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## OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Maritime Safety Agency and repealing Regulation (EC) No 1406/2002

Delegations will find in Annex the *general approach* on the above-mentioned proposal, as adopted by the Council at its 4033<sup>rd</sup> meeting on 18 June 2024.

2023/0163 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the European Maritime Safety Agency and repealing Regulation (EC) No 1406/2002**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C, C/2023/873, 8.12.2023.

Whereas:

- (1) A number of legislative measures have been adopted by the Union in order to enhance maritime safety and security, to promote the sustainability, by also preventing pollution, and the decarbonisation of shipping, and to facilitate the exchange of information and the digitalisation of the maritime sector. In order to be effective, such legislation should be applied in a proper and uniform manner throughout the Union. That would ensure a level playing field, reduce the distortion of competition resulting from the economic advantages enjoyed by non-complying ships and would reward the serious maritime players.
- (2) The pursuit of those goals requires substantial technical work led by a specialised body. That is why it was necessary, as part of the second ‘Erika package’ in 2002, to establish, within the existing institutional framework and with respect for the responsibilities and rights of the Member States as flag, port and coastal States, a European agency for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships.
- (3) Regulation (EC) No 1406/2002 of the European Parliament and of the Council<sup>2</sup> established the European Maritime Safety Agency (‘the Agency’) in order to assist the Commission and the Member States with the effective implementation at the Union level of the legislation in the areas of maritime safety and pollution prevention through appropriate visits to Member States for the monitoring of the relevant legislation and the provision of voluntary training and capacity building.
- (4) Following the establishment of the Agency in 2002, the Union legislation in the areas of maritime safety, sustainability and pollution prevention and maritime security expanded significantly resulting in five amendments to the Agency’s mandate.

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<sup>2</sup> 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).

- (5) Since 2013 the Agency continued to expand significantly its tasks either through the activation of relevant ancillary tasks prescribed in Article 2a of Regulation (EC) No 1406/2002 or through requests for technical assistance to the Commission and the Member States especially in the area of decarbonisation and digitalisation of the maritime sector. In addition, amendments to Directives 2005/35/EC<sup>3</sup>, 2009/16/EC<sup>4</sup>, 2009/18/EC<sup>5</sup> and 2009/21/EC<sup>6</sup> of the European Parliament and of the Council have a direct impact on the tasks of the Agency. Those Directives provide in particular for the performance of tasks by the Agency relating to ship source pollution, the port State control regime at the Union level, the Member States activities concerning the investigations related to maritime accidents in Union waters and the obligations of the Member States as flag States.
- (6) In addition, the governance of the Agency needs to be aligned to the inter-institutional agreement on the governance of decentralised agencies<sup>7</sup> and the framework financial regulation for the decentralized bodies of the Union<sup>8</sup>.
- (7) Due to the substantial number of changes in view of the above developments, it is appropriate to repeal Regulation (EC) No 1406/2002 and replace it by a new legal act.

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<sup>3</sup> Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences (OJ L 255, 30.9.2005, p. 11).

<sup>4</sup> Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

<sup>5</sup> Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council (OJ L 131, 28.5.2009, p. 114).

<sup>6</sup> Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ L 131, 28.5.2009, p. 132).

<sup>7</sup> [https://european-union.europa.eu/system/files/2022-06/joint\\_statement\\_on\\_decentralised\\_agencies\\_en.pdf](https://european-union.europa.eu/system/files/2022-06/joint_statement_on_decentralised_agencies_en.pdf)

<sup>8</sup> Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial Regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council, (OJ L 122, 10.5.2019 p. 1).

- (8) The Agency was initially established with the objective of contributing to the establishment of a high level of maritime safety across the Union while also assisting the pollution prevention from ships and later also from oil and gas installations. While those objectives were further strengthened with the addition of promoting maritime security, the Agency's focus, during recent years, on support to regulatory developments in the area of decarbonisation and digitalisation of shipping merit the addition of those areas in the overall objectives of the Agency enabling it to contribute to the goals of the twin, green and digital, transition of the industry. Likewise, the crucial role of the Agency in the provision of a maritime awareness picture in the sea, through satellite images and the operation of remotely piloted aircraft systems, justifies the addition of a relevant overall objective for the Agency.
- (9) Those objectives should define the areas of the Agency's engagement in supporting the Commission and the Member States with technical and operational assistance in order to implement the Union's policies in the maritime domain.
- (10) For the proper achievement of those objectives, it is appropriate that the Agency carries out specific tasks in the area of maritime safety, environmental protection, decarbonisation of the maritime sector, maritime security and cybersecurity, maritime surveillance and maritime crises and the promotion of the digitalisation and facilitation of exchanges of data in the maritime domain. In order to focus on specific challenges and to warrant the cost-efficiency of the tasks the Agency is carrying out, the Management Board has the right to prioritize and deprioritize certain tasks and activities in the annual and multiannual planning.
- (11) In addition to the specific tasks, the Agency should provide horizontal, technical support, upon request by the Commission or the Member States, for the implementation of any task that falls under the remit of its competences and objectives, stemming from future needs and developments at the Union level. Such additional tasks shall be subjected to a consideration of the available human and financial resources, which the Management Board of the Agency should take into account before deciding to include them in the Single Programming Document of the Agency as part of its annual or multiannual work program. This is necessary to ensure that certain tasks which constitute the core of the Agency could be prioritised if needed.

