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IMPACT ASSESSMENT

Accompanying document to the Proposal for a Regulation (EU) of the European Parliament and of the Council amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency

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COMMISSION STAFF WORKING DOCUMENT

Report on the impact assessment of the proposal for amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency

Lead DG: MOVE

Other involved services: ADMIN, BUDG, EMPL, ENTR, ENV, MARE, RTD, SG, SJ

Agenda planning or WP reference: 2008/MOVE/047

Executive summary

In this impact assessment, the Commission has reviewed a number of options regarding the 2002 Regulation establishing a European Maritime Safety Authority (EMSA). The external evaluation of EMSA's past and current performance fully confirmed the expected added-value of this Agency to the Commission and to the Member States regarding maritime safety, maritime security, the prevention of pollution and the response to pollution caused by ships. The impact assessment shows that a number of new tasks should be given to EMSA and that a number of clarifications would be usefully introduced in the Regulation, regarding EMSA's tasks and its specific governance arrangements.

Regarding EMSA's tasks the following four options were considered:

- Option 1: "do nothing" (i.e. leave Regulation 1406/2002 unchanged)
- Option 2: "minimal" revision limited to tasks arising from the implementation of the third EU-legislation maritime safety package;
- Option 3: "medium" revision encompassing option 2 plus taking over a large part of the activities of the Paris Memorandum of Understanding in the area of Port State Control;
- Option 4: "large" revision encompassing option 3 plus new tasks in the areas of security, research and general maritime policy.

Regarding the Agency's governance aspects, the following three options were established:

- Option 1: "do nothing" (i.e. leave Regulation 1406/2002 unchanged);
- Option 2: revision of the governance issues within the institutional framework of a regulatory agency;
- Option 3: radical revision by transforming the institutional framework in which EMSA currently operates.

Regarding the governance options, it was concluded at an early stage to pursue with a limited version of option 2 as the costs and difficulties raised by option 3 were considered too huge in comparison to the expected benefits, while option 1 does not allow improving the governance of the Agency. The limited version consists of modifying only governance arrangements

specific to EMSA, while leaving questions of horizontal nature to the ongoing political discussions between the EU Institutions.

The Commission has opted for a limited review of EMSA's tasks, which maintains entirely EMSA's existing activities. The preferred option is a "light" version of option 4 (which encompasses options 2 and 3); in which certain specific tasks examined individually have been disregarded. The tasks disregarded are those (a) where the outcome of the third Maritime Safety Package changed the initial Commission proposals; (b) which appear of not producing significant enough benefits for being transferred from the Secretariat of the Paris MoU to EMSA and (c) those that concern the extension of EMSA's assistance to the Commission regarding maritime security beyond the scope of Regulation 725/2004.

The financial consequences of this preferred option are estimated at additional staff requirements of 18 posts to be phased in between 2012 and 2014, a significant part of which should be made available by the Agency itself through internal redeployment. The overall budgetary costs for the period 2012-2017 are estimated at 5.7 M EUR. It should be noted that EMSA has received over the past years a considerable number of additional posts (55 posts for the period 2008-2011 in comparison to 2007), of which 32 needed for the new LRIT tasks started in 2008 (see section 3.2.1).

Section 1: Procedural issues and consultation of interested parties

1.1. Organisation and timing

This proposal was part of the Commission's legislative and work programme for 2008 (reference 2008/MOVE/047).

Preparations for the impact analysis started in 2007. An inter-service steering group was established to which the following DGs were invited: ADMIN, BUDG, EMPL, ENTR, ENV, MARE, RTD, SG and SJ as well as EMSA. After agreement on the terms of reference by correspondence, the kick-off meeting of the inter-service steering group took place on 16 October 2007 and the final meeting on 1st April 2008.

1.2. External expertise

Two different independent sources of expertise have been used. Firstly, as foreseen by Article 22 of the EMSA Regulation¹, EMSA's Administrative Board commissioned an external evaluation. The call for tender was launched in April 2007 and the Commission was part of

¹ 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, amended for the last time by Regulation (EC) No 2038/2006 of the European Parliament and of the Council of 18 December 2006 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships. Article 22 reads: "1. Within five years from the date of the Agency having taken up its responsibilities, the Administrative Board shall commission an independent external evaluation on the implementation of this Regulation. The Commission shall make available to the Agency any information the latter considers relevant to that evaluation. 2. The evaluation shall assess the impact of this Regulation, the Agency and its working practices. The Administrative Board shall issue specific terms of reference in agreement with the Commission, following consultations with the parties involved. 3. The Administrative Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission. Both the evaluation findings and recommendations shall be forwarded by the Commission to the European Parliament and the Council and shall be made public."

the Board's selection and steering group. The study was carried out by the consultant COWI and the final report was presented to EMSA's Administrative Board in March 2008. On the basis of this report, the Administrative Board adopted recommendations at its subsequent meeting of 12 June 2008². As foreseen by the Regulation, both the findings and the recommendations have been published³.

Secondly, in order to complete the evaluation by a study of the possible impact of the policy options under consideration, DG MOVE commissioned a study under its framework contract for assistance regarding impact assessment. This study was undertaken by PriceWaterhouseCoopers Advisory (PwC).

1.3. Consultation of stakeholders

Stakeholders have been consulted in the preparation of the two external studies. In addition, the Commission has held ad-hoc consultation.

Regarding the first study, COWI consulted EMSA twice, sent a questionnaire to the 27 EU Member States (response rate of 89%) and organised interviews with 18 representatives from Member States, 12 representatives from the Commission, 4 members of the European Parliament and 4 industry representatives. EMSA's Administrative Board had set up a steering committee to accompany the activities of the consultant, to which the Commission participated. The consultant presented its intermediate and final findings to the entire Board.

Regarding the second study, PwC consulted EMSA and sent a detailed questionnaire to the members of EMSA's Administrative Board (27 EU Member States, Norway, Iceland as well as 4 industry representatives) and to the Secretariat of the Paris Memorandum of Understanding on Port State Control. The participation rate was 56%, with 36 % of the consulted parties filling the questionnaire.

During the preparation of the proposal and the impact assessment, the Commission has consulted the Directors of the Maritime Transport Administrations of the 27 EU Member States as well as Norway and Iceland. The topic was also raised at various meetings of EMSA's Administrative Board in the context of the Agency's evaluation. The Commission received written contributions from two Member States.

1.4. Main results from the stakeholder consultations

Based on the input from the stakeholder consultation, the external evaluation of the Agency attributes excellent marks to the Agency summarised in the following quote:

*"It is the overall conclusion from the evaluation that the establishment of EMSA has filled a gap in the maritime safety area in the European Union. The Agency has quickly grown in terms of its tasks and importance to become a significant actor in the maritime safety area. The Agency has added value to the sector in general, and, in particular, to its two main stakeholders, the Member States and the Commission."*⁴

² See Annex I.

³ See EMSA's website at <http://www.emsa.europa.eu/end179d003d002.html>. Additionally, the executive summary of the external evaluation can be found in Annex II.

⁴ See the external evaluation study, p. 6.

Furthermore, the stakeholders consider the EMSA Regulation and EMSA itself as highly relevant. EMSA's effectiveness and efficiency are considered above average - and EMSA's effectiveness is considered as high in many areas. The external evaluation indicates that most Member States have experienced administrative savings or expect, in the future, to be able to save administrative resources as a consequence of EMSA's work in certain areas and that EMSA has contributed to making legislative proposals technically feasible and acceptable.

However, the external evaluation highlights that EMSA's effectiveness and efficiency can be further improved in a number of areas and that some clarifications are desirable. Those remarks concern mainly the internal organisation of the Agency, in particular the management of projects with a high IT component⁵. Furthermore, the study notes the duality of EMSA's role in carrying out inspections of Member States on behalf of the Commission on the one hand and providing technical assistance to the Member States on the other hand⁶.

Based on these findings, EMSA's Administrative Board issued a set of recommendations on 12 June 2008 (see Annex I). One recommendation requires definitely a change to the Regulation while other recommendations would benefit from an appropriate legal basis in EMSA's founding Regulation.

The stakeholder consultation during the second study confirmed the excellent standing of EMSA. The replies showed that EMSA should be able to perform effectively an overwhelming majority of the potential new tasks under consideration in the impact assessment (see section 6).

Furthermore, a majority of stakeholders wished to keep the Paris Memorandum of Understanding on Port State Control (Paris MoU) in its existing structure as an intergovernmental body. The Commission has taken account of this opinion (see section 6.4. below for further details). EMSA's multi-annual strategy adopted in March 2010 foresees "*to maximise management efficiency*"⁷ for both EMSA and the Paris MoU Secretariat. Different actions are envisaged for the near future. In order to respond to the concerns expressed by Member States that EMSA's focus could be detracted from its current assistance to the Commission and the Member States to new activities like the assistance to third countries, the Commission services conclude that any revision or extension of EMSA's tasks should not jeopardise the current achievements of the Agency and the services provided to the Commission and the Member States, thus any new tasks require appropriate additional resources for EMSA.

1.5. *Opinion from the Impact Assessment Board*

The Impact Assessment Board issued its opinion on 22 June 2008 providing a number of recommendations for improvements. The major changes to the report are the following:

- The description of the baseline scenario has been extended;
- Considerations on the principles of subsidiarity and proportionality have been introduced;

⁵ While regulatory agencies benefit from a huge degree of administrative autonomy regarding their internal management, this aspect will be addressed indirectly below under options 2, 3 and 4, in particular in tasks B7, B8, B11, B12, C5 and D4.

⁶ See the external evaluation study, p. 35.

⁷ To be published on EMSA's website.

- The presentation of policy options has been restructured;
- The assessment of the economic impact has been improved.

Section 2: Problem definition

2.1. Background on EMSA

The European Maritime Safety Agency (EMSA) was created in 2002 as part of the second maritime safety package in a general effort to improve maritime safety in European waters after a number of maritime accidents, some of them leading to environmental catastrophes in Europe. The Commission proposed the creation of EMSA with the main objective to "*provide the Commission and Member States with support in applying and monitoring compliance with Community law and in assessing the effectiveness of the measures in place. The Agency will have a staff of around 50 [...]*"⁸. After the entry into force of the Regulation in August 2002, the Agency started activities in early 2003 with the Executive Director taking up his duties. The first full year of operations was 2004.

