requests for assistance in accordance with Article 17 (5);

- (j) decide to carry out the visits and inspections provided for in Article 10, after consultation of the Commission and following the methodology for visits established by the Management Board in accordance with Article 16 (1) point (g);
- (k) decide to enter into administrative arrangements with other Union bodies working in the Agency's fields of activities provided that the draft arrangement has been submitted for consultation to the Commission first and the Management Board in accordance with Article 11 (5) and provided that the Management Board has not objected within four weeks;
- (l) take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation;
- (m) organise an effective monitoring system in order to be able to compare the Agency's achievements with its objectives and tasks as laid down in this Regulation. To that end, he or she shall establish, in agreement with the Commission and the Management Board, tailored performance indicators allowing for an effective assessment of the results achieved. He or she shall ensure that the Agency's organisational structure be regularly adapted to the evolving needs within the available financial and human resources. In this regard, he or she shall establish regular evaluation procedures that meet recognised professional standards;
- (n) establish and ensure the functioning of an effective and efficient internal control system and report any significant change to it to the Management Board;
- (o) ensure the carrying out of risk assessments and risk management for the Agency;
- (p) prepare a follow-up action plan in relation to the conclusions of internal or external audit reports and evaluations, as well as investigations by OLAF and EPPO, as referred to in Article 38, and report on progress twice a year to the Commission and regularly to the Management Board;
- (q) protect the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, without prejudicing the investigative competence of OLAF and EPPO, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where

appropriate, by imposing effective, proportionate and dissuasive administrative, including financial penalties;

- (r) prepare an anti-fraud strategy, an efficiency gains and synergies strategy, a strategy for cooperation with third countries or international organisations, or both, and a strategy for the organisational management and internal control systems, for the Agency and present it to the Management Board for approval;
- (s) promote diversity and ensure gender balance as regards the recruitment of the Agency's staff;
- (t) recruit staff on the broadest possible geographical basis;
- (u) design and implement a communication policy for the Agency;
- (v) perform any other tasks entrusted or delegated to him or her by the Management Board or as may be required by this Regulation;

Article 24

Participation of third countries

1. The Agency shall be open to the participation of third countries, which have entered into agreements with the Union, whereby they have adopted and are applying the Union law in the field of maritime safety, maritime security, prevention of pollution and response to pollution caused by ships.
2. Under the relevant provisions of those agreements, arrangements specifying the nature and the extent of the detailed rules for the participation by those countries in the work of the Agency including provisions on financial contributions and staff shall be concluded by the Agency following the opinion of the Commission **and the authorisation of the Management Board.**

CHAPTER VI

FINANCIAL PROVISIONS

Article 25

Financial rules

The financial rules applicable to the Agency shall be adopted by the Management Board after consulting the Commission. The financial rules shall not depart from Commission Delegated Regulation (EU) 2019/715 unless such a departure is specifically required for the Agency's operation and the Commission has given its prior consent.

Article 26

Budget

1. Estimates of all revenue and expenditure for the Agency shall be prepared each financial year, corresponding to the calendar year, and shall be shown in the Agency's budget.
2. The Agency's budget shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other resources, the Agency's revenue shall comprise:
 - (a) a contribution from the Union entered in the general budget of the European Union and grants from Union bodies;
 - (b) possible contributions from any third country which participates in the work of the Agency in accordance with Article 24;
 - (c) ~~any fees and charges for infrastructure, publications, training or any other services falling under the scope of this Regulation provided by the Agency in accordance with the implementing acts adopted pursuant to Article 33;~~
 - (d) any voluntary financial contribution from Member States, third countries or other entities, provided such contribution is transparent, is clearly identified in the budget and does not compromise the independence and impartiality of the Agency.

4. The expenditure of the Agency shall include staff remuneration, administrative and infrastructure expenses and operating costs.