- (12) The Agency is at the forefront of the technical expertise in the areas of its competence and thus it should provide voluntary training and capacity building activities to the Member States and the use of the most technologically advanced tools in their delivery.
- (13) This technical expertise of the Agency should be further cultivated by conducting research in the maritime field and contributing to the relevant Union's activities in the area. The Agency should contribute in close cooperation with the Management Board with a proactive approach to the objectives of enhancing maritime safety, security, decarbonisation of shipping and prevention of pollution by ships.
- (14) As regards maritime safety, the Agency should develop a proactive approach in determining safety risks and challenges on the basis of which it should present to the Commission every three years a report on the progress on maritime safety. Moreover, the Agency should continue assisting the Commission and the Member States in the implementation of the relevant Union legislation, especially in the areas of flag and port State obligations, the accident investigation of marine accidents, the passenger ship safety legislation, Recognised Organisations and marine equipment. Recognising the evolving nature of maritime safety, the Agency could, upon prior approval by the Management Board, support the Commission and the Member States in identifying emerging areas of expertise related to maritime safety, without prejudice to the competences of Member States in those areas. It is also important to collect further statistics in the area of the training and certification for seafarers and, upon the request of the Management Board, on the implementation of relevant international conventions regarding the onboard working and living conditions of seafarers. Special attention should be given to the work already carried out by international organisations, in order to avoid duplication.

- (15) Since the last substantial amendment of the Regulation in 2013, there have been significant legislative developments in the maritime sector with regards to sustainability such as pollution prevention and response, environmental protection and decarbonization. In addition to the tasks that the Agency's mandate covered until now, such as the prevention of pollution from ships and oil and gas installations, mainly through the operation of CleanSeaNet, the Agency should continue assisting the Commission in the implementation of Directive (EU) 2019/883 of the European Parliament and of the Council<sup>9</sup> by reflecting this task in its updated mandate. Moreover, there is an increased need for the Agency to continue assisting in the implementation of the shipping related elements of Directives 2008/56/EC<sup>10</sup> and (EU) 2016/802<sup>11</sup> of the European Parliament and of the Council. The Agency should deliver a report on the progress made every three years. Recognising the evolving nature of the sector, the Agency could, upon prior approval by the Management Board, support the Commission and the Member States in identifying emerging areas of expertise related to environmental protection, without prejudice to the competences of Member States in those areas.

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<sup>9</sup> Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC (OJ L 151, 7.6.2019, p. 116).

<sup>10</sup> Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

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

- (16) In the area of decarbonisation of the shipping sector, efforts to limit global maritime emissions through the International Maritime Organisation (IMO) are under way and should be encouraged, including the rapid implementation of the initial IMO Strategy on Reduction of Greenhouse Gas Emissions from Ships, adopted in 2018. Discussions are undergoing on the means to implement in practice such ambition, including on a revision of the initial strategy. At the Union level, a set of policies and legislative proposals to support the decarbonisation and further promote the sustainability of the maritime sector has been developed, as reflected in particular in the European Green Deal, the Sustainable and Smart Mobility Strategy, the “Fit for 55” package and the Zero Pollution Strategy. As a result, the need to reduce greenhouse gas emissions from the maritime sector should be reflected in the mandate of the Agency.
- (17) In this regard, while the Agency should continue assisting the Commission and the Member States in the implementation of Regulation (EU) 2015/757 of the European Parliament and of the Council<sup>12</sup> it should further assist in the implementation of the new regulatory measures to decarbonise the shipping sector, as stemming from the Fit for 55 legislative package, such as the Regulation (EU) 2023/1805 on the use of renewable and low-carbon fuels in maritime transport<sup>13</sup> and the shipping-related elements of Directive 2003/87/EC of the European Parliament and of the Council<sup>14</sup> establishing a scheme for greenhouse gas emission allowance trading within the Community. The Agency should continue to be at the forefront of expertise at Union level to assist in the transition of the sector into renewable and low carbon fuels by conducting research relevant for the implementation and development of Union legislation on the uptake and deployment of sustainable alternative sources of power for ships, including onshore power supply to ships and in relation to the deployment of energy efficiency and wind propulsion assistance solutions. In order to monitor progress in the area of decarbonisation of

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<sup>12</sup> Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (OJ L 123, 19.5.2015, p. 55).

<sup>13</sup> Regulation (EU) 2023/1805 of the European Parliament and of the Council of 13 September 2023 on the use of renewable and low-carbon fuels in maritime transport, and amending Directive 2009/16/EC (OJ L 234, 22.9.2023, p. 48)

<sup>14</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).



the shipping sector, the Agency should report to the Commission on the greenhouse gas reduction efforts and any recommendations that might have every three years.

- (18) In the area of maritime security, the Agency should continue to provide technical assistance to the Commission inspections in the framework of Regulation 725/2004 of the European Parliament and of the Council<sup>15</sup> on enhancing ship and port facility security. Given that the number of cybersecurity incidents in the maritime sector has gone up significantly in recent years, the Agency should assist Union efforts to enhance resilience against cybersecurity incidents in the maritime sector by facilitating the exchange of best practices and information on cyber security incidents between the Member States.
- (19) The Agency should continue to host the vessel monitoring and information system established under Directive 2002/59/EC of the European Parliament and of the Council<sup>16</sup> together with other systems underpinning the establishment of a maritime awareness picture. In this regard, the Agency should continue to play a vital role in the management of the maritime security component of Copernicus programme and should continue making use of available state-of-the-art technology, such as remotely piloted aircraft systems providing to Member States and other Union bodies a useful tool for surveillance and monitoring. In addition to these services, the Agency has demonstrated its strategic role in providing maritime situational awareness supporting various crises, such as the COVID-19 and Russia's war of aggression against Ukraine. As a result, the Agency should operate a centre, open 24 hours per day and 7 days per week, which should assist the Commission and the Member States with such emergency situations.

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<sup>15</sup> Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security, (OJ L 129 of 29.4.2004, p. 6).

<sup>16</sup> Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p. 10).

