Changes to legislation: *There are outstanding changes not yet made to Regulation (EC) No 1406/2002 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (Text with EEA relevance)

REGULATION (EC) No 1406/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 June 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 establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the Economic and Social Committee[(2)],

Having regard to the opinion of the Committee of the Regions[(3)],

Acting in accordance with the procedure referred to in Article 251 of the Treaty[(4)],

Whereas:

(1) A large number of legislative measures have been adopted in the Community in order to enhance safety and prevent pollution in maritime transport. In order to be effective, such legislation must be applied in a proper and uniform manner throughout the Community. This will ensure a level playing field, reduce the distortion of competition resulting from the economic advantages enjoyed by non-complying ships and will reward the serious maritime players.

(2) Certain tasks currently done at Community or national level could be executed by a specialised expert body. Indeed, there is a need for technical and scientific support and a high level of stable expertise to properly apply the Community legislation in the fields of maritime safety and ship pollution prevention, to monitor its implementation and to evaluate the effectiveness of the measures in place. There is a need therefore, within the Community's existing institutional structure and balance of powers, to establish a European Maritime Safety Agency (‘the Agency’).

(3) In general terms, the Agency should represent the technical body providing the Community with the necessary means to act effectively to enhance overall maritime safety and ship pollution prevention rules. The Agency should assist the Commission in the continuous process of updating and developing Community legislation in the field of maritime safety and prevention of pollution by ships and should provide the necessary support to ensure the convergent and effective implementation of such legislation throughout the Community by assisting the Commission in performing the

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tasks assigned to the latter by existing and future Community legislation on maritime safety and ship pollution prevention.

(4) For the proper achievement of the purposes for which the Agency is established, it is appropriate that the Agency carries out a number of other important tasks aimed at enhancing maritime safety and ship pollution prevention in the waters of the Member States. In this respect, the Agency should work with Member States to organise appropriate training activities on port State control and flag State related issues and to provide technical assistance related to the implementation of Community legislation. It should facilitate cooperation between the Member States and the Commission as provided for in 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[(5)], namely by developing and operating any information system necessary for the objectives of that Directive, and in the activities concerning the investigations related to serious maritime accidents. It should provide the Commission and the Member States with objective, reliable and comparable information and data on maritime safety and on ship pollution prevention to enable them to take any necessary initiatives to enhance the measures in place and to evaluate their effectiveness. It should place the Community maritime safety know-how at the disposal of the States applying for accession. It should be open to the participation of these States and to other third countries which have concluded agreements with the Community whereby they adopt and implement Community legislation in the field of maritime safety and prevention of pollution by ships.

(5) The Agency should favour the establishment of better cooperation between the Member States and should develop and disseminate best practices in the Community. This in turn should contribute to enhancing the overall maritime safety system in the Community as well as reducing the risk of maritime accidents, marine pollution and the loss of human lives at sea.

(6) In order properly to carry out the tasks entrusted to the Agency, it is appropriate that its officials carry out visits to the Member States in order to monitor the overall functioning of the Community maritime safety and ship pollution prevention system. The visits should be carried out in accordance with a policy to be established by the Agency's Administrative Board and should be facilitated by the authorities of the Member States.

(7) The Agency should apply the relevant Community legislation concerning public access to documents and the protection of individuals with regard to the processing of personal data. It should give the public and any interested party objective, reliable and easily understandable information with regard to its work.

(8) For the contractual liability of the Agency, which is governed by the law applicable to the contracts concluded by the Agency, the Court of Justice should have jurisdiction to give judgment pursuant to any arbitration clause contained in the contract. The Court of Justice should also have jurisdiction in disputes relating to compensation for any damage arising from the non-contractual liability of the Agency.

(9) In order to effectively ensure the accomplishment of the functions of the Agency, the Member States and the Commission should be represented on an Administrative Board

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entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency, approve its work programme, examine requests for technical assistance from Member States, define a policy for visits to the Member States and appoint the Executive Director. In the light of the highly technical and scientific mission and tasks of the Agency, it is appropriate for the Administrative Board to consist of one representative of each Member State and four representatives of the Commission, being members with a high level of expertise. In order further to ensure the highest level of expertise and experience in the Administrative Board and with a view to involving the sectors most closely concerned in the tasks of the Agency, the Commission should nominate independent professionals from these sectors as board members without the right to vote, on the basis of their personal merit and experience in the field of maritime safety and prevention of pollution by ships and not as representatives of particular professional organisations.