Previous modifications of the EMSA Regulation

The maritime legislation of the EU has considerably evolved since the creation of EMSA in 2002, as witnessed by the three modifications of the founding Regulation already adopted⁹. While the **first modification** to the EMSA founding Regulation was of a horizontal nature and concerned financial and budgetary procedures as well as transparency, the **second modification** which entered into force in May 2004 brought considerable new tasks to the Agency in the areas of maritime security and pollution preparedness and response. Under the terms of that Regulation, the Agency is required to provide the Member States and the Commission with technical and scientific assistance in the field of accidental or deliberate pollution caused by ships and, in particular, to support, on request, in a cost-efficient way, the pollution response mechanisms of the Member States. In order to provide an overall framework for its action in the field of prevention and response to oil pollution, the Agency adopted an Action Plan in October 2004 for oil pollution preparedness and response. The **third modification** introduced by Regulation 2038/2006 provided the funding of 154 M EUR in a multi-annual financial framework for these activities for the period 2007-2013¹⁰. However, these previous modifications have not been sufficient to address the new challenges ahead for EMSA, most of the challenges being external either to EMSA or to EMSA and the EU as a whole.

2.2. EMSA's current situation

This report is not the appropriate place to provide a full description of EMSA's current activities. Comprehensive information on EMSA is available at its website including annual work programmes, annual reports, budgetary information, the Action Plan for Oil Pollution Preparedness and Response (initial adoption in 2004), the Action Plan for Hazardous and

⁸ COM(2000)802 of 6.12.2000, p. 5.

⁹ First modification by Regulation (EC) No 1644/2003 of the European Parliament and of the Council of 22 July 2003, OJ L 245 of 29.9.2003, p. 10;

Second modification by Regulation (EC) No 724/2004 of the European Parliament and of the Council of 31 March 2004, OJ L 129 of 29.4.2004, p. 1;

Third modification by Regulation (EC) No 2038/2006 of the European Parliament and of the Council of 18 December 2006, OJ L 394 of 30.12.2006, p. 1, see also the corrigendum in OJ L 30 of 3.2.2007, p. 12.

¹⁰ For more information see EMSA's first financial report published in early 2008. The report is available at <http://www.emsa.europa.eu/end645.html> under the heading "Pollution preparedness & response".

Noxious Substances Pollution Preparedness and Response (initial adoption in 2007) as well as information for the general public¹¹.

The following two tables illustrate EMSA's rapid growth over the past years:

EMSA Budget in million Euros:									
	2003	2004	2005	2006	2007	2008	2009	2010	2011 Draft ¹²
Authorised CA	2.650	13.304	35.360	44.738	48.249	50.203	48.335	53.791	56.598
Authorised PA	2.650	13.340	35.360	44.738	48.249	50.228	53.300	50.014	57.644
Committed	1.043	7.503	29.714	34.287	43.280	46.466	45.427 ¹³	n. a.	n. a.
Paid	0.507	4.666	15.175	23.969	32.982	37.213	43.040 ¹³	n. a.	n. a.

CA = Commitment appropriations / PA = Payment appropriations

EMSA's human resources									
	2003	2004	2005	2006	2007	2008	2009	2010	2011 planned
Authorised posts under the establishment plan	40	55	95	132	153	181	192	200	208
Posts occupied at year's end	8	34	80	111	135	149	179	n. a.	n. a.
Total staff including seconded national experts, auxiliaries and contractual agents at year's end	14	50	100	131	161	179	212	n. a.	n. a.

As from 1st June 2008, EMSA has been organised in the following three departments, each one composed of three units:

- Corporate Services (Finance, Human Resources, Legal, IT, External Communication and Facilities Management);
- Implementation (maritime safety and protection of marine environment acquis);
- Operations (Pollution response, CleanSeaNet, SafeSeaNet, LRIT).

¹¹ See <http://www.emsa.europa.eu/>

¹² Figures from the Draft Budget 2011 as adopted by EMSA's Administrative Board on 9-10 March 2010.

¹³ The budget execution figures for 2009 are provisional.

Some key figures from 2009 illustrate EMSA's different activities:

114 inspections in the areas of maritime safety, maritime security and prevention of pollution by ships
88 events organised with over 2.250 participants. This includes 694 people trained in 34 training sessions.
65 substantial technical reports
13 contracts covering 18 stand-by oil spill recovery vessels (16 in the stand-by phase and 2 in the preparatory phase) for the different regional seas of the EU. Participation in 47 drills.
Over 3 million messages are exchanged per month in the EU vessel traffic monitoring system SafeSeaNet, with 2.000 users.
CleanSeaNet: 2.107 possible oil slicks detected, 751 oil slicks verified by Member States and 194 oil slicks confirmed.
Long-Range Identification and Tracking of vessels (LRIT): Establishment and management of the EU LRIT data centre which covers more than 6.000 EU-flag ships.

Finally, the appreciation from the shipping sector of EMSA's contribution should be noted, confirming EMSA's increasing role in maritime safety at the European scene as the following example demonstrates: EMSA established in 2004 a High Level Panel of Experts on Double Hull Tankers with the active participation of the main stakeholders¹⁴. The Panel met 6 times and adopted a report¹⁵ with 8 recommendations which were transmitted to the regulators and the tanker industry. The open and informal way of work has proven to be effective in addressing the issues that were raised, to carry out analyses, come to conclusions and – what is important for the future implementation of the recommendations – unanimously present solutions to the concerns raised.

2.3. *Need for action*

From this situation two different sets of problems arise:

- 1) to which extent does the EMSA Regulation provide the appropriate basis for EMSA carrying out its tasks as expected by its main stakeholders and
- 2) how to deal with a number of governance issues which have been experienced in the first years of EMSA's existence.

2.3.1. *Avoid inconsistency*

Evolution of maritime safety acquis

The third maritime safety package proposed by the Commission in late 2005 and finally adopted in March 2009 further enhances EMSA's tasks and its assistance to the Commission and the Member States, although the final result of the legislative procedure requires less assistance than the initial Commission proposals would have required in particular regarding

¹⁴ Baltic and International Maritime Council (BIMCO), Community of European Shipyards' Association (CESA), European Commission (DG TREN), International Association of Classification Societies (IACS), International Chamber of Shipping (ICS), International Maritime Organization (IMO), International Association of Independent Tanker Owners (INTERTANKO) and Oil Companies International Marine Forum (OCIMF).

¹⁵ The report is available at <http://www.emsa.europa.eu/end185d007d002d003d002.html>

flag state responsibilities and liability of shipowners. In its communication on the third maritime safety package, the Commission indicated: *"Implementation of the measures contained in this package will, where appropriate, involve the European Maritime Safety Agency set up by Regulation (EC) No 1406/2002 of the European Parliament and of the Council. Some of the measures are already provided for in that Regulation. The others will be the subject of a proposal to amend the Regulation setting up the Agency which the Commission intends to submit in the coming months"*¹⁶.

Without acting, the inconsistency between EMSA's founding Regulation and recently adopted EU legislative acts in the area of maritime safety, will lead to uncertainties regarding EMSA's tasks and to a lack of visibility in the sense of "who is doing what?"

It is necessary to better specify EMSA's tasks and to define precisely EMSA's assistance to the Commission and the Member States in the light of various new developments.

Other developments at EU level

The Commission presented in January 2009 its Maritime Transport Strategy for the period up to 2018¹⁷. Beside the intention to "revise the mandate and the functioning of the European Maritime Safety Agency, in order to further enhance the technical and scientific assistance it can give to the Member States and the Commission" (p. 8), the Commission announced also its plans in the area of human resources, seamanship and maritime know-how (point 3 of the communication), where EMSA is expected to make different contributions. The Council welcomed this communication¹⁸ and supported "enhancing the work of the European Maritime Safety Agency for providing technical and scientific assistance to Member States and the Commission". The EP opinion on the communication is under preparation.

In developing the **Integrated EU maritime policy**, the Commission has stated its intention to take forward an integrated approach to maritime surveillance at EU level, which brings together and makes interoperable the various surveillance systems which are in place or planned, building on the ongoing technical work by the EU Agencies EMSA, FRONTEX, and the Communities Fisheries Control Agency¹⁹. EMSA's contribution to this new and wider EU policy objective has not been foreseen in its founding Regulation (for details see below under option 4).

Following an invitation by the EU legislator²⁰, the Commission services are working on a feasibility study regarding a **European Coastguard service**. The Commission services are currently considering that synergies at EU level could be reinforced through EMSA's activities. This could be further supported by extending EMSA's tasks in selected areas, in

¹⁶ See COM(2005)585, 23.11.2005, p. 5.

¹⁷ See COM(2009) 8 from 21.1.2009: "Strategic goals and recommendations for the EU's maritime transport policy until 2018".

¹⁸ See Council conclusions of the meeting in Brussels on 30 and 31 March 2009, p. 24-30 of the press release. The European Parliament is currently finalising its report on the communication.

¹⁹ See Action Plan in SEC(2007)1278 of 10.10.2007, p. 7-8 and Communication "Towards the integration of maritime surveillance: A common information sharing environment for the EU maritime domain" COM(2009)538 final.

²⁰ See article 11 of 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, OJ L 255, 30.09.2005, p. 11 and point 15 of the EP resolution on improving safety at sea of 21.04.2004.

particular regarding the surveillance of coastal waters and shipping routes as well as assistance for tracking possible polluters (for details see below under options 2 and 4).

While the current EMSA Regulation foresees "the analysis of research projects"²¹, it is felt that at EU level there is a gap between **maritime research** and the follow-up to research projects from a regulatory point of view. An enhanced role for EMSA could help to close this gap. In analysing research projects, EMSA could pay particular attention to the question to which extent the successful implementation of research results requires regulatory action and assist the Commission in preparing appropriate action. The external evaluation report identified research as one of the possible new tasks for EMSA²² (for details see below under option 4).

External influences on EMSA

The growing influence of the EU and its Member States in **international organisations** relevant for maritime transport, mainly the International Maritime Organization (IMO), makes it also necessary to review EMSA tasks and resources in order to ensure that the Commission and the Member States receive the best possible technical advice. It should also be noted that the International Labour Office (ILO) adopted in 2006 a comprehensive Maritime Labour Convention. The EU social partners agreed in 2008 to introduce this Convention into EU legislation through the procedure foreseen in Article 139 of the Treaty. The Council adopted Directive 2009/13/EC in early 2009²³. The implementation and enforcement of this Convention establishing minimum working conditions for seafarers will require adaptations from Flag States, Port States and Labour Supplying States, where EMSA's assistance is required. Furthermore, IMO is working on the revision of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). A diplomatic conference will take place in Manila in June 2010 to agree on the new text. The Commission assisted by EMSA has been coordinating substantial EU input and the EU positions in this process and EMSA will assist the Commission in the preparation of the revision of Directive 2008/106 on the minimum level of training of seafarers, once the text of the new Convention has been adopted.

To a certain extent, EMSA is a victim of its own success as its contribution to maritime safety has created expectations for and interest in cooperation with EMSA amongst a large group of stakeholders. In particular the maritime **neighbouring countries** of the EU sharing a regional sea with the EU Member States like the Baltic Sea, the Black Sea or the Mediterranean have been voicing their interest in technical cooperation with the Agency. The EMSA Regulation makes such technical cooperation difficult (for details see below under option 4).

²¹ See article 2 (a) of the EMSA Regulation.