- (19a) The Agency should assist the Commission and the Member States in the exchange of information through the development and maintenance of the voluntary Common Information Sharing Environment (CISE), respecting the voluntary nature of Member States' participation.
- (20) Digitalisation of data is part of technological progress in the area of data collection and communication with a view to helping to bring down costs and making efficient use of human resources. The deployment and operation of Maritime Autonomous Surface Ships (MASS) and the digital and technological developments provide a wide range of new opportunities in terms of data collection and management of integrated systems. This creates opportunities for the potential digitalisation, automation and standardisation of several processes, which would allow for the facilitation of safety, security, sustainability and efficiency of maritime operations, including surveillance mechanisms, at Union level, reducing in parallel the administrative burden to the Member States. In this regard, the Agency should, among others, facilitate and promote the use of electronic certificates, the collection, recording and evaluation of technical data, the systematic exploitation of existing databases, including their cross-fertilisation through the use of innovative IT and artificial intelligence tools, with the aim to reduce administrative burden for Member States. In this work the Agency should take into account the need for any tool or system to be user friendly and interoperable with already existing technical solutions in order not to create unnecessary costs for Member States or the industry.
- (21) In order to properly carry out the tasks entrusted to the Agency, it is appropriate that its officials should carry out visits to the Member States in order to monitor the overall functioning of the Union maritime safety and pollution prevention system. The Agency should also carry out inspections in order to assist the Commission in the assessment of the effective implementation of Union law.

- (22) To contribute to the relevant work of the technical bodies of the IMO, the International Labour Organisation (ILO) and the Paris Memorandum of Understanding on Port State Control, signed at Paris on 26 January 1982 ('Paris MoU'), the Commission and the Member States may ask technical assistance regarding matters of Union competence. Likewise, the Commission may also need the technical assistance of the Agency in supporting third countries in the maritime domain, in particular with capacity building and pollution prevention and response means. Support to third countries shall be subject to a consideration of the available human and financial resources and should not be detrimental to the Agency's priorities.
- (23) National authorities carrying out coast guard functions are responsible for a wide range of tasks, which may include maritime safety, security, search and rescue, border control, fisheries control, customs control, general law enforcement and environmental protection. In accordance in particular with the revised EU maritime security strategy (EUMSS) and its action plan, the Agency, the European Border and Coast Guard Agency, established by Regulation (EU) 2019/1896 of the European Parliament and of the Council<sup>17</sup>, and the European Fisheries Control Agency, established by Regulation (EU) 2019/473 of the European Parliament and of the Council<sup>18</sup>, should therefore strengthen their cooperation, within their mandate, both with each other and with the national authorities carrying out coast guard functions, for example through the European Coastguard Functions Forum, in order to increase maritime situational awareness and to support coherent and cost-efficient action.

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<sup>17</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

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

- (24) The implementation of this Regulation should not affect the division of competence between the Union and the Member States or the obligations of Member States under international conventions such as the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the International Convention for the Prevention of Pollution from Ships, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, and other relevant international maritime instrument.
- (25) In order to streamline the decision-making process in the Agency, an efficient and effective governance structure should be introduced. To that end, the Member States and the Commission should be represented on a Management Board vested with the necessary powers, including the power to establish the budget and approve the programming document. The Management Board should give general orientations for the Agency's activities and be more closely involved in the monitoring of the Agency's activities, with a view to reinforcing supervision on administrative and budgetary matters. The Management Board should have the possibility to establish subsidiary committees and working groups with the task of preparing the meetings of the Management Board in an appropriate manner and supporting its decision-making process as well as the follow-up and the implementation of its decisions. The Agency should be headed by an Executive Director.
- (26) In order to guarantee the transparency of the Management Board's decisions, representatives of the sectors concerned could attend parts of its meetings, but without the right to vote. The representatives of the various stakeholders should be appointed by the Commission on the basis of their representativeness at Union level.

- (27) In order to perform its tasks properly, the Agency should have legal personality and an autonomous budget funded mainly through a contribution by the Union and through fees and charges paid by third countries or other entities. The Agency's independence and impartiality should not be compromised by any financial contribution that it receives from Member States, third countries or other entities. In order to ensure independence in its daily management and in the opinions, recommendations and decisions which it issues, the Agency's organisation should be transparent and the Executive Director should have full responsibility. The Agency's staff should be independent and should be employed on both short-term and long-term contracts in order to maintain its organisational knowledge and business continuity, while keeping a necessary and ongoing exchange of expertise with the maritime sector. The expenditure of the Agency should include staff, administrative, infrastructure and operational expenses.
- (28) With regard to the prevention and management of conflicts of interest, it is essential that the Agency acts impartially, demonstrates integrity and establishes high professional standards. There should never be any legitimate reason to suspect that decisions might be influenced by interests conflicting with the role of the Agency as a body serving the Union as a whole or by private interests or affiliations of any member of the Management Board which would create, or have the potential to create, a conflict with the proper performance of the official duties of the person concerned. The Management Board should therefore adopt comprehensive rules on conflicts of interests and those rules should be published on the Agency's homepage.
- (29) A broader strategic perspective in relation to the activities of the Agency would facilitate the planning and management of its resources in a more effective manner and would contribute to a higher quality of its outputs. That is confirmed and reinforced by Delegated Regulation (EU) 2019/715. Therefore, a single programming document containing the annual and multi-annual work programmes should be adopted and updated periodically by the Management Board, following proper consultation of the relevant stakeholders.