Article 27

Establishment of the budget

1. Each year, the Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following financial year, including the establishment plan, and send it to the Management Board.
2. The Management Board shall, on the basis of that draft, adopt a provisional draft estimate of the Agency's revenue and expenditure for the following financial year.
3. The provisional draft estimate of the Agency's revenue and expenditure shall be sent to the Commission by 31 January each year. The Management Board shall send the final draft estimate to the Commission by 31 March of that year.
4. The Commission shall send the statement of estimates to the budgetary authority together with the draft general budget of the European Union.
5. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the European Union the estimates it considers necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 of the TFEU.
6. The budgetary authority shall authorize the appropriations for the contribution to the Agency.
7. The budgetary authority shall adopt the Agency's establishment plan.
8. The Agency's budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the European Union. Where necessary, it shall be adjusted accordingly.
9. For any building project likely to have significant implications for the budget of the Agency the provisions of Delegated Regulation (EU) No 715/2019 shall apply.

Article 28

Implementation of the budget

1. The Executive Director shall implement the Agency's budget.
2. Each year the Executive Director shall send to the budgetary authority all information relevant to the findings of evaluation procedures.

Article 29

Presentation of accounts and discharge

1. By 1 March of the following financial year, the Agency's accounting officer shall send the provisional accounts to the Commission's accounting officer and to the Court of Auditors
2. By 31 March of the following financial year, the Agency shall send the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors.
3. By 31 March of the following financial year, the Commission's accounting officer shall send the Agency's provisional accounts, consolidated with the Commission's accounts, to the Court of Auditors.
4. On receipt of the Court of Auditors' observations on the Agency's provisional accounts pursuant to Article 246 of the Financial Regulation, the Executive Director shall draw up the Agency's final accounts under his or her own responsibility and submit them to the Management Board for an opinion.
5. The Management Board shall deliver an opinion on the Agency's final accounts.
6. The accounting officer shall, by 1 July of the following financial year, send the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.
7. The final accounts shall be published in the Official Journal of the European Union by 15 November of the following financial year.
8. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September. The Executive Director shall also send that reply to the Management Board.

9. The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 261(3) of the Financial Regulation.
10. On a recommendation from the Council acting by a qualified majority, the European Parliament shall, before 15 May of year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

CHAPTER VII

STAFF

Article 30

General provision

The Staff Regulations and the Conditions of Employment of Other Servants and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of the Agency.

Article 31

Seconded national experts and other staff

1. The Agency may make use of seconded national experts or other staff not employed by the Agency.
2. The Management Board shall adopt a decision laying down rules on the secondment of national experts to the Agency.

CHAPTER VIII

GENERAL AND FINAL PROVISIONS

Article 32

Legal status and seat

1. The Agency shall be a body of the Union and shall have legal personality.

2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may in particular, acquire and dispose of movable and immovable property and be a party to legal proceedings.
3. The Agency shall be represented by its Executive Director.
4. The seat of the Agency shall be in Lisbon, the Republic of Portugal.
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5. At the request of the Commission, the Management Board may decide, with the agreement of and in cooperation with the Member States concerned and with due regard to budgetary implications, including any contribution the Member States concerned may provide, to establish regional centers 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 Management Board shall define the precise scope of activities of the regional centre while avoiding unnecessary financial costs and enhancing cooperation with existing regional and national networks.

Article 33

~~Implementing acts relating to fees and charges~~

1. ~~The Commission shall adopt, in accordance with the principles set out in paragraphs 2, 3 and 4 implementing acts specifying:~~
 - (a) ~~the fees and charges payable to the Agency, in particular in application of Article 26 (3) point (c); and~~
 - (b) ~~the conditions of payment.~~

~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 34 (2).~~
2. ~~Fees and charges shall be levied for possible services provided by the Agency, in particular to third countries and the industry for tasks falling under its competencies.~~
3. ~~All fees and charges shall be expressed, and payable, in euro. Fees and charges shall be set in a transparent, fair and uniform manner. The specific needs of small and medium-sized~~

enterprises, including the possibility of splitting payments into several instalments and phases, shall be taken into account, as appropriate. The apportionment of the fees shall be clearly identified in the accounts. Reasonable deadlines shall be set for the payment of fees and charges.

4. ~~The amount of the fees and charges shall be fixed at such a level as to ensure that the revenue in respect thereof is sufficient to cover the full cost of the services provided. All expenditure of the Agency attributed to staff involved in the activities referred to in paragraph 2, including the employer's pro-rata contribution to the pension scheme, shall in particular be reflected in that cost. Should a significant imbalance resulting from the provision of the services covered by fees and charges become recurrent, the level of those fees and charges shall be revised. Those fees and charges shall be assigned revenues for the Agency.~~

Article 34

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 Council⁴³. 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.~~

Article 35

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Union shall apply to the Agency and its staff.