²² See box 3.1 on page 28 of the external evaluation, where "complex technical assistance to the Commission in cooperation with research and development programmes" and "scientific research and climate change (in particular mitigating the effects of climate change on coastal regions)" are mentioned.

²³ Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC, OJ L 124, 20.05.2009, p. 30.

The Joint Declaration of the Paris Summit for the Mediterranean adopted on 13 July 2008 may serve as a prominent example²⁴. In its annex, the importance of maritime safety and security as well as of civil protection is stressed. EMSA makes an important contribution to all these areas.

Furthermore, EMSA supports the Commission in **regional organisations**. At technical level, EMSA may even represent the Commission due to its technical expertise and its resources. While the current Regulation foresees this in the case of the Paris Memorandum of Understanding on Port State Control²⁵, EMSA's assistance is relevant also for other regional organisations in which the Commission is active, in particular regarding the prevention of and response to pollution by ships (Helsinki Commission for the Baltic Sea, Barcelona Convention for the Mediterranean, etc.). For example, EMSA is active in the regional maritime traffic data exchange (AIS data = Automatic Identification System of vessels) in the Baltic and Mediterranean Sea and assists the Commission in the implementation of a regional maritime safety project in the Mediterranean (SafeMed).

LRIT as a case study

Another prominent case for interaction between various regulatory levels is the Long Range Identification and Tracking of vessels (LRIT). This project will be discussed in more detail below under option 2, but it has to be mentioned here that the initiative was launched and agreed at **international** level; the implementation was discussed at **EU** level and the technical and operational management was given to **EMSA**. Within IMO, the contracting parties agreed on the introduction of this new system within given deadlines. The EU Member States decided in October 2007 to set up an EU LRIT data centre to be "*managed by the Commission, in cooperation with Member States through EMSA*"²⁶. The Council adopted further guidelines regarding the EU LRIT data centre in December 2008²⁷. With the Member States agreeing to convey the implementation of international obligations to the Commission and EMSA, the Commission had to provide additional budgetary resources in the EU budget for financing this new project through an amending budget in 2008.

A pilot project is ongoing together with the EU Naval forces and in cooperation with Member States in the Gulf of Aden based on LRIT as a tool to fight against piracy, showing the potential of using information available from maritime applications for different user communities.

It should be noted that EU Member States decided in late 2009 to submit a bid to IMO for EMSA to host the International Data Exchange (IDE) of the global LRIT system from 2011 onwards. The IDE is currently provided on a temporary basis by the USA. A decision is expected to be taken at IMO's Maritime Safety Committee in May 2010; no other bid has been received.

For these reasons, the Commission has to make sure that EMSA remains able to meet the legitimate requirements of its stakeholders also in the future in line with the developments in the area of maritime safety.

²⁴ See the text of the declaration, in particular p. 19, at:
http://ec.europa.eu/external_relations/euromed/index_en.htm.

²⁵ See article 2 (b) (ii) of the EMSA Regulation.

²⁶ See point 1 in the Council Resolution of 2 October 2007, Council document 13736/07.

²⁷ See Council Resolution of 9 December 2008, Council document 17043/08.

2.3.2. Governance issues

The second set of problems to be addressed in this revision concerns governance issues. Experience over the past years has shown that some governance provisions need to be clarified further in order to better define the roles and responsibilities of the Agency, the Administrative Board, the Member States and the Commission. The external evaluation study has confirmed the need to clarify certain issues²⁸. The Commission has identified the following two main problems:

- EMSA's double role between on the one hand monitoring Member States through inspections and visits, which may eventually lead to infringements procedures and cases at the European Court of Justice, and on the other hand providing technical assistance, training and maritime support services to the Member States.
- The potential conflict of interest for Board members representing Member States: On the one hand they decide as Board members on EMSA's activities and resources, in particular on the visits policy²⁹, on the other hand they represent national administrations, which are themselves subject to visits and inspections by EMSA to check the conformity of national regulations and practice with the applicable EU law. This potential conflict has led to discussions at Board meetings in particular at the time of agreeing EMSA's visits policy³⁰.

While for the time being, such problems have been fortunately avoided and while most stakeholders acknowledge that EMSA handles both roles well so far³¹, the problematic character of the underlying provisions³² has become clear and requires corrective action.

Other governance issues concern the management of the Agency. As recommended by EMSA's Administrative Board (see Annex I), the external evaluation of the Agency should be repeated at regular intervals thus requiring modifications to Article 22.

A second recommendation concerns the development of a multi-annual strategy for EMSA, which should allow a better strategic planning as the current planning is mainly conditioned by the annual budgetary cycle. In March 2010, EMSA's Administrative Board approved a multi-annual strategy for the period 2010-2014, in which 14 new themes for EMSA are outlined³³. The Commission supports the strategy subject to the availability of the required budgetary resources. While it considers that many of the 14 themes do not require changes to the EMSA-Regulation, it has taken into account a number of themes in the proposal (see explanatory memorandum).

²⁸ See the external evaluation study, p. 7: "Comprehensive alterations to the current tasks allocated to EMSA are not recommended. There is a need for clarification in some areas and this should be mainly addressed by the development of a strategy plan for the Agency".

²⁹ See Article 3 (1) of the EMSA Regulation: "*In order to perform the tasks entrusted to it, the Agency may carry out visits to the Member States **in accordance with the policy defined by the Administrative Board.***"

³⁰ The document is available at <http://www.emsa.europa.eu/end179d003d001.html> under the decisions of the meeting of 25 June 2004.

³¹ See the external evaluation study, p. 35.

³² See in particular Articles 2 and 3 of the Regulation.

³³ To be published on EMSA's website.

Furthermore, due to EMSA's increased size, an intermediate management layer (Heads of Department) has been created. However, unlike in other regulatory agencies of a similar size, no role has been foreseen for the Administrative Board in the appointment of these managers.

Finally, the initial balance of the voting rights between Commission and Member States has been altered considerably by the latest enlargements. While in late 2002 at the first meetings of EMSA's Administrative Board, the Commission represented around 21 % of the votes (4 Commission representatives out of a total of 19 representatives with voting rights); this share has now been reduced to around 13 % due to the enlargement to 27 Member States (4 Commission representatives out of a total of 31 representatives with voting rights). The Administrative Board takes decisions in general by a two-thirds majority of all members with the right to vote (see Article 14). Special procedures are foreseen regarding the agency's work programmes (see Article 10(2)(d)) while the appointment of the Executive Directors requires a four-fifths majority (see Article 16).

2.4. Affected stakeholders

The most affected stakeholders of the envisaged modifications are the Agency itself as well as the Commission and the national maritime administrations, which form EMSA's main "users".

Secondly, as all actors in the maritime sector (seafarers, passengers, staff employed in the maritime sector and citizens living close to the shore) are directly affected by maritime safety measures, the revision of the EMSA Regulation, impacting on EMSA's contribution to maritime safety would affect them indirectly.

2.5. Consequences of inaction

The question of how the problem would evolve, all things being equal, is addressed as policy option 1 "Do nothing" below under sections 4 to 6. This would mean leaving Regulation 1406/2002 unchanged despite changes in EU maritime transport law, new developments at international and EU level and growing expectations from stakeholders towards assistance from EMSA.

2.6. Legal basis for action by the EU

The proposal seeks to modify existing EU legislation, more specifically Regulation 1406/2002.

In accordance with the principle of subsidiarity, such action has to be taken at EU level and cannot be taken at national, regional or local level.

The envisaged EU action also respects the principle of proportionality, as the Agency has been conceived to provide the appropriate technical assistance to the Commission and to the Member States in its field of competence. All options under consideration have been considered in this spirit.

The proposal does not affect the fundamental rights of citizens, as the Agency does not take any actions affecting individual citizens.

Section 3: Objectives

3.1. *General policy objectives*

The general policy objective is to improve maritime safety, maritime security and prevention from and response to pollution caused by vessels in order to improve the safety of European citizens, waters and coastlines and to allow the free and safe flow of goods and passengers by sea.

It has to be pointed out that the public opinion in Europe has developed very high expectations to maritime safety, which could be labelled as a "zero tolerance" limit for maritime accidents. This expectation by the European citizens has been echoed at various occasions by the European Parliament, requesting the Commission and the other Institutions to take robust action³⁴.

3.2. *Specific policy objectives*

The first specific policy objective is to ensure a better match between EMSA's tasks as enshrined in its founding Regulation and the different elements of EU maritime safety legislation. This may encompass the extension of EMSA's tasks to new fields in the areas of maritime safety, maritime security, prevention of and response to pollution.

The second specific policy objective is to clarify the governance issues, which have come up in the first years of EMSA's existence, with a view to better identify the responsibilities of the different actors (Agency, Administrative Board, Commission, and Member States).

Finally, the third specific policy objective is to help improving the visibility of the EU at the international scene by providing state-of-the-art technical assistance to Member States and the Commission in all areas of the Agency's expertise.

3.3. *Operational objective*

The operational objective of this impact assessment is to consider the need to modify the existing Regulation 1406/2002 in such a way as to realise the above-stated policy objectives in the most efficient and effective way.

3.4. *Consistency with other EU policies*

The objectives and the resulting proposal are fully in line with other EU policies, in particular the integrated EU maritime policy and environmental protection as well with the Lisbon and Sustainable Development strategies. A safe and sustainable maritime transport sector is an essential contribution to trade and to economic growth of the EU. Furthermore, the EU maritime transport policy including EMSA's activities creates a level playing-field within the EU and contributes to improving the competitiveness of the EU's shipping sector at global level.

³⁴ See for example the EP resolution of 20 May 2008 on an integrated maritime policy for the European Union, in particular paragraph 20; the EP resolution of 12 July 2007 on a future maritime policy for the European Union, in particular paragraphs 26-29; as well as the EP resolution on improving safety at sea of 21.04.2004.

Section 4: Policy options

As the proposal addresses both EMSA's tasks and governance issues, the two parts are handled separately.

4.1. *Policy options regarding the tasks of the Agency*

The following options were examined regarding EMSA's tasks:

- Option 1: "do nothing" (i.e. leave Regulation 1406/2002 unchanged)
- Option 2: "minimal" revision limited to tasks arising from the implementation of the third EU maritime safety package;
- Option 3: "medium" revision encompassing option 2 plus taking over a large part of the activities of the Paris Memorandum of Understanding in the area of Port State Control;
- Option 4: "large" revision encompassing option 3 plus new tasks in the areas of security, research and general maritime policy.

From the outset, it was considered that options 2 to 4 were not conflicting options but cumulative and that within each of these options a number of specific tasks should be developed and assessed individually, which could lead to the partial redefinition of certain options, in particular the preferred option.