- (30) When the Agency is asked to conduct a new task not currently included in its work programme or certain tasks for which a consideration and an analysis of the impact on its resources, in human and budgetary terms, is necessary according to its mandate, the Management Board should include such tasks in the programming document only after such an analysis. That analysis should identify the necessary resources with which the Agency could deliver upon those new tasks and whether the existing tasks of the Agency are negatively affected or should be reoriented.
- (31) The Agency should be properly resourced to carry out its tasks and granted an autonomous budget. It should be mainly financed by a contribution from the general budget of the Union. The Union budgetary procedure should be applicable to the Union contribution and to any other subsidies chargeable to the general budget of the Union. The auditing of accounts should be undertaken by the Court of Auditors of the Union.
- (32) Fees improve the funding of an agency and may be considered for specific services, falling under the scope of its competencies, rendered by the Agency to third countries or the industry. Any fees levied by the Agency should cover its costs for providing the respective services.
- (33) [...]
- (34) Over the past years, as more decentralised agencies have been created, transparency and control over the management of Union funding allocated to them has improved, in particular as regards the budgetisation of fees, financial control, power of discharge, pension scheme contributions and the internal budgetary procedure (code of conduct). Similarly, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>19</sup> should apply without restriction to the Agency, which should accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of

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<sup>19</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)<sup>20</sup>.

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

HAVE ADOPTED THIS REGULATION:

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<sup>20</sup> OJ L 136, 31.5.1999, p. 15.

## *CHAPTER I*

### ***SUBJECT MATTER, SCOPE AND OBJECTIVES***

#### *Article 1*

##### **Establishment, subject matter and scope**

1. This Regulation establishes the European Maritime Safety Agency ('the Agency') and provides comprehensive rules on the Agency's tasks, functioning and governance.
2. The Agency shall assist the Member States and the Commission in the effective application and implementation of Union law related to maritime transport across the Union. To that end, the Agency shall cooperate with the Member States and the Commission and provide them with technical, operational and scientific assistance within the scope of the Agency's objectives and tasks set out in Article 2 and Chapters II and III.
3. By providing the assistance referred to in paragraph 2, the Agency shall in particular provide support to the Member States and the Commission to apply the relevant Union legal acts properly while contributing to the overall efficiency of maritime traffic and maritime transport as set out in this Regulation, so as to facilitate the achievement of the Union's objectives in the maritime transport domain.
4. Any assistance provided by the Agency shall be without prejudice to the rights and responsibilities of the Member States as flag, port or coastal States.

#### *Article 2*

##### **Objectives of the Agency**

1. The main objectives of the Agency shall be to aim to ensure a high, uniform and effective level of maritime safety, maritime security, the reduction of greenhouse gas emissions from ships and the sustainability of the maritime sector as well as the prevention of and response to pollution caused by ships and the response to marine pollution caused by oil and gas installations.



2. Furthermore, the Agency shall support the promotion of digitalisation of the maritime sector by facilitating the electronic transmission of data supporting simplification and the provision of integrated maritime surveillance and awareness systems and services, as well as training that is of a voluntary nature for Member States, to the Commission and the Member States.

2a. In order to ensure that those objectives are met in the appropriate manner, the Agency shall perform the tasks as set out in Chapters II and III, notwithstanding the right of the Management Board to prioritize certain tasks and activities in the annual and multiannual planning in accordance with Article 17.

## *CHAPTER II*

### **TASKS OF THE AGENCY**

#### *Article 3*

#### **Horizontal technical support**

1. The Agency shall assist the Commission:
  - (a) in the control of the effective implementation of relevant binding legal acts of the Union, falling under the objectives of the Agency, in particular by carrying-out the visits and inspections as referred to in Article 10. In this regard, the Agency may address suggestions to the Commission for possible improvements;
  - (b) in the preparatory work for updating and developing relevant legal acts of the Union falling under the objectives of the Agency, in particular in accordance with the development of international law;
  - (c) in the performance of any other task assigned to the Commission in legislative acts of the Union regarding the objectives of the Agency.
2. The Agency shall work with the Member States to:

- (a) organise, where appropriate, relevant capacity building and training activities in fields which fall under the objectives of the Agency and are the responsibility of the Member States.  
Training activities provided shall be developed in close consultation with the Member States and the Commission and approved by the Management Board in accordance with Article 17 of this Regulation, while fully respecting Article 166 of the Treaty on the Functioning of the European Union (TFEU);
- (b) develop technical solutions, including the provision of relevant operational services, and provide technical assistance, to building up the necessary national capacity for the implementation of relevant legal acts of the Union pertinent to the objectives of the Agency.
3. The Agency shall promote and facilitate cooperation between Member States and between them and the Commission in the implementation of the Union legislation by promoting the exchange and dissemination of experiences and good practices.
4. The Agency shall contribute, at the Commission's request, or on its own initiative, subject to prior approval of the Management Board in accordance with Article 17, to maritime research activities at the Union level when needed to fulfil the objectives of the Agency. In this regard, the Agency shall assist the Commission and the Member States in identifying key research themes, without prejudice to other research activities at the Union level, and in analysing ongoing and completed research projects relevant to the objectives of the Agency. Where appropriate, subject to the applicable rules on intellectual property and security considerations, the Agency may disseminate the results of its research and innovation activities, following approval by the Commission, as part of its contribution to creating synergies between the research and innovation activities of other Union bodies and the Member States.
5. Where required for the implementation of its tasks, the Agency may undertake studies, involving the Commission and where applicable, through consultation steering groups, the Member States, and where appropriate, the social partners and industry representatives with expertise in the relevant topics.

6. On the basis of the research and studies conducted by the Agency, but also on the basis of the experience gained through its own activities, especially the visits and inspections, and exchange of information and good practices with the Member States and the Commission, the Agency may propose to the Commission, after prior consultation of the Management Board, relevant non-binding material, such as recommendations, guidelines or manuals to support Member States, and where appropriate the industry, in the implementation of the Union legislation. Any guidelines and guidance on the implementation of Union legislation shall only be issued by the Commission.