(10) The good functioning of the Agency requires that its Executive Director be appointed on the grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant for maritime safety and prevention of pollution by ships and that he/she performs his/her duties with complete independence and flexibility as to the organisation of the internal functioning of the Agency. To this end, the Executive Director should prepare and take all necessary steps to ensure the proper accomplishment of the working programme of the Agency, should prepare each year a draft general report to be submitted to the Administrative Board, should draw up estimates of the revenues and expenditure of the Agency and should implement the budget.

(11) In order to guarantee the full autonomy and independence of the Agency, it is considered necessary to grant it an autonomous budget whose revenue comes essentially from a contribution from the Community.

(12) Over the past years, as more decentralised agencies have been created, the budgetary authority has looked to improve transparency and control over the management of the Community funding allocated to them, in particular concerning the budgetisation of the fees, financial control, power of discharge, pension scheme contributions and the internal budgetary procedure (code of conduct). In a similar way, Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)[(6)] should apply without restriction to the Agency, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)[(7)].

(13) Within five years from the date of the Agency having taken up its responsibilities, the Administrative Board should commission an independent external evaluation in order to assess the impact of this Regulation, the Agency and its working practices on establishing a high level of maritime safety and prevention of pollution by ships,

HAVE ADOPTED THIS REGULATION:

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CHAPTER I

OBJECTIVES AND TASKS

[F1 Article 1

Objectives

1 This Regulation establishes a European Maritime Safety Agency ('the Agency') for the purpose of ensuring a high, uniform and effective level of maritime safety, maritime security, prevention of, and response to, pollution caused by ships as well as response to marine pollution caused by oil and gas installations.

2 To that end, the Agency shall cooperate with the Member States and the Commission and provide them with technical, operational and scientific assistance in the fields mentioned in paragraph 1 of this Article within the limits of the core tasks set out in Article 2 and, as and when applicable, the ancillary tasks set out in Article 2a, in particular in order to help the Member States and the Commission to apply the relevant legal acts of the Union properly. As regards the field of response to pollution, the Agency shall provide operational assistance only upon the request of the affected State(s).

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

Textual Amendments

F1 Substituted by 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).

Article 2

Core tasks of the Agency

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

2 The Agency shall assist the Commission:

a in the preparatory work for updating and developing relevant legal acts of the Union, in particular in line with the development of international legislation;

b in the effective implementation of relevant binding legal acts of the Union, in particular by carrying-out visits and inspections as referred to in Article 3 of this Regulation and by providing technical assistance to the Commission in the performance of the inspection tasks assigned to it pursuant to Article 9(4) of Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security[8]. In this regard, it may address suggestions to the Commission for any possible improvements of those binding legal acts;

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c in the analysis of ongoing and completed research projects relevant to the objectives of the Agency; this may include the identification of possible follow-up measures resulting from specific research projects;

d in the performance of any other task assigned to the Commission in legislative acts of the Union regarding the objectives of the Agency.

3 The Agency shall work with the Member States to:

a organise, where appropriate, relevant training activities in fields which are the responsibility of the Member States;

b develop technical solutions, including the provision of relevant operational services, and provide technical assistance, to the building up of the necessary national capacity for the implementation of relevant legal acts of the Union;

c provide, at the request of a Member State, appropriate information resulting from the inspections referred to in Article 3 in order to support the monitoring of the recognised organisations that carry out certification tasks on behalf of the Member States in accordance with Article 9 of Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations[(9)] without prejudice to the rights and obligations of the flag State;

d support with additional means in a cost efficient way pollution response actions in case of pollution caused by ships as well as marine pollution caused by oil and gas installations, when a request has been presented by the affected Member State under the authority of which the cleaning operations are conducted, without prejudice to the responsibility of coastal States to have appropriate pollution response mechanisms in place while respecting existing cooperation between Member States in this field. As appropriate, requests for mobilisation of anti-pollution actions shall be relayed through the EU Civil Protection Mechanism established by Council Decision 2007/779/EC, Euratom[(10)].

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

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

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

c in the field of the investigation of marine casualties and incidents in accordance with Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the