4.1.1. Option 1 "do nothing"

Under the assumption that Regulation 1406/2002 remains in its current version, EMSA would continue its current activities and provide its contribution to maritime safety. Having said this, the Agency would suffer from growing inconsistency between its tasks as laid down in the founding Regulation on the one hand and the legitimate needs and expectations from Member States and the Commission regarding technical assistance in the implementation of the ever evolving EU maritime safety legislation on the other hand, in particular regarding the forthcoming implementation of the first elements of the third maritime safety package. Such a situation would be unclear and inefficient from a legal point of view, thus creating confusion and a waste of budgetary resources. Eventually, such a scenario could result in an increased maritime safety risk despite the effectiveness and pragmatism shown by EMSA.

Under option 1, if EMSA had to continue to operate as presently, its activities could be summarised in 37 specific tasks. These tasks have been identified for the sake of this impact assessment without prejudice to the legal text in Article 2 of the Regulation. The tasks have been organised in the following five groups:

- Group 1 horizontal tasks: six different horizontal tasks were defined through which EMSA provides technical assistance to the Commission, the Member States and candidate countries. These tasks concern the preparation of legislation, the implementation as well as the monitoring and evaluation of the implemented measures. The general provision of data and training are also covered in this group.
- Group 2 maritime safety: this is the biggest group with 18 tasks organised by the different legal instruments (like classification societies, port state control, training of seafarers).

Activities comprise inspections in Member States and third countries, provision of specialised technical assistance, development and management of databases and operational services regarding vessel traffic monitoring and the tracking of illegal discharges at sea by vessels.

- Group 3 maritime security: This is a very small group with the single task of providing technical assistance to the Commission inspections under Regulation 725/2004/EC.
- Group 4 prevention of pollution: In this second biggest group of 7 tasks, activities comprise again inspections in Member States, the provision of specialised technical assistance in various areas of potential pollution (anti-fouling, air emissions, ship waste).
- Group 5 preparedness and response to pollution: In this last group, 5 tasks are organised mainly around the operational support to Member States with additional anti pollution means.

Further details are given in Annex III.

4.1.2. Option 2 "minimal" revision

Option 2 looks at EMSA's required assistance to the implementation of the seven proposals of the third maritime safety package. It can be considered as a "minimal" revision as this package is the logical development of the EU's maritime safety legal framework.

The Commission submitted the package consisting of the following 7 legislative proposals in late 2005³⁵:

- Proposal for a Directive of the European Parliament and of the Council on compliance with flag State requirements;
- Proposal for a Directive of the European Parliament and of the Council on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations;
- Proposal for a Directive of the European Parliament and of the Council on port State control;
- Proposal for a Directive of the European Parliament and of the Council amending Directive 2002/59/EC establishing a EU vessel traffic monitoring and information system;
- Proposal for a Directive of the European Parliament and of the Council establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC;
- Proposal for a Regulation of the European Parliament and of the Council on the liability of carriers of passengers by sea and inland waterways in the event of accidents;
- Proposal for a Directive of the European Parliament and the Council on the civil liability and financial guarantees of shipowners.

³⁵ See http://ec.europa.eu/transport/maritime/safety/2005_package_3_en.htm for more information.

While the first four proposals improve and strengthen existing EU legislation, the remaining three proposals are set to complete the maritime safety measures through new legislative instruments. All proposals are in line with and based on the work of the International Maritime Organization and most of them have been developed with EMSA's assistance.

The European Parliament and the Council reached agreement on all proposals in late 2008 and the legal acts were finally adopted on 11 March 2009. It should be noted that EMSA is already active with considerable resources in many areas of the package (Port State Control, classification societies, the EU vessel traffic monitoring and information system, accident investigation), which should allow the Agency to take over smoothly and at reduced additional costs any new tasks in these areas.

Under option 2, 15 potential new tasks were identified corresponding to the 7 proposals of the third maritime safety package. Details are given in Annex IV.

4.1.3. Option 3 "medium" revision

Option 3 includes option 2 and looks further at the relationship between EMSA and the Paris Memorandum of Understanding on Port State Control (Paris MoU). It can be considered as "medium"-sized revision, as it tackles institutional and organisational aspects in the area of Port State Control beyond the mere implementation of EU-legislation under option 2.

The Paris MoU is a regional intergovernmental arrangement to harmonise Port State Control procedures. It was set up in 1982. The current 27 members comprise the 22 EU coastal States, Canada, Croatia, Iceland, Norway and the Russian Federation. EMSA has already been assisting the Commission in the activities of the Paris MoU on the basis of the existing Regulation³⁶ and plays a major role in the organisation of Port State Control within the Paris MoU. The development and operation of the information system Thetis (The hybrid European targeting and information system) under the New Inspection Regime which serves both the EU-legislation and the Paris MoU regulations is the most prominent example for this tendency.

The current "hybrid" situation between the Paris MoU and the EU legislation on Port State Control will continue to evolve during the implementation of the third maritime safety package as highlighted inter alia by the EMSA multi-annual strategy (see above under point 1.4).

Under option 3, 6 potential new tasks were identified in addition to those in option 2. Details are given in Annex IV.

4.1.4. Option 4 "large" revision

While including options 2 and 3, option 4 further considers different possible extensions of EMSA's tasks within the areas falling under its general objectives as listed in Article 1. It is therefore a large revision of the EMSA Regulation encompassing different aspects regarding maritime security, research, the integrated EU maritime policy, cooperation regarding marine pollution, the relations with third countries and social aspects.

³⁶ See Article 2(b) (ii) of Regulation 1406/2002.

As far as **maritime security** is concerned, it has to be recalled that Regulation 1406/2002 in its current version limits EMSA's assistance to the Commission inspections to *"to ship and relevant companies and Recognised Security Organisations authorised to undertake certain security-related activities in this context"*³⁷. It should be noted that EMSA has currently only ship-side expertise in house but not port-side.

While EMSA's current mandate includes the *"analysis of **research** projects"*³⁸, it was felt that EMSA could play a bigger role regarding on the one hand the regulatory and non-regulatory follow-up to research projects and on the other hand the identification of research needs from a maritime safety perspective.

Within the **integrated EU maritime policy** a special role was foreseen for EMSA regarding the *"integrated approach to maritime surveillance at EU level"*³⁹.

As far as cooperation regarding **marine pollution** is concerned, the Commission stated in late 2006 in the light of the expiring EU framework for cooperation in the field of accidental or deliberate marine pollution⁴⁰ that EMSA will play an increased role, including the organisation of workshops and studies, technical assistance in the event of disasters including pollution response vessels and satellite images. It is thus worthwhile to examine whether this increased role needs to be better reflected in the Regulation.

Finally, the undeniable success of EMSA has raised huge interest by **third countries** in EMSA's activities. In particular the maritime neighbouring countries of the EU sharing a regional sea with the EU Member States like the Baltic Sea, the Black Sea or the Mediterranean have been voicing their interest in technical cooperation with the Agency, in particular regarding operational services like the pollution response vessels, the satellite images to detect illegal discharges at sea (CleanSeaNet) or data exchange with the EU vessel traffic monitoring and information system SafeSeaNet which is under construction. The current EMSA Regulation makes such technical cooperation difficult. It only foresees the full participation of third countries after those having adopted and applied the EU law⁴¹. This is currently the case of Norway and Iceland through the European Economic Area Agreement. Furthermore, EMSA may provide technical assistance to accession countries in the course of negotiations⁴², which is currently the case of Croatia and Turkey. Furthermore and fully in line with the EU policy, EMSA assists also other potential candidate countries through an administrative agreement with DG Enlargement, which is not explicitly covered by its current Regulation. However, not all EU neighbouring States will qualify for one of these two scenarios (full participation or candidate countries negotiating their accession), while the EU has a vital interest in the maritime safety of the regional seas as any maritime accident or pollution caused by ships in these regional seas may affect the EU. In line with the European Neighbourhood Policy of opening EU programmes and Agencies to partner countries⁴³, it should be examined to which extent EMSA could establish relations at technical level with these countries. The European Neighbourhood Policy would indeed cover most of the third

³⁷ See Article 2(b)(iv) of Regulation 1406/2002.

³⁸ See Article 2(a) of Regulation 1406/2002.

³⁹ See footnote 15 above

⁴⁰ Decision 2850/2000/EC expired on 31/12/2006. See the Commission Communication COM(2006)863 of 22.12.2006.

⁴¹ See article 17 of the EMSA Regulation.

⁴² See article 2 (g) of the EMSA Regulation.

⁴³ See Commission Communication COM (2006) 724 of 04.12.2006.

countries interested in cooperation with the EU regarding maritime safety with the exception of Russia, with whom the EU shares the Baltic Sea and the Black Sea and Canada, which like Russia participates in the Paris MoU. It is thus envisaged to examine possible relations between EMSA and the countries of the European Neighbourhood Policy plus Russia and Canada through the Paris MoU.

In line with the Maritime Transport Strategy developed by the Commission in early 2009, the social aspects of shipping require further attention. While the EU has already developed measures – either legislative, or non-binding - EMSA is already active in the field of training and certification of seafarers through the inspections of EU Member States and third countries, more assistance might be required in the future regarding various social aspects related to training, qualification, certification, career perspectives, working and living conditions onboard.

Under option 4, 8 potential new tasks were identified (1 task for maritime security, 2 tasks for research, 1 task for the integrated EU maritime policy, 1 task for marine pollution, 2 tasks for cooperation with neighbouring countries and 1 task for the social aspects of shipping) in addition to the tasks of the two previous options. Details are given in Annex IV.

4.2. Policy options regarding the governance of the Agency

In addition to EMSA's tasks, the Commission services considered **governance issues** in the light of the findings by the external evaluation, the recommendations by EMSA's Administrative Board and its own experience over the last years drawing also on the more general discussion on the governance of the Agencies at EU level⁴⁴.

Three options were considered:

- Option 1: "do nothing" (i.e. leave Regulation 1406/2002 unchanged);
- Option 2: revision of the governance issues within the institutional framework of a regulatory agency;
- Option 3: radical revision by transforming the institutional framework in which EMSA currently operates.

Option 2 would consist of modifying certain articles within Regulation 1406/2002 without altering the institutional set up of a regulatory agency and its governance structure. This would mainly concern article 3 on visits, articles 10 and 14 concerning the Administrative Board and articles 15 and 16 regarding the Executive Director. In particular, the potential conflict of interest for Member States' representatives in the Administrative Board should be examined. Furthermore, the instrument of a multi-annual strategy should allow defining EMSA's role in a medium term perspective.

In the light of the on-going inter-institutional deliberations on the agency system, it was decided at an early stage of the preparation of the proposal to put aside any issue of horizontal nature (for example the structure and the voting rights of the Administrative Board) and to

⁴⁴ See the latest Commission Communication on this subject: "European agencies – The way forward", COM (2008)135 of 11.03.2008.

concentrate on the few governance issues which are specific to EMSA (for example the organisation of inspections of EU Member States).