#### *Article 4*

##### **Tasks relating to maritime safety**

1. The Agency shall monitor progress on the safety of maritime transport in the Union, conduct risk analyses on the basis of the available data and develop safety risk assessment models to identify safety challenges and risks. Every three years it shall present to the Commission a report on progress on maritime safety with possible technical recommendations that could be addressed at the Union level.
2. The Agency shall assist the Commission and the Member States in the implementation of Directive 2009/21/EC. In particular, the Agency shall organise, where appropriate and requested by Member States, relevant training activities of Member States' flag State inspectors and surveyors referred to in Article 4c of that Directive. It shall also develop, maintain and update a digital interoperable portal in accordance with Article 6, as well as the ships information database in accordance with Article 6a of that Directive, and establish the electronic reporting tool referred to in Article 9b of that Directive.

The Agency shall develop relevant tools and services assisting the Member States, upon their request, on fulfilling their obligations under Directive 2009/21/EC.

[...]

3. The Agency shall assist the Commission in the development and maintenance of the electronic platforms and systems provided for in Articles 24 and 24a of Directive 2009/16/EC. On the basis of the data collected, the Agency shall assist the Commission in the analysis of the relevant information and the publication of information concerning companies with low and very low performance pursuant to Directive 2009/16/EC.

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

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

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

The Agency shall provide regular training according to the needs of Member States' marine safety investigation authorities.

5. The Agency shall assist the Commission and the Member States in the implementation of Directives 2009/45/EC<sup>21</sup> and 2003/25/EC of the European Parliament and of the Council<sup>22</sup> and Council Directive 98/41/EC<sup>23</sup>. The Agency shall, in particular, develop and maintain a database for recording measures as provided for in Article 9 of Directive 2009/45/EC and Article 9 of Directive 98/41/EC and assist the Commission in the assessment such measures.

6. The Agency shall facilitate the cooperation and the exchange of information between the Commission and the Member States for the assessment of the recognised organisations that carry out survey and certification tasks in accordance with Article 8(1) of Regulation (EC) No 391/2009<sup>24</sup>. In particular, the Agency shall:

- (a) provide to the Commission an opinion on its assessment of the recognised organisations under Article 8(1) of Regulation (EC) No 391/2009;
- (b) provide to the Member States appropriate information in the context of the inspections conducted to support the Commission's assessment under Article 8 (1) of Regulation (EC) No 391/2009 in order to support the monitoring and oversight of the recognised organisations according to Article 9 of Directive 2009/15/EC of the European Parliament and of the Council<sup>25</sup>;

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<sup>21</sup> Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (OJ L 163, 25.6.2009, p. 1).

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

<sup>23</sup> Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community (OJ L 188, 2.7.1998, p. 35).

<sup>24</sup> Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (OJ L 131, 28.5.2009, p. 11).

<sup>25</sup> Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ L 131, 28.5.2009, p. 47).

- (c) provide, at the Commission's request, technical assistance on possible remedial measures or the imposition of fines to the recognised organisations in accordance with Article 5 and 6 of Regulation (EC) No 391/2009 after providing advance notice to the Member States that have granted authorisation to the recognised organisation concerned of the measures or fines that the Commission intends to take.

7. The Agency shall assist the Commission in the implementation of Directive 2014/90/EU of the European Parliament and of the Council<sup>26</sup> by providing its technical assessment on safety and environmental aspects, providing recommendations with lists of the respective design, construction and performance requirements and testing standards, developing and maintaining the database provided for in Article 35(4) of that Directive and facilitating cooperation between notified assessment bodies acting as the technical secretariat for their coordination group.

8. [...]

9. The Agency may gather and analyse statistics on seafarers provided and used in accordance with Directive (EU) 2022/993 of the European Parliament and of the Council<sup>27</sup>. It may also, upon request of the Management Board, gather and analyse statistics with the aim of assisting in the improvement of the onboard working and living conditions of seafarers without duplicating the work done by international organizations.

9a. After prior approval by the Management Board, the Agency may support the Commission and the Member States in the identification of emerging areas of expertise related to maritime safety, as appropriate and without prejudice to the competences of Member States in those areas.

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<sup>26</sup> Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (OJ L 257, 28.8.2014, p. 146).

<sup>27</sup> Directive (EU) 2022/993 of the European Parliament and of the Council of 8 June 2022 on the minimum level of training of seafarers (OJ L 169, 27.6.2022, p. 45).

9b. The tasks set out in this Article shall not infringe upon Member States' rights and obligations, in particular as flag, port or coastal States.

## *Article 5*

### **Tasks relating to environmental protection**

1. The Agency shall, in a cost-efficient way, support the Member States with additional pollution response means, including those to be developed for sustainable alternative fuels, in case of pollution caused by ships as well as marine pollution caused by oil and gas installations. The Agency shall so act on request of the affected Member State under the authority of which the cleaning operations are conducted. Such assistance is without prejudice to the responsibility of coastal States to have appropriate pollution response mechanisms in place and shall respect existing cooperation between Member States in this field. The operational means that the Agency provides to the Member States shall take into account and cater for the transition of the sector to the use of sustainable alternative sources of power for ships. As appropriate, requests for mobilisation of anti-pollution actions shall be relayed through the Union Civil Protection Mechanism established by Decision No 1313/2013/EU of the European Parliament and of the Council<sup>28</sup>.

1a. The Agency shall prepare and update a risk assessment for all European sea basins which shall only serve as a basis for the location of the Agency's oil and chemical pollution response vessels for supporting the Member States in marine environment pollution response activities.

2. The Agency shall assist the Commission and the Member States with the detection of possible pollution and pursuit of ships making illegal discharges in accordance with Directive 2005/35/EC. The Agency shall in particular assist with the implementation of Articles 10, 10a, 10b, 10c and 10d of that Directive.