⁴³ ~~Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships (OJ L 324, 29.11.2002, p. 1).~~

Article 36

Language arrangements

1. The provisions laid down in Council Regulation No 1⁴⁴ shall apply to the Agency.
2. The translation **and all other linguistic** services required ~~for the functioning of~~ by the Agency, **other than interpretation**, shall be provided by the Translation Centre ~~of~~for the Bodies of the European Union.

Article 37

Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council⁴⁵ shall apply to documents held by the Agency.
2. The Management Board shall, within six months of the date of its first meeting, adopt the detailed rules for applying Regulation (EC) No 1049/2001.
3. Decisions taken by the Agency under Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 of the TFEU respectively.
4. The processing of personal data by the Agency shall be subject to Regulation (EU) 2018/1725 of the European Parliament and of the Council⁴⁶.

⁴⁴ OJ L 17, 6.10.1958, p. 385/58. Regulation as last amended by the Regulation (EC) No 1791/2006 of 20 November 2006 adapting certain Regulations and Decisions by reason of the accession of Bulgaria and Romania.

⁴⁵ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

⁴⁶ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 38

Combating fraud

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EU, Euratom) No 883/2013 the Agency shall adopt appropriate provisions applicable to all employees of the Agency.
2. The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.
3. OLAF may carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Agency, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013.
4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the European Court of Auditors OLAF and EPPO to conduct such audits and investigations, according to their respective competences.

Article 39

Security rules on the protection of classified and sensitive non-classified information

The Agency shall adopt own security rules equivalent to the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in the Commission Decisions (EU, Euratom) 2015/443⁴⁷ and 2015/444⁴⁸. The security rules of the Agency shall include provisions for the exchange, processing and storage of such information.

⁴⁷ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

⁴⁸ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

Article 40

Liability

1. The Agency's contractual liability shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.
3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the performance of their duties.
4. The Court of Justice of the European Union shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.
5. The personal liability of its staff towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

Article 41

Evaluation and review

1. No later than ~~5~~**five** years after the [date of entry into force], and every ~~5~~**five** years thereafter, the Commission shall conduct an evaluation to assess particularly the impact, effectiveness and efficiency of the Agency and its working practices, **taking into account the opinion of the Management Board**. The evaluation shall, in particular, address the possible need to modify the mandate of the Agency, **notably in order to take account of the evolution of the Union's legislation in the maritime transport field**, and the financial implications of any such modification, **as well as the need to establish a fees and charges scheme and to identify the services that the Agency may offer under such a scheme**.
2. The Commission shall forward the evaluation report together with its conclusions on the report, to the European Parliament, the Council and the Management Board. The findings of the evaluation shall be made public.

3. On the occasion of every second evaluation, there shall also be an assessment of the results achieved by the Agency having regard to its objectives, mandate and tasks. If the Commission considers that the continuation of the Agency is no longer justified with regard to its assigned objectives, mandate and tasks, it may propose that this Regulation be amended accordingly or repealed.

Article 42

Administrative inquiries of the European Ombudsman

The activities of the Agency shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 of the TFEU.

Article 43

Transitional provisions

1. By way of derogation from Article 15 of this Regulation, the members of the Administrative Board appointed under Regulation (EC) No 1406/2002 before [date of entry into force] shall remain in office as members of the Management Board until the expiry date of their term of office, without prejudice to the right of each Member State to appoint a new representative.
2. The Executive Director of the Agency appointed on the basis of Article 16 of Regulation (EU) No 1406/2002 shall remain assigned to the post of the Executive Director with the tasks and responsibilities provided for in Article 23 of this Regulation. ~~If a decision extending the mandate of the Executive Director in accordance with Article 16(2) of Regulation (EU) No 1406/2002 is adopted prior to the entry into force of this Regulation, the duration of the extended mandate shall be for 5 years. The other conditions of her contract shall remain unchanged.~~
3. The entry into force of this Regulation is without prejudice to all employment contracts in force on [date of entry into force].

Article 44

Repeal

Regulation (EC) No 1406/2002 is repealed.

Article 45

Entry into force

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

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President