Option 3 would transform EMSA's inspection activities into a regular Commission service – like the transport security inspections or the Food and Veterinary Office – while the remainder of EMSA's activities would become an Executive Agency managing an EU maritime safety programme. This option would require major changes not only to the founding Regulation, but also to the Commission's administrative structure.

Although such a radical solution would easily overcome the potential conflict of interest the Member States' representatives are faced with, the administrative and political costs of the transformation were considered disproportionate. Such option would also seem unjustified in view of the results of the external evaluation. Furthermore, a splitting of the Agency into two distinct sub-entities would create unwanted and counterproductive inefficiencies. It was thus decided at an early stage to maintain EMSA as a regulatory agency with a high degree of autonomy in a single organisation.

A non-regulatory approach could not be considered, neither for the tasks nor for the governance aspects, as the problems identified lie with EU legislation. Therefore, a non-regulatory approach is per definition not effective for solving the problem.

Section 5: Analysis of impacts

5.1. Preliminary considerations

5.1.1. Analysis of the policy options regarding the governance of the Agency

As it has been assumed that the governance-related aspects of the revision would not produce a negative impact in economic, social or environmental terms, it has been decided to pursue with option 2 as explained below under point 4.2. Indeed, it would not make sense not to address governance issues in the course of revising EMSA's tasks like option 1 ("do nothing") would have required. The proposal contains thus a limited number of improvements and clarifications regarding the governance of the Agency (mainly related to Article 3 and 16).

5.1.2. Analysis of the policy options regarding the tasks of the Agency

In general, the likely economic, social and environmental impacts of the options are extremely limited due to the limited scope of the modifications under consideration. It is widely recognised that it is impossible to benchmark maritime safety as such, while the absence of the required safety level leads to incidents, accidents and even catastrophes. Furthermore, it is not possible to quantify accurately the impacts of the options under consideration. Indeed, all EMSA's tasks are shaped as technical assistance to the Commission and to Member States. The contribution of technical assistance to the policy objectives is not measurable with the instruments currently available.

5.2. The economic impact

5.2.1. Types of economic impact

Three types of economic impact were checked: (1) the impact on the competitiveness of the shipping sector, (2) the administrative burden or costs for Member States and (3) the costs for the EU budget.

5.2.2. Competitiveness of the shipping sector

No measurable impact in terms of competitiveness of the shipping sector could be established for any of the options in terms of costs or benefits. Regulatory impacts on shipowners, masters and other actors flow from the maritime safety legal acts like Port State Control and not from the EMSA Regulation itself or any of the envisaged modifications. It is however assumed that EMSA's assistance to Member States and the Commission would indirectly benefit the shipping sector as Member States and the Commission should be in a better position to carry out their regulatory activities. For example a better targeting of risk ships in Port State Control thanks to the information system build up by EMSA will reward quality ships being inspected less often than at present. It should be repeated that the regulatory requirements for this policy follow from the Port State Control Directive and not from the EMSA Regulation. The latter will define EMSA's contribution and assistance to the maritime safety policy of the EU. It is thus impossible to define with the necessary precision the economic benefit that might arise for quality shipping from EMSA's technical assistance to the Commission and to the Member States. Likewise, the potential costs for operators of substandard ships are not possible to establish.

5.2.3. Administrative burden for Member States

The second possible economic impact concerns administrative burden or costs for Member States. By definition, EMSA's technical assistance should create neither administrative burden nor costs for the Member States. To the contrary, EMSA's assistance, in particular regarding the different maritime data services, allows national maritime administrations making savings and a better use of their resources in order to concentrate on their responsibilities as flag State, port State or coastal State (see also below under option 2).

While the possible savings expected for Member States are difficult to quantify, during stakeholder consultations a high number of Member States' representatives expected to realise savings at national level from EMSA's extended technical assistance. This has also been confirmed for EMSA's current tasks in the external evaluation⁴⁵.

Option 1: Under this option EMSA would continue to work within its current mandate and thus provide its assistance to the Commission and Member States within the current limitations. Any additional assistance, necessary or desirable, for the Commission and Member States would be impossible from a legal perspective. The lack of assistance could create additional costs for the Member States just jeopardising the swift and efficient implementation of the third maritime safety package. Thus, EMSA's defined objective ensuring "a high, uniform and effective level of maritime safety (...)" will become more and more difficult to meet. Indirectly, citizens and the marine environment would be negatively affected by this option.

Option 2: Possible cost-savings for Member States are expected in the areas of harmonised training for maritime experts like Port State Control officers, the hosting and operation of maritime data services at central EU-level instead of different national applications.

A concrete example is the common EU LRIT data centre already introduced above in section 2.3.1. The current budgetary estimations for the EU LRIT data centre foresee a total of 28 additional staff and a budget of approximatively 38 M EUR for the period 2008 to 2013 instead of 29 national data centres (Norway and Iceland participate in EMSA). For the sake of comparison, it is interesting to establish the average costs per country by dividing the expected costs of the EU centre by the number of participating countries. The result shows that it does not seem realistic to run national data centres with an average of less than one staff member and an annual budget of 220.000 EUR in particular under the assumption that such service should operate on a 24/7 basis.

Other examples are SafeSeaNet and the information system Thetis for the New Inspection Regime in the area of Port State Control.

Option 3: It was established that synergy and efficiency gains could lead to small cost savings for all Port States by shifting tasks from the Paris MoU Secretariat (approximatively 10 FTE), currently hosted by the Dutch Ministry of Transports, to EMSA. There are therefore small budgetary consequences for the Member States contributing To the Paris MoU.

Option 4: No further cost savings for Member States are expected under this option.

⁴⁵ See p. 56-57.

As EMSA's activities do not touch directly private companies or citizens, all options under consideration do not entail administrative burden for private agents.

5.2.4. Consequences for the EU budget

The main economic impact identified concerns the increase of the EMSA budget by the required administrative and operational credits in order to carry out additional tasks. As stated before, it is assumed that the envisaged modifications as to the governance of the Agency will not create any additional costs.

The estimated costs for the options under consideration are shown in the following table (option 3 includes costs of option 2 and option 4 includes the costs of option 3):

Costs for EU budget	Option 1 "do nothing" 2007 baseline	Option 2 "minimal" revision	Option 3 "medium" revision	Option 4 "large" revision
Staff in FTE	153	+ 48	+ 55	+ 66
Annual budgetary costs in M EUR	48.249	+ 4.164	+ 4.771	+ 5.726

The additional annual costs are calculated in the following way: EMSA calculates annual cost per staff member at 91.550 EUR for 2011 to which 5 % were added for overheads, infrastructure and travel costs. This leads to an annual cost per 1 FTE of 98.050 EUR.

The calculations operated in this impact assessment constitute an ex-ante evaluation foreseen by the Financial Regulation, independently from the question whether the amounts under discussion would require or not such an evaluation.

5.3. *The social impact*

The social impact of all options is marginal. In terms of employment, EMSA's needs in terms of additional staff are estimated at a maximum of 66 new posts, if all the possible new tasks under examination would be given to EMSA⁴⁶. Some indirect positive effects can be construed for the safety and the working and living conditions of seafarers and passengers on board of vessels, in particular with regard to the specific task under option 4.

Furthermore, the EU as the world's biggest trading block has an interest in the safe and reliable transport of goods over the seas. This is a concern shared by companies and consumers. Environmental impacts of shipping like air emissions bear also a public health component, thus having a social impact.

It was not established that the measures under consideration improving maritime safety, maritime security, the prevention of pollution as well as the preparedness and the response to pollution caused by ships could have a negative social impact.

⁴⁶ Details per option can be found in the table under point 5.2.4. See also below under section 6.3.

5.4. *The environmental impact*

Regarding the environmental impact, it is expected that options 2 to 4 provide positive environmental impact as the measures under consideration would contribute to safer ships and safer shipping, be it through improved control of foreign vessels in EU ports, the better monitoring of all vessels in the vicinity of EU coasts, the increased role of EMSA in research, the enhanced investigation of accidents with a view to avoid future problems. This assumption is supported by EMSA's current assistance to the Commission and the Member States regarding the environmental impacts of shipping. As stated below, the EU maritime safety measures on port state control and other areas are defined by other legislative acts than the EMSA founding Regulation. The latter Regulation deals with EMSA's contribution to the objectives of the EU maritime safety policy.

Under option 4, if EMSA's role within the field of maritime pollution would be enhanced to become a reference point for the exchange of experience between national administrations and a platform for international cooperation, an even more positive environmental impact is expected than under option 2. Option 3, which focuses more on organisational changes affecting the Secretariat of the Paris MoU and EMSA, does not seem to produce any environmental impact.

5.5. *Impact of maritime accidents*

The impact under consideration should be compared with the consequences of maritime accidents.

Without going into details, it should be recalled that recent catastrophes involving passenger ships in the EU have caused the loss of more than thousand human lives (Herald of Free Enterprise in 1987, Scandinavian Star in 1990, Estonia in 1994 and Express Samina in 2000).

It is difficult to establish correctly the total costs of maritime accidents and this is not the purpose of this impact assessment. However, it is worthwhile noting that the costs of a tanker accident amount to hundreds of millions of Euros. According to the International Oil Pollution Compensation Fund, claims for compensation regarding the sinking of the oil tanker Erika amount to 206 million EUR while the claims for the sinking of the oil tanker Prestige amount to more than 1.000 million EUR⁴⁷. Accidents along the European coastline generate also costs for the EU budget covered by different instruments like the EU Solidarity Fund, the European Social Fund, the Cohesion Fund or the Financial Instrument for Fisheries Guidance. The EU financial assistance provided to address the consequence of the Prestige accident amount to 436 M EUR⁴⁸. The recent accident involving the container ship "MSC Napoli" in January 2007 causing the loss of 103 containers and the contained spillage of up to 200 tonnes of oil, is reported to cost more to the insurer than the huge oil spill from the Amoco Cadiz in 1978 which was about 120 M USD.

5.6. *Conclusion*

In summary, the assessment has not shown any negative impact for options 2 to 4. However, the totality of new tasks implies additional costs for the EU budget. In parallel, a number of

⁴⁷ The report is available at <http://www.iopcfund-docs.org/prestige.htm>

⁴⁸ Calculation by PwC in their study, see p. 123.

measures under consideration do not present any measurable impact in economic, social or environmental terms.

Section 6: Comparing the options

In order to be able to weigh the options and their underlying tasks, first the effectiveness of EMSA taking over the different tasks under consideration was assessed. Secondly, the added value for the EU for each task was evaluated. In the final step taking into account the budgetary constraints, the Commission services identified the preferred option by looking at the individual tasks under each option.

6.1. *Effectiveness*

For each of the 29 potential new tasks under consideration in options 2 to 4, EMSA's expected effectiveness has been assessed on the basis of:

- EMSA's current experience in performing similar activities;
- EMSA's expertise in the fields covered by the proposed tasks;
- The external evaluation of EMSA's effectiveness in performing its current activities;
- The consultation of EMSA's stakeholders other than the Commission.