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<sup>28</sup> Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).

(a) [...]

(b) [...]

(c) [...]

(d) [...]

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

4. The Agency shall assist the Commission and the Member States in the implementation of Directive (EU) 2019/883 on port reception facilities for the delivery of waste from ships.

5. [...]

6. The Agency shall assist the Commission and the Member States, upon the request of the Commission or a Member State, including with operational tools and services, in the implementation of the shipping-related elements of Directive (EU) 2016/802.

7. [...]

8. The Agency shall assist the Commission and the Member States, upon the request of the Commission or a Member State, in the implementation of Regulation (EU) No 1257/2013 of the European Parliament and of the Council<sup>29</sup>.

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<sup>29</sup> Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (OJ L 330, 10.12.2013, p. 1).



8a. After prior approval by the Management Board, the Agency may support the Commission and the Member States in the identification of emerging areas of expertise related to environmental protection, as appropriate and without prejudice to the competences of Member States in those areas.

9. The Agency shall every three years present to the Commission a report on the progress made in reducing the environmental impact of maritime transport at the Union level.

9a. The tasks set out in this Article shall not infringe upon Member States' rights and obligations, in particular as flag, port or coastal States.

## *Article 6*

### **Tasks relating to decarbonisation**

1. [...]

2. The Agency shall provide technical assistance to the Commission and the Member States, upon the request of the Commission or a Member State, in relation to operational and technical measures as well as regulatory efforts to reduce greenhouse gas emissions from ships. In this regard, the Agency may utilize any operational tools or services pertinent to the task. The Agency shall in particular research, analyse and propose to the Commission, after prior consultation of the Member States, relevant guidance or recommendations in relation to the uptake and deployment of sustainable alternative fuels, energy and power systems for ships.

3. The Agency shall assist the Commission and the Member States in the implementation of Regulation (EU) 2023/1805. In particular, the Agency shall assist the Commission with the development and maintenance of the FuelEU database and other relevant IT tools as referred to in Article 19 of that Regulation, in the development of the appropriate monitoring tools, guidance and risk-based targeting tools to facilitate implementation, verification and enforcement activities, in particular provided for in Article 18 of that Regulation and with the analysis of the relevant data and the preparation of the reporting under Article 30 of that Regulation.
4. The Agency shall assist the Commission and the Member States in the implementation of Regulation (EU) 2015/757. In particular, the Agency shall assist the Commission with the development, update and maintenance of relevant IT tools, databases and guidance for the purposes of implementing that Regulation and facilitating enforcement activities, assist the Commission with the analysis of relevant data reported under that Regulation, and support the Commission in its activities to comply with the obligations under Article 21 of that Regulation.
5. The Agency shall assist the Commission and the Member States in the implementation of Directive 2003/87/EC, as relevant to the maritime sector. In particular, the Agency shall assist the Commission with the development of the appropriate IT implementation tools, monitoring tools, guidance and risk-based targeting tools to facilitate verification, enforcement and implementation activities related to Directive 2003/87/EC, as relevant to the maritime sector, while exploiting the results of existing relevant tools, services and databases.
6. The Agency shall every three years present to the Commission a report on the progress made in achieving the decarbonisation of maritime transport at the Union level. Where possible, the report shall include technical analysis on identified issues that could be addressed at the Union level.
- 6a. The tasks set out in this Article shall not infringe upon Member States' rights and obligations, in particular as flag, port or coastal States.

## *Article 7*

### **Tasks relating to maritime security and cybersecurity**

1. The Agency shall provide technical assistance to the Commission in the performance of the inspection tasks assigned to it pursuant to Article 9(4) of Regulation (EC) No 725/2004.
2. The Agency shall assist the Commission and the Member States, upon the request of the Commission or a Member State, together with any other relevant Union body, by facilitating the exchange of best practices and information on cyber security incidents between the Member States.
- 2a. The tasks set out in this Article shall not infringe upon Member States' rights and obligations, in particular as flag, port or coastal States.

## *Article 8*

### **Tasks relating to maritime surveillance and maritime crises**

1. The Agency shall provide to the Commission and the Member States, upon the request of the Commission or a Member State, maritime surveillance and communication services based on state-of-the-art, including space-based and ground infrastructure and sensors mounted on any kind of platform, improving maritime situational awareness.
2. In the field of traffic monitoring covered by Directive 2002/59/EC, the Agency shall in particular promote cooperation between riparian States in the shipping areas concerned, as well as, develop, maintain and operate the European Union Long-Range Identification and Tracking (LRIT) of Ships European Data Centre and the Union Maritime Information and Exchange System (SafeSeaNet) as referred to in Articles 6b and 22a of that Directive as well as the International LRIT information data exchange system in accordance with the commitment made in the IMO.

3. The Agency shall provide, upon request and without prejudice to national and Union law, relevant vessel positioning and Earth observation data to the Commission, the competent national authorities and relevant Union bodies within their mandate in order to facilitate measures against threats of piracy and of intentional unlawful acts as provided for in applicable Union law or under internationally agreed legal instruments in the area of maritime transport, subject to applicable data protection rules and in accordance with administrative procedures as established by Directive 2002/59/EC. The provision of LRIT of ships data shall be subject to the consent of the flag State concerned.

4. The Agency shall operate a centre available 24 hours a day and 7 days a week providing, upon request and without prejudice to national and Union law, to the Commission, the competent national authorities, without prejudice to their rights and responsibilities as flag, coastal and port States, and to relevant Union bodies, within their mandate, maritime situational awareness and analytical data, as appropriate, supporting them in:

- (a) safety, security and pollution at sea;
- (b) situations of emergency at sea;
- (c) the implementation of Union maritime legislation requiring the monitoring of ship movements;
- (d) measures against threats of intentional unlawful acts as provided for in applicable Union maritime legislation;
- (da) the implementation of the Union restrictive measures adopted under Article 29 of the TEU or Article 215 TFEU that fall under the remit of the competences of the Agency.
- (e) [...]

