Regulation (EU) No 100/2013 of the European Parliament and of the Council of 15 January 2013 amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency (Text with EEA relevance)

REGULATION (EU) No 100/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Regulation (EC) No 1406/2002 of the European Parliament and of the Council[(3)], which was adopted in response to the 'Erika' oil tanker incident, established a European Maritime Safety Agency (the 'Agency') for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships.

(2) After the 'Prestige' oil tanker incident in 2002, Regulation (EC) No 1406/2002 was modified to give the Agency more tasks with regard to pollution response.

(3) It is necessary to clarify which types of marine pollution should fall within the objectives of Regulation (EC) No 1406/2002. Thus, marine pollution caused by oil and gas installations should be understood as pollution by oil or any substance other than oil which, if introduced into the marine environment, is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, as established by the Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, 2000.

(4) Acting in accordance with Article 22 of Regulation (EC) No 1406/2002, the Administrative Board of the Agency (the 'Administrative Board') in 2007 commissioned an independent external evaluation on the implementation of that

Regulation. Based on that evaluation, in June 2008, it issued recommendations regarding changes to the functioning of the Agency, to its areas of competence and to its working practices.

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

(6) The Agency's tasks should be described clearly and precisely, and any duplication of tasks should be avoided.

(7) The Agency has shown that certain tasks can be undertaken more efficiently at European level, which might, in certain cases, offer Member States savings on their national budgets and, where demonstrated, represent genuine European added value.

(8) Some provisions regarding the specific governance of the Agency should be clarified. Taking into account the special responsibility of the Commission for the implementation of Union policies enshrined by the Treaty on the Functioning of the European Union, the Commission should provide policy guidance to the Agency in the performance of its tasks while fully respecting the legal status of the Agency and the independence of its Executive Director as established by Regulation (EC) No 1406/2002.

(9) When appointing members of the Administrative Board, electing the Chairperson and Deputy Chairperson of the Administrative Board and appointing Heads of Department, the importance of ensuring balanced gender representation should be fully taken into account.

(10) Any reference to relevant legal acts of the Union should be understood to refer to acts in the field of maritime safety, maritime security, prevention of, and response to, pollution caused by ships as well as response to marine pollution caused by oil and gas installations.

(11) For the purposes of this Regulation, 'maritime security' is to be understood — in accordance with Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security[4] — as

the combined preventive measures intended to protect shipping and port facilities against threats of intentional unlawful acts. The security objective should be achieved by adopting appropriate measures in the field of maritime transport policy, without prejudice to the rules of the Member States in the field of national security, defence and public security, and in combating financial crimes against the State.

(12) The Agency should act in the interests of the Union. This should include the situation when the Agency is tasked to act outside the territory of the Member States in its fields of competence and to provide technical assistance to relevant third countries, in promoting the Union's maritime safety policy.

(13) The Agency should provide technical assistance to Member States which should facilitate the establishment of the necessary national capacity to implement the Union *acquis*.

(14) The Agency should provide operational assistance to the Member States and the Commission. This should include services such as the Union Maritime Information and Exchange System (SafeSeaNet), the European Satellite Oil Monitoring Service (CleanSeaNet), the European Union Long Range Identification and Tracking Data Centre (EU LRIT Data Centre) and the EU Port State Control inspection data base (Thetis).

(15) The Agency's expertise in electronic data transmission and in maritime information exchange systems should be used to simplify reporting formalities for ships with a view to the elimination of barriers to maritime transport and the establishment of a European Maritime Transport Space without Barriers. In particular, the Agency should support Member States in the implementation of Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States[(5)].

(16) The Agency should enhance its assistance to the Commission regarding research activities related to its fields of competences. However, duplication of work as regards the existing Union research framework should be avoided. In particular, the Agency should not be in charge of the management of research projects.

(17) In the light of the development of new innovative applications and services and the improvement of the existing applications and services, and with a view to implementing a European Maritime Transport Space without Barriers, the Agency should make full use of the potential offered by the European satellite navigation programmes (EGNOS and Galileo) and by the Global Monitoring for Environment and Security programme (GMES).

(18) After the expiry of the Union framework for cooperation in the field of accidental or deliberate marine pollution established by Decision No 2850/2000/EC of the European Parliament and of the Council[(6)], the Agency should continue some of the activities previously carried out under that framework by drawing in particular on the expertise within the Consultative Technical Group for Marine Pollution Preparedness and Response. The activities of the Agency in this field should not relieve coastal States of their responsibility to have appropriate pollution response mechanisms in place and

should respect existing cooperation arrangements between Member States or groups of Member States.