The effectiveness of EMSA has been assessed according to the following qualitative rating scale: fairly effective; effective; highly effective. Due to EMSA's current experience in similar activities, it was concluded that EMSA should be either effective or even highly effective in carrying out the great majority of the potential tasks. These concerns all tasks under option 2 and 3 while under option 4 the 2 tasks related to research and the 2 tasks related to cooperation with neighbouring third countries were rated "fairly effective" as both would constitute rather new areas of activities for the agency.

It should be noted that the majority of respondents spoke against EMSA cooperating with third countries. This might be explained by the fear that EMSA's current focus on assistance to the Commission and the Member States might be detracted thus presenting a possible inconvenient to Member States, which the Commission definitely intends to avoid.

The large majority of responding stakeholders are in favour or neutral about extending EMSA's competences to assistance to the Commission in identifying research subjects. The Commission is looking forward to receiving EMSA's enhanced assistance in the analysis of research projects and is confident that EMSA can successfully handle this task.

6.2. *Added value for the EU*

On the basis of the stakeholder consultation, the analysis of EMSA's expected effectiveness and the analysed impacts, the assessment of the value added for the EU was established for each possible new task to EMSA. The value added has been assessed according to the following qualitative rating scale: low; medium; high.

All possible new tasks under option 2 present a high added value with the exception of the management of financial security certificates rated medium added value. A majority of new tasks under option 3 present likewise a high added value. The three exceptions are: (1) Assistance to the EC and the Paris MoU in their cooperation with other MoUs; (2) Taking care of publications, website and providing general information; (3) Elaboration and publication of statistics developed by the Paris MoU. Under the fourth option, all tasks

present a high added value. Regarding the research activities and the cooperation with neighbouring third countries it should be noted that this would be rather new types of activity for EMSA.

The four tasks rated with less than high added value have not been included in the proposal.

6.3. *Budgetary situation and evolution of the Agency's resources*

When assessing the feasibility of the different options under consideration, the Commission services had also to take into account the availability of budgetary means within the EU budget. The EU contribution to the EMSA budget amounts to almost 100 %⁴⁹ and stems from the heading 1A "Competitiveness for growth and employment". The financial perspectives up to 2013 do not allow providing the budgetary resources to EMSA in order to carry out all possible and desirable new tasks. The Commission services are projecting to start the implementation of the revised EMSA Regulation in 2012 after the completion of the legislative procedure. Therefore, the Commission had to select amongst the tasks identified in the impact assessment according to their relevance and their added value for the EU.

In parallel to the development of the proposal and the impact assessment since 2007, EMSA has already been implementing many new tasks on the basis of the current Regulation. EMSA received between 2008 and 2011 a total of 55 additional posts⁵⁰ and its operational credits were also increased. For example, EMSA received 28 posts for the new LRIT task⁵¹. EMSA has also started other tasks with additional resources received between 2008 and 2010 or planned for 2011, in particular in the area of Port State Control⁵². Consequently, less additional resources are required as from 2012 against the base line scenario of 2007⁵³.

The Directive for flag states requirements provides a second example for substantial changes intervening in the course of the impact assessment. Indeed, in the light of the final outcome of the negotiations on the third maritime safety package, no specific technical assistance by EMSA is necessary. The initially identified tasks B1 – B4 have therefore been disregarded.

6.4. *The preferred option*

- The Commission has come to the conclusion that option 4, which encompasses as explained above options 2 and 3, is the preferred option for the revision of EMSA's tasks, thus ensuring that the Agency will continue to provide valuable technical assistance to the Commission and the Member States in all relevant fields of its remit. However, in the light of the budgetary situation explained in the previous point and the final outcome of the third maritime safety package, the Commission has opted for a more limited approach to option 4, downsizing the scope from 29 to 19 new tasks for EMSA. Details are shown in Annex IV. Most of these 19 tasks come from the options 2 and 4, while the majority of tasks under option 3 have been disregarded. Taking into account the aforementioned budgetary situation and the developments and investments already undertaken between 2008, and 2011, the costs of EMSA's further extension are limited to 18 additional posts to be phased

⁴⁹ Including the contribution from Norway and Iceland through the EFTA EEA mechanism.

⁵⁰ 28 additional posts in 2008, 11 additional posts in 2009, 8 additional posts in 2010, and 8 additional posts envisaged for 2011 subject to the decision of the Budgetary Authority.

⁵¹ See task B12 in Annex IV.

⁵² See tasks B7, C2 and C3 in Annex IV.

⁵³ Limited reductions according to the same principle were operated for tasks B5, B6, B9, B13, B14, and D6, see Annex IV.

in from 2012 to 2014. In line with the current budgetary situation, the Agency should provide a significant part (6 posts) through redeployment. The additional annual costs would therefore amount to approximatively 3.9 M EUR for the period 2012 to 2015.

The elimination of 10 potential tasks is justified by the following considerations:

- Tasks B1 to B4 related to Flag state requirements: The underlying ideas in the Commission proposal have been disregarded during the legislative procedure.
- Task B15 "Management of financial security certificates at EU level" was a new idea which emerged at the stage of the first reading of the civil liability proposal in early 2007. The idea has been disregarded at a later stage of the legislative procedure.
- Task C1 "Establishment of a black-grey-white list for flag States" /
Task C4 "Assistance to the Commission and the Paris MoU in their cooperation with other MoUs" /
Task C5 "Taking care of publications, website and providing general information" /
Task C6 "Elaborating and publishing statistics developed by the Paris MoU":
In the light of comments made by stakeholders asking to maintain the status of the Paris MoU and its Secretariat and in the absence of any significant benefit other than some efficiency gains (see point 5.2.3 below), if the tasks were handed over to EMSA, the Commission services have decided to disregard for the time being these four tasks under option 3.
The Commission however continues to monitor the viability of the "hybrid" situation between the Paris MoU and the EU legislation on Port State Control. In the light of the further development of the EU acquis on Port State Control as decided in the third maritime safety package and the consequences of EMSA's increasing involvement in this domain, it might become necessary to revert to this question in the future. This view was confirmed in EMSA's multi-annual strategy (see above under point 1.4).
- Task D1 "Maritime security": In the light of the budgetary constraints and having in mind the organisation of the maritime security inspections by the Commission, it was decided that EMSA's tasks should not be extended beyond Regulation 725/2004 and therefore not include activities under Directive 2005/65. However, in order to improve the efficiency of EMSA's assistance to the Commission during the inspections within the framework of Regulation 725/2004, the current limitation in Article 2 (b)(iv) of the EMSA Regulation should be removed. As explained in section 4.1. above, EMSA's assistance to Commission inspections is currently limited *"to ship and relevant companies and Recognised Security Organisations authorised to undertake certain security-related activities in this context"*. This limitation within the scope of Regulation 725/2004 can be removed for the sake of the efficiency of the security inspections without increasing the scope beyond the aforementioned Regulation and without increasing EMSA's resources.

- The following table presents a summary of the comparison of the policy options regarding the tasks of the Agency.

(Note: It is recalled that option 3 includes option 2, while option 4 includes options 2 and 3)

	Option 1 "do nothing"	Option 2 "minimal" revision	Option 3 "medium" revision	Option 4 "large" revision
Possible savings for Member States	None to the contrary, Member States getting less appropriate technical assistance would need to invest more themselves	Yes	Not more than under option 2	Not more than under option 2
Costs for EU budget (additional staff)	No additional costs	limited additional costs	Not more than under option 2	modest additional costs
Social impact	Risk of not providing required level of maritime safety	Higher level of maritime safety	No change in comparison to option 2 Higher visibility for the EU	Higher level of maritime safety than in option 2 Higher visibility for the EU
Environmental impact	EMSA will continue its current activities.	Higher level of the protection of the marine environment	No change in comparison to option 2	Higher level of the protection of the marine environment than in option 2
Effectiveness	EMSA works effectively.	EMSA could take over all new tasks effectively.	EMSA could take over all new tasks effectively.	EMSA could take over all new tasks effectively. The areas of research and relations with third countries constitute rather new activities for EMSA.
EU added value	EMSA provides added value to the EU.	All new tasks have high added value for the EU, with the exception of task B15 (medium).	4 new tasks have high added value for the EU, 1 task represents medium added value and another task low added value.	All new tasks have high added value for the EU.
End result	Option disregarded	Part of the preferred option 10 out of the 15 tasks under option 2 qualify.	Part of the preferred option 2 out of the 4 additional tasks under option 3 qualify.	Preferred option 7 out of the 8 additional tasks under option 4 qualify.

Section 7: Monitoring and evaluation

7.1. Indicators of progress

The following three indicators have been established:

- Satisfaction of EMSA's main stakeholders (Commission and Member States) by the appropriate and targeted assistance received from the Agency;
- Smooth and cost-efficient implementation of the third maritime safety package by Member States;
- Efficient contribution by EMSA to the maritime surveillance activities under the integrated EU maritime policy.

7.2. Monitoring and evaluation

According to the provisions of its founding Regulation and the principles of EU governance, EMSA will continue to be subject to the strict and comprehensive monitoring arrangements of an EU regulatory agency under the budgetary procedure (Administrative Board, internal audit, Court of Auditors, discharge procedure).

It is suggested to repeat the evaluation exercise foreseen by Article 22 at regular intervals, which corresponds to the political determination shown by the EU Institutions regarding the governance of the EU agencies. It is foreseen to establish a maximum time span of 5 years with the possibility for EMSA's Administrative Board to launch an evaluation at any earlier moment if appropriate.

RECOMMENDATIONS ISSUED FOLLOWING THE EVALUATION OF THE EUROPEAN MARITIME SAFETY AGENCY APPROVED BY THE EMSA ADMINISTRATIVE BOARD, 12 JUNE 2008

I. CHANGES TO REGULATION 1406/2002

Amend Article 22 of Regulation 1406/2002 to provide for regular evaluations of the implementation of the EMSA regulation (every 5 years)

The evaluation exercise has shown its merits, and should be performed on a regular basis. The next and subsequent formal evaluations should examine also the extent to which Member State administrations have been able to make savings in activities formerly carried out at national level on account of EMSA's activities, as well as seeking stakeholders' views on the value of EMSA activities which are seen as additional or complementary.

Consequently, it is recommended to carry out such evaluations once every 5 years and to amend the aforementioned Article 22 accordingly at the next revision of the EMSA founding Regulation.