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

5. The Agency shall within its field of competence contribute to a timely response to and mitigation of crises by assisting, upon request, the Member States and the Commission with the execution of contingency plans and by facilitating the exchange of information and best practices.

6. The Agency shall assist the Commission in the operation of the maritime surveillance component of the Copernicus Security Service within the governance and financial framework of the Copernicus programme.

7. [...]

7a. The tasks set out in this Article shall not infringe upon Member States' rights and obligations, in particular as flag, port or coastal States.

### *Article 9*

#### **Tasks relating to digitalisation and simplification**

1. The Agency may, where appropriate and upon approval by the Commission and the Member States, collect and provide, in the areas of Union law within the Agency's competence, objective, reliable and comparable statistics, information and data, to evaluate the effectiveness and cost-efficiency of existing measures. Furthermore, the Agency may, where appropriate and upon request of the Commission or Member States, facilitate and promote solutions to strengthen the simplification and digitalisation of the European maritime sector, including through electronic certificates.

2. The Agency shall assist the Commission in the implementation of the Regulation (EU) 2019/1239 of the European Parliament and of the Council<sup>30</sup>, with the following tasks:

- (a) to develop, where appropriate, the common IT components and services of the European Maritime Single Window environment ('EMSWe') under the responsibility of the Commission;
- (b) to maintain the EMSWe Data Set, the Message Implementation Guide and the templates of the digital spreadsheets;
- (c) to provide non-binding technical guidance to the Member States for the implementation of the EMSWe.
- (d) to facilitate the re-use and the sharing of data exchanged in the EMSWe using SafeSeaNet.

3. The Agency shall provide technical assistance to the Member States, upon their request and without prejudice to the existing technical solutions for their registries or their rights and obligations as flag States, in the digitalization of their registries and their procedures facilitating the uptake of electronic certificates.

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

3b. The tasks set out in this Article shall not infringe upon Member States' rights and obligations, in particular as flag, port or coastal States.

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<sup>30</sup> Regulation (EU) 2019/1239 of the European Parliament and of the Council of 20 June 2019 establishing a European Maritime Single Window environment and repealing Directive 2010/65/EU (OJ L 198, 25.7.2019, p. 64).

### **Visits to Member States and inspections**

1. In order to assist the Commission in fulfilling its duties under the TFEU, and in particular the assessment of the effective implementation of relevant Union law, the Agency shall carry out visits to Member States as required by legal acts of the Union as listed in Annex I, if the Commission decides to delegate such a task to the Agency, in accordance with a methodology established by the Management Board. Such methodology shall take into account an integrated approach by each visit aiming to verify more than one piece of legislation each time pertinent to the function of flag, port or coastal State of the examined Member State during the visit.
2. The Agency shall inform the Member State concerned in reasonable time and no later than five months before the planned visit, the names of the authorised officials, and the date on which the visit starts and its expected duration. The Agency officials delegated to carry out such visits shall do so on presentation of a decision in writing from the Executive Director of the Agency specifying the purpose and the aims of their mission.
3. The Agency may carry out inspections on behalf of the Commission as required by binding legal acts of the Union regarding organisations recognised by the Union in accordance with Regulation (EC) No 391/2009, and as regards the training and certification of seafarers in third countries in accordance with Directive (EU) 2022/993.
- 3a. The Agency may also carry out site inspections on behalf of the Commission in accordance with Regulation (EU) 1257/2013 on recycling facilities in third countries, if the Commission decides to delegate this task to the Agency.
4. [...]

5. At the end of each visit or inspection, the Agency shall draw up a report and send it to the Commission and to the Member State concerned. The report would follow the template previously established by the Commission.
6. Where appropriate, and in any case when a cycle of visits or inspections is concluded, the Agency shall analyse reports from that cycle with a view to identifying horizontal findings and general conclusions on the effectiveness and cost-efficiency of the measures in place. The Agency shall present this analysis to the Commission and Member States for further discussion in order to draw any relevant lessons and facilitate the dissemination of good working practices.
- 6a. The tasks set out in this Article shall not infringe upon Member States' rights and obligations, in particular as flag, port or coastal States.

### *CHAPTER III*

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

### *Article 11*

#### **International relations**

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

[...]



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

3. The Agency may, upon the request of the Commission or the European External Action Service, or both, or the Member States, provide assistance in case of pollution caused by ships as well as marine pollution caused by oil and gas installations affecting third countries sharing a regional sea basin with the Union. The Agency shall provide the assistance in line with the Union Civil Protection Mechanism established by Decision No 1313/2013/EU, and with the conditions applicable to Member States as referred to in Article 5 (1) of this Regulation applied by analogy to the third countries. Those tasks shall be coordinated with the existing regional cooperation arrangements related to marine pollution.

4. Without prejudice to Article 24, the Agency may provide, upon the request of the Commission, technical assistance to third countries for matters falling under its competence.

5. The Agency may enter into administrative arrangements and cooperation with other Union bodies working in the matters falling within the scope of the Agency's competence following the approval of the Commission. Such arrangements and cooperation shall be subject to the favourable opinion of the Management Board and periodical reporting to it.

6. [...]

6a. The tasks set out in this Article shall not infringe upon Member States' rights and obligations, in particular as flag, port or coastal States.