(19) Upon request, the Agency provides Member States with detailed information about potential cases of pollution by ships through CleanSeaNet to enable them to fulfil their responsibilities under Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements[(7)]. However, the effectiveness of enforcement varies greatly despite such pollution having the potential to end up in other national waters. In its next report under Article 12 of that Directive, the Commission should therefore provide information to the European Parliament and to the Council about the effectiveness and the consistency of the enforcement of that Directive and other relevant information about its application.

(20) Requests from affected States for the mobilisation of anti-pollution actions by the Agency should be relayed through the EU Civil Protection Mechanism established by Council Decision 2007/779/EC, Euratom[(8)]. However, the Commission may consider that in circumstances other than requests for mobilisation of stand-by anti-pollution ships and equipment, alternative means of communication using advanced information technology may be more appropriate and, thus, may inform the requesting Member State.

(21) Recent events highlighted the risks of offshore oil and gas exploration and production activities to maritime transport and the marine environment. The Agency's response capabilities for oil pollution and its expertise in the field of pollution by hazardous and noxious substances should be used to cover response to pollution originating from such activities, at the request of an affected State.

(22) In particular, CleanSeaNet, which is currently used to provide evidence of oil spills from ships, should also be used by the Agency to detect and report oil spills from offshore oil and gas exploration and production activities, without causing any detrimental effects to the service provided for maritime transport.

(23) The Agency has established and recognised valuable expertise and tools in the fields of maritime safety, maritime security, prevention of, and response to, pollution caused by ships. This expertise and these tools can be relevant for other Union activities related to the Union maritime transport policy. The Agency should therefore assist the Commission and the Member States upon request in the development and implementation of such Union activities provided that the Administrative Board has approved this in the context of the Agency's annual work programme. Such assistance should be subject to a detailed cost/benefit analysis and should not be detrimental to the Agency's core tasks.

(24) Through the technical assistance that the Agency provides,, it also contributes to the development of more environment-friendly maritime transport.

(25) As regards classification societies, most classification societies deal with both seagoing and inland waterway vessels. Based on the Agency's experience with classification societies for seagoing vessels, the Agency could provide relevant information to the

Commission with regard to classification societies for inland waterway vessels and thus allow for efficiency gains.

(26) As regards the interface between transport information systems, the Agency should assist the Commission and the Member States by exploring, together with competent authorities for the River Information Services System, the possibility of sharing information between such systems.

(27) Without prejudice to the responsibility of the competent authorities, the Agency should assist the Commission and the Member States in the development and implementation of the future e-Maritime initiative, which aims at improving the efficiency of the European maritime transport sector by facilitating the use of advanced information technologies.

(28) With a view to achieving the single market and a European Maritime Transport Space without Barriers, administrative burdens on shipping should be reduced, thereby inter alia encouraging short sea shipping. In this context, the 'Blue Belt' concept and e-Maritime could potentially be used as a means of reducing reporting formalities required from commercial vessels on entering or leaving ports in the Member States.

(29) It is recalled that according to the case-law of the Court of Justice of the European Union, and in order to respect the principle of institutional balance, the power to adopt decisions of general application may not be conferred on an agency.

(30) Without prejudice to the objectives and tasks laid down in Regulation (EC) No 1406/2002, the Commission should prepare and submit, within one year of the date of entry into force of this Regulation, in close cooperation with relevant stakeholders, a feasibility study with a view to evaluate and identify the possibilities of enhancing coordination and cooperation of different coastguard functions. That study should take into account the existing legal framework and relevant recommendations from the appropriate Union fora as well as the current development of the Common Information Sharing Environment (CISE) and should fully respect the principles of subsidiarity and proportionality, making clear the costs and benefits to the European Parliament and the Council.

(31) Attracting well trained European seafarers is important for the competitiveness of the Union maritime clusters. Therefore, in light of the current and future demand in the Union for highly qualified seafarers, the Agency should, if appropriate, support Member States and the Commission in promoting maritime training by facilitating the voluntary exchange of best practice and by providing information on Union exchange programmes on maritime training. This could include assisting competent European stakeholders in pursuing excellence for maritime education and training on a voluntary basis, while fully respecting the responsibility of the Member States for the content and organisation of maritime training.

(32) In order to counter the growing risk of piracy, the Agency should continue, where appropriate, to forward to competent national authorities and other relevant bodies, including operations such as EU Naval Force operation Atalanta, detailed information about the position of vessels flying the flag of Member States and transiting through