II. RECOMMENDATIONS RELATED TO THE AGENCY AND ITS WORKING PRACTISES

Continue to focus on activities which add value for its stakeholders (the Commission, Member States and citizens of the EU)

EMSA should continue to focus on activities which add value for the Commission, Member States and EU citizens, avoiding duplication or undue overlap with activities carried out at other levels, for example by Member State administrations. EMSA's activities should be additional or complementary to those of other tiers of administration, or should progressively substitute, where it has been agreed that specific tasks can be carried out more appropriately, more effectively or more efficiently at EU level (examples of additional activities include EMSA's supplementary oil pollution response capability in several regions and the development of the European LRIT system. Seafarer training and certification audits in third countries are an example of an activity where EMSA's role should progressively substitute for that of individual Member State administrations.). However, added value and a community approach should be demonstrated before a new task is assigned to EMSA. Corollary to this, the outcomes of the activities carried out by EMSA should also be evaluated and their benefits should be extolled.

Furthermore, EMSA should use its position and neutrality to report on trends observed in the course of its activities so as to provide an overview of the functioning and evolution of the maritime world to its stakeholders.

Develop a strategic plan covering a 5 year perspective

A Strategic Plan should be developed to provide an overview of the situation for EMSA over the next 5 years. This rolling plan should outline where the Agency wants to be in a 5 year

time span and indicate priorities and the high-level objectives of the Agency, taking into account its mission, the multi annual staff policy plan, the Action Plan for Oil Pollution Preparedness and Response (Oil Action Plan) and key documents and influences that will affect it's work in the coming years. Concerning the Action Plan for Oil Pollution Preparedness and Response, strategic elements should also be included in its presentation in order to develop a common understanding of the implications of this strategy in terms of the roles and responsibilities of the involved stakeholders and to clarify and make explicit the longer term priorities guiding EMSA's work.

Continue in the efforts towards activity based costing and budgeting

EMSA needs to implement an activity based budgeting and accounting system as far as practicable, taking into consideration the existing constraints (budget structure, functionalities of ABAC system, etc). Such a system should allow EMSA to assign budget to activities and relate this to actual expenditure thereby enabling monitoring of progress. The first steps to implement such a system have been already taken in the Agency, by implementing a pilot system with posting criteria in the accounting system.

It is recommended that EMSA assigns high priority to developing activity based budgeting and accounting. This should be seen as a management tool facilitating day-today, goal-oriented management - and monitoring of achievements.

Such a system will allow the Agency to improve effectiveness and efficiency by determining the costs of individual activities and projects. At the same time, the system will allow the Agency to report accurately on the activities planned and budgeted for, activities undertaken, outputs produced and actual expenditure related to the given tasks.

Improve the communication plan

The current annual work plans and annual reports serve two different audiences. On the one hand, the Administrative Board will require detailed information to monitor progress using budget information, as set out in the third point of these recommendations. On the other hand, this level of detail will not be relevant for the general public. It is recommended that the Agency modifies its communication policy and practise to reflect this.

In fact, the Agency has started to implement this recommendation with the adoption of the 2007 Annual report, where overall information for the general public is published in the main section and is complemented with detailed information for the Administrative Board on budgets, activities, achievements and accounts in its annexes. In following this issue, this approach will be further fine-tuned.

Structure the annual work programmes to function as operational action plans for the given year

The work programmes should be more operational to function as a tool for monitoring of the Agency's performance. The Work Programme 2008 already represents a step in this direction.

The annual work programme should function as operational action plan for the given year, focusing on the planned activities and the associated budget for the year (activity based budgeting/costing). The work programme should be a management tool for the Executive Director and the Heads of Units giving a benchmark against which the activities and budgets can be implemented and progress can be monitored. The description of targets, milestones, expected outputs and expected outcomes should also be included in the annual work programme. In this way, the work programmes will also be a tool for overall progress monitoring for the Administrative Board.

Develop the annual report to reflect better actual achievements made against the targets

Annual reports, as provided for in EMSA's Founding Regulation, target two different audiences. On the one hand they serve to inform the political level, maritime stakeholders and the public at large of the main developments in EMSA. On the other hand they serve as a management tool for the Administrative Board to monitor progress and performance of the Agency at different levels.

It is recommended to strengthen this latter function by including the required detailed information for the Board on actual activities, achievements and expenditure at project level in a separate section of the report.

Develop the project management capacity

This evaluation has pointed to new, complex tasks requiring multidisciplinary work as an area with a scope for improving EMSA's effectiveness. There is a need to increase the flexibility of the organisation and to further encourage cross-unit and cross-disciplinary cooperation. It is recommended to focus on further development of the project management capacity as a tool in this regard.

The adoption of project management guidelines within EMSA is recommended and staff should be trained in planning and managing projects following such guidelines.

III. OTHER/GENERAL RECOMMENDATIONS

Ensure formal, periodic reviews of EMSA's effectiveness.

In relation to regular evaluations as referred to under point I, EMSA's key stakeholders should have the opportunity to take stock of the Agency's development and effectiveness.

The final outcomes of EMSA activities in many cases depend upon decisions and actions to be taken by the Commission, the Member States and other EU institutions, with the benefit of advice and information provided by EMSA. There is a need to collect and bring together, in a form suitable for dissemination and publication, information about those decisions and actions and the outcomes which resulted. EMSA's effectiveness is ultimately determined not by the number of reports which it produces, or the number of visits or inspections which it carries out, but by the progress made, with its support, in improving maritime safety and

environmental protection. While it is important not to confuse the activities or actions of EMSA with those of the Commission, the Member States and other EU institutions, it should nevertheless be possible to obtain and publish periodic information about outcomes, with appropriate explanations for all of EMSA's activities.

Annex II: Executive Summary from the external evaluation

This report presents the results of the evaluation of the European Maritime Safety Agency - EMSA. The evaluation was commissioned by the Administrative Board as required by Regulation (EC) 1406/2002 as amended. The evaluation was undertaken by COWI A/S.

The overall objective of the evaluation is to assess the relevance of the Regulation and the effectiveness and efficiency of EMSA in fulfilling its objectives and tasks. Impact and sustainability cannot yet be fully assessed. Tentative conclusions on utility and sustainability will be made to the extent that the data collected allows.

The Terms of Reference and COWI's technical proposal constitute the basis for the evaluation. The Administrative Board of the Agency set up a Steering Group to monitor and supervise the work and the progress of the evaluation.

As a result of the evaluation process, the evaluator has submitted the following documents to the Steering Group and the Administrative Board:

- (i) an Inception report specifying the evaluation methodology (approved by the Steering Group on 17 September 2007)
- (ii) a Report on Preliminary Conclusions approved by the Steering Group on 28 November, 2007
- (iii) a draft Final Report submitted to the Steering Group on January 11, 2008
- (iv) on receiving comments to the draft version, the present Final Report was submitted on 6 February, 2008.

The basis for evaluation findings, conclusions and recommendations are the following data:

- Material from EMSA's web site and other documents provided by EMSA
- Documents from DG TREN's website
- Qualitative data from interviews with the Executive Director, Heads of Units and staff members during the first mission to EMSA in September and the second mission to EMSA in November
- Quantitative data from a questionnaire sent to all 27 Member States. 24 Member States have responded (89%) (see Questionnaire in App. 2)
- Qualitative data from person-to-person interviews with representatives from the maritime administrations of 18 Member States (incl. Iceland and Norway) (all Member States invited - all Member States who indicated their interest were interviewed at MSC Conference in Copenhagen); 12 representatives of the Commission (DG TREN and DG ENV based on selection by the Steering Group and the Consultant); 4 Members of the European Parliament (based on relevance in relation to the transport/maritime sector); Two members of EMSA's Administrative Board appointed by the Commission to represent the sector; representatives of BIMCO and IMO (see List of Interviewees in App. 3).

It is the overall conclusion from the evaluation that the establishment of EMSA has filled a gap in the maritime safety area in the European Union. The Agency has quickly grown in terms of its tasks and importance to become a significant actor in the maritime safety area. The Agency has added value to the sector in general, and, in particular, to its two main stakeholders, the Member States and the Commission.

Established, from scratch, in 2002, the Agency has been quick - not only in building its own organisation - but also in delivering useful outputs to its stakeholders. In general, EMSA's stakeholders are therefore also satisfied with its performance.

The EMSA Regulation, and hence EMSA itself, is highly relevant. The data collected supports the conclusion that the Regulation fulfilled a need felt among Member States and the Commission at the time of its adoption in 2002.

The maritime sector in general, as well as the Member States and the European Union, particularly with its enlargement, have changed since 2002. Today, in 2007, the Regulation and the Agency remain highly relevant - perhaps even more so than when it was initially perceived and initiated.

EMSA's effectiveness is above average - and in many areas it is high. The Agency has contributed significantly to improving the effectiveness of Community-level maritime safety activities in general. The tasks performed by the Agency are thus carried out more effectively today than was the case when the same tasks were dealt with by individual Member States and/or the Commission - if at all – prior to its establishment.

Naturally, effectiveness varies among the different areas that the Agency is involved with. Hence, in some areas effectiveness is very high, while in others it is average – and in some cases below average. The evaluation has thus identified a number of areas where effectiveness can be enhanced.

EMSA's efficiency performance is above average. This conclusion takes into consideration the fact that the Agency was established from scratch, that it was relocated from Brussels to Lisbon, and that it has had a very high and rapid growth rate from 1 staff member in 2003 to a staff of more than 150 in 2007.

Not surprisingly, there are a number of areas where efficiency can be improved. This notably concerns the question of activity based costing (ABC) – establishing a transparent relationship between budgets, activities and accounts. When implemented, ABC will facilitate a more thorough analysis of efficiency and become a management instrument for the Agency to further improve its effectiveness and efficiency.

It is found that EMSA's main activities provide added value to the Member States and to the work of the Commission, hence indicating a satisfactory utility and sustainability of the activities⁵⁴. Other indications of satisfactory performance measured on these criteria are: Most Member States have experienced administrative savings or expect, in the future, to be able to save administrative resources as a consequence of EMSA's work in certain areas, e.g. those

⁵⁴ Findings related to utility and sustainability is indicative. The assessment of utility and sustainability focuses on the longer term impacts (as presented in "Evaluating EU Activities - a practical guide for the Commission Service" (DG BUDG, 2004)). Since EMSA is a young organisation, it is not possible to fully assess these impacts as yet. Albeit these limitations some indications can be given.

that relate to CleanSeaNet and inspections in connection with the STCW Convention in third countries. Member States also indicate that EMSA has contributed to making legislative proposals technically feasible and acceptable.

It is recommended that EMSA:

- Develop a strategy plan covering a 3-5 year perspective
- Develop the annual work programmes to function as operational action plans for the given year
- Develop the annual report to reflect actual achievements made against the targets - and prepare it in a way that it distinguishes between target groups (i.e. the general public and the Administrative Board)
- Develop a direct link between project work plans and unit work plans
- Introduce activity based costing and budgeting
- Improve the action plan for oil pollution preparedness and response with inclusion of strategic elements
- Streamline inspections to Member States
- Apply a strategic and needs-oriented approach to training activities
- Develop the project management capacity through staff training
- Improve the use of IT, specifically in relation to payments and recruitment
- Improve communication planning and activities

The recommendations to the Member States and the Commission include:

- Comprehensive alterations to the current tasks allocated to EMSA are not recommended. There is a need for clarification in some areas and this should mainly be addressed by the development of a strategy plan for the Agency. The Member States and the Commission should support the development of a strategy plan for the Agency and the inclusion of strategic elements in the action plan for oil pollution preparedness and response. They should engage in dialogue with EMSA on future needs and challenges and their expectations to EMSA.
- It is suggested to consider some minor amendments in relation to the EMSA Regulation. Article 22 could be amended to provide for regular evaluations of the implementation of the EMSA Regulation (every 5 years). It could also be considered to include a formal requirement for the Agency (the Executive Director) to produce a strategy plan for the Agency to be updated at least every 3 years.
- The Member States and the Commission - as key end-users - should also support the process of introducing activity-based costing and budgeting in the Agency. Feed-back to EMSA from the Administrative Board will be needed on the level of satisfaction with the reporting and suggestions for further improvement.

- It is recommended that reports from STCW inspections in third countries are made available to the Member States. During the evaluation exercise the first steps have been taken to that effect. It is recommended to assign high priority to developing the secure web-site.
- It is suggested that the Commission considers including wider impact assessments in relation to future EU-wide studies on implementation of Community legislation. The 'terms of reference' for cross-country studies conducted by EMSA could thus be complemented with a requirement to analyse the EU-wide impact on the level of maritime safety. Such assessments could contribute to an improved understanding of the links between the implementation of Community law and the level of maritime safety in Europe.
- When assigning comprehensive new tasks to the Agency, the potential for achieving "value added" should be analysed. It should be transparent (i) in which areas EMSA is supplementing what Member States are already doing - and hence increasing the overall quality for the entire EU, (ii) in which areas EMSA is taking over activities and implementation from Member States allowing them to make savings on their national budgets - and where EMSA is hence adding synergy and economy of scale. Such studies would be in concurrence with recent Commission practice when establishing new agencies.
- Considering that an impact assessment of the EMSA Regulation is currently on-going, it is suggested that the Administrative Board makes this evaluation report available to the responsible contractor.

Annex III: Current tasks of EMSA

*Disclaimer: The following 37 tasks were defined for the sake of this impact assessment.
Regulation 1406/2002 contains the legal definition of EMSA's tasks.*

1. Horizontal tasks		
Technical and scientific assistance to Commission, Member States, new Member States, acceding Member States	Provision of assistance to the Commission in the preparatory work for developing new legislation as well as for updating and amending existing Community legislation.	
	Provision of technical and scientific assistance to Member States and to the Commission in order to help them to apply the Community legislation.	
	Provision of technical and scientific assistance to the Commission in order to help them to monitor the implementation of the Community legislation and to evaluate the effectiveness of the measures in place.	
	Provide the Commission and the Member States with objective, reliable and comparable information and data, including the collection, recording and evaluation of technical data.	
	Organization of training activities for Member States in the areas of maritime safety, security and prevention of marine pollution.	
	Assistance to candidate countries in implementing EU legislation in the fields of maritime safety, security, prevention of marine pollution.	
2. Maritime safety		
	Legislation	Task
Visits and inspections to monitor EU legislation implementation	Classification Societies. (Regulation 391/2009/EC and Directive 2009/15/EC).	Inspections of the recognised classification societies on behalf of the Commission. Inspections of classification societies for which EU recognition is being requested by one or more Member States.
	Training of Seafarers. (Directives 2008/106/EC and 2005/45/EC).	Inspections to asses the quality of the systems and procedures set up by Member States.
		Inspections in third countries to asses the quality of training of foreign seafarers on board of EU vessels.
	Port State Control. (Directive 2009/16/EC).	Undertaking visits to Member States to assess whether their port state control systems and procedures fully comply with EU legislation.
	EU Vessels Traffic Monitoring. (Directive 2002/59/EC).	Inspections to monitor the implementation of the Directive.
Technical and scientific assistance to Member States and Commission, circulation of information and cooperation with Maritime Authorities	Port State Control. (Directive 2009/16/EC).	Provision of technical assistance related to Commission participation in the Paris MoU.
		Promotion of and contribution to co-operation between Member States in the development of technical practices aimed at improving the implementation of the EU port state control Directive. In particular implementation of integrated electronic tools for the training of PSC officers.
		Publishing and updating the EU list of banned ships.

	Directive 99/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high speed passenger craft services.	Database of inspection reports management and monitoring of the regime application.
	EU Vessel Traffic Monitoring. (Directive 2002/59/EC).	SafeSeaNet management.
		Promotion of cooperation between coastal States in the shipping areas concerned in the fields covered by the Directive.
		The EU Transport, Telecommunications and Energy Council adopted on 2 October 2007 a resolution concerning the establishment of a European Union Long Range Identification and Tracking (LRIT) Data Centre. The Data Centre will be managed by the Commission, in co-operation with Member States, through EMSA. The Council stressed that its objectives should include maritime security, search and rescue, maritime safety and protection of the marine environment. Automatic Identification System (AIS) reports will be integrated into the data and the development process will make use of the existing SafeSeaNet system. It is planned that the new data centre will be operational by the end of 2008.
	Marine Equipment. (Directive 96/98/EC).	Development and management of the database of EU approved marine equipment.
	Liability & Compensation. (Directive 2005/35/EC).	Technical assistance to Commission in international negotiations at the IMO and at the International Oil Compensations Funds (IOPC Fund).
	Mutual recognition of seafarers' certificates. (Directive 2005/45/EC).	Development of STCW related database.
	Ship source pollution and on the introduction of penalties for infringements. (Directive 2005/35/EC).	CleanSeaNet: Assistance to Member States in tracking illegal discharges at sea by providing satellite images to Member States.
	Accident investigation. (Regulation 2009/18/EC).	Development and management of a common database containing information at EU level.
		Technical assistance to Member States and Commission in creating a common methodology for investigations.
3. Maritime security		
	Legislation	Task
Visits and inspections to monitor EU legislation Implementation	Commission inspections in the field of Regulation 725/2004/EC enhancing ship and port facility security (Regulation 884/2005/EC).	Technical assistance to the Commission: EMSA shall make technical experts available to participate in Commission inspections, including the related preparatory and reporting phases in respect of ships and relevant companies.

4. Prevention of pollution		
	Legislation	Task
Visits and inspections to monitor EU legislation Implementation	Port Reception Facilities. (Directive 2000/59/EC).	Visits and inspections aimed at evaluating, in close cooperation with the Commission, whether the goals of the port reception facilities' Directive have been met, with regard to ships.
	Prohibition of organotin compounds (Regulation 782/2003/EC).	Inspections monitoring the implementation of the Directive.
	Air Emissions (Directive 2005/33/EC).	Inspections monitoring the implementation of the Directive.
Technical and scientific assistance to Member States and Commission, circulation of information and cooperation with Maritime Authorities	Port Reception Facilities. (Directive 2000/59/EC).	Assistance to the Commission. Identification and dissemination of best practices throughout the Community.
		Assistance to the Commission. Evaluation of waste reception plans developed by ports.
		Gathering of information on the fee systems applied in Member States.
	Maritime Pollution Preparedness and response.	The Consultative Technical group (CTG) provides a platform between Member States at the Community level, contributing to the technical preparedness to accidental and deliberate marine pollution from ships. For issues within EMSA's competence, this group is a follow-up to the Management Committee for Marine Pollution (MCMP) established for the assistance to the Community framework of cooperation in the field of accidental or deliberate marine pollution.
5. Preparedness and response to pollution		
	Legislation	Task
Technical and scientific assistance to Member States and Commission, circulation of information and cooperation with Maritime Authorities	Operational support to Member States with additional anti pollution means. (Regulation 1406/2002/EC and 2038/2006/EC).	Provision of information and best practices
		Technical and scientific assistance to Member States and to the Commission within the relevant regional agreements in the field of response to pollution.
		Operational assistance and support, on request, with additional means (stand-by anti-pollution ships and equipment), to Member States' pollution response actions in the event of accidental or deliberate pollution caused by ships.
		Drawing up, on a regular basis, a list of private and state pollution response capabilities in the various regions of the EU.
		Assistance in the field of response to ship-sourced pollution within EU waters.

Annex IV: Possible future tasks of EMSA

1. List of the 19 tasks envisaged by the preferred option

10 tasks in Policy Option 2	
Common rules and standards for ship inspection's relevant activities of maritime administrations	
B5	Assisting the Commission in the development of implementation rules.
B6	Assessing the new certification body.
Port State Control	
B7	Operation and hosting of the new information system Thetis
B8	Notification of arrival of ships: integrate notification requirements of ships into the reporting scheme of Directive 2002/59/EC and SafeSeaNet.
B9	Professional profile of inspectors: develop and promote harmonised Community training schemes.
Community vessel traffic monitoring and information system	
B10	Places of refuge: facilitate the harmonisation of national plans and setting of regional arrangements.
B11	Enhancement of SafeSeaNet
B12	Operation of the EU LRIT data centre
Fundamental principles governing the investigation of accidents in the maritime transport sector	
B13	Organise and support a permanent cooperation framework of investigative bodies.
B14	Organise early alert system.
2 additional tasks in Policy Option 3	
C2	Training of Port State Control officers.
C3	Development of instructions and guidance material for PSC officers.
7 additional tasks in Policy Option 4	
D2	Analysis of research results, including identification of possible regulatory follow-up measures.
D3	Identification of research subjects and areas to be possibly included in calls for proposals under the EU framework programme.
D4	Contribution to the EU maritime surveillance policy
D5	Preparedness to marine pollution at sea/by vessels
D6	Cooperation with neighbouring third countries (EU regional seas and Paris MoU) in areas of exchange of information, training and technical assistance
D7	Cooperation with neighbouring third countries (EU regional seas and Paris MoU) in operational services

	like SafeSeaNet, CleanSeaNet, anti-pollution vessels
D8	Social aspects of shipping: training, qualification, working and living conditions of seafarers

2. List of the 10 disregarded tasks

5 tasks in Policy Option 2	
Flag State requirements	
B1	Technical assistance aimed at establishing minimum criteria on resources and processes for administering safety and pollution prevention.
B2	Technical assistance aimed at establishing minimum qualification requirements for surveyors of flag State.
B3	Establishing a common methodology for Flag State performance.
B4	Assistance to Member States in Flag State auditing process.
Civil liability and financial guarantees of ship owners	
B15	Management of financial security certificates at EU level.
4 tasks in Policy Option 3	
C1	Establishment of a black-grey-white list for flag States.
C4	Assistance to the Commission and the Paris MoU in their cooperation with other MoUs.
C5	Taking care of publications, website and providing general information.
C6	Elaborating and publishing statistics developed by the Paris MoU.
1 task in Policy Option 4	
D1	Enhanced technical assistance to the Commission in preparing and carrying out maritime security inspections to verify correct implementation of the legislation.