**European cooperation on coast guard functions**

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

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

### *Article 13*

#### **Communication and dissemination**

The Agency may engage in communication activities on its own initiative in the fields within its mandate in order to promote its work and disseminate relevant guidance. It shall ensure in particular that the public and any interested party are timely given objective, reliable and easily understandable information with regard to its work. Communication activities shall be supportive to the rest of the tasks referred to in the Articles 3 to 12 and shall be carried out in accordance with relevant communication and dissemination plans adopted by the Management Board which shall include, where appropriate, arrangements regarding consultation with Member States before the publication of information. Those plans, based on an analysis of needs, shall be regularly updated by the Management Board.

## *CHAPTER IV*

### **ORGANISATION OF THE AGENCY**

#### *Article 14*

#### **Administrative and management structure**

The Agency's administrative and management structure shall comprise:

- (a) a Management Board, which shall exercise the functions set out in Article 16;
- (b) [...]
- (c) an Executive Director, who shall exercise the duties set out in Article 23.

#### *Article 15*

#### **Composition of the Management Board**

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

[...]

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

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

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

### *Article 16*

#### **Functions of the Management Board**

1. In order to ensure that the Agency carries out its tasks, the Management Board shall:
  - (a) give the general and strategic orientations for the Agency's activities;
  - (b) adopt each year, by a two-thirds majority of its members with voting rights, after having received the opinion of the Commission and in accordance with Article 17, the single programming document of the Agency;
  - (c) adopt, by a two-thirds majority of its members with voting rights, the annual budget and the staff establishment plan of the Agency and exercise other functions in respect of the Agency's budget pursuant to Chapter VI;
  - (d) adopt, by a two-thirds majority of its members with voting rights, the consolidated annual activity report on the Agency's activities and forward it each year by 1 July to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States. The report shall be made public;
  - (e) adopt the financial rules applicable to the Agency in accordance with Article 25;

- (f) deliver an opinion, by a two-thirds majority of its members with voting rights, on the Agency's final accounts;
- (g) establish the methodology for the visits to be carried out pursuant to Article 10. In the event that the Commission expresses, within 15 days from the date of adoption of the methodology, its disagreement, the Management Board shall re-examine and adopt it, possibly amended, in second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States;
- (h) consider and approve administrative arrangements, in accordance with Article 11 (5);
- (i) adopt an anti-fraud strategy, proportionate to fraud risks taking into account the costs and benefits of the measures to be implemented;
- (j) adopt rules for the prevention and management of conflicts of interest in respect of its members and publish annually on its website the declaration of interests of the Management Board members;
- (ja) adopt rules and procedures on transparency as regards lobbying activities and the involvement of third entities in the preparation of reports or other documents issued by the Agency, especially those concerning such third entities, to be published on its website;
- (k) adopt and regularly update the communication and dissemination plans referred to in Article 13, based on an analysis of needs;
- (l) adopt its rules of procedure, by a two-thirds majority of its members with voting rights;
- (m) [...]
- (n) [...]

- (o) in accordance with paragraph 2, exercise, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment<sup>31</sup>;
- (p) adopt implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 (2) of the Staff Regulations;
- (q) appoint, provide guidance and monitor the performance of the Executive Director and where relevant extend his or her term of office or remove him or her from office, by a four-fifths majority of its members with voting rights, in accordance with Article 22;
- (r) establish procedures for decision-making by the Executive Director;
- (s) if appropriate, appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment of Other Servants, who shall be totally independent in the performance of his or her duties;
- (t) ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO);
- (u) take all decisions on the establishment of the Agency's internal structures by a two-thirds majority of its Members with voting rights, including the set-up of subsidiary or working groups without decision-making powers and taking due account of their budgetary impact and, where necessary, their modification;

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<sup>31</sup> Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1)

- (ua) authorise, by a two-thirds majority of its members with voting rights, the arrangements for the participation of third countries in the work of the Agency, in accordance with Article 24;
- (v) decide, by a two-thirds majority of its members with voting rights, on the services that the Agency may offer against fees and charges and adopt a framework model for the financial apportionment of the fees and charges payable as referred to in Article 26 (3), point (c). In the event that the Commission expresses, within 15 days from the date of adoption of the Management Board's decision concerning the services offered against fees or the framework model, its disagreement, the Management Board shall re-examine and adopt it, possibly amended, in second reading either with a four-fifths majority, including the Commission representatives, or by unanimity of the representatives of the Member States;
- (va) decide, by a two-thirds majority of its members with voting rights, on fees and charges payable to the Agency and the conditions of payment referred to in Article 33;
- (w) adopt an efficiency gains and synergies strategy;
- (x) [...]
- (y) adopt the internal security rules of the Agency referred to in Article 41;
- (z) appoint the data protection officer of the Agency.

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



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

## *Article 17*

### **Annual and multi-annual programming**

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

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

2. The single programming document shall become definitive after final adoption of the general budget and if necessary shall be adjusted accordingly.

3. The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be coherent with the multi-annual work programme referred to in paragraph 7. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year.

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

5. The Management Board shall examine and approve, in the framework of the preparation of the single programming document, Commission's or Member States' requests for technical assistance, as referred to in Article 3 (1), point (c), Article 3 (2), point (b), Article 4 (2), (9) and (9a), Article 5 (6), (8) and (8a), Article 7 (2), Article 8 (6) and (7), Article 9 (3), Article 10 (3a) and Article 11 (2) and (4). The approval of such requests shall:

- (a) not be detrimental to the other tasks of the Agency;
- (b) shall avoid duplication of efforts;
- (c) shall be subject to an analysis of the human and budgetary resources implications; and
- (d) may be subject to a decision to postpone other tasks.

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

7. The multi-annual work programme shall set out overall strategic programming including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff.

8. The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 41.

## *Article 18*

### **Chairperson of the Management Board**

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

## *Article 19*

### **Meetings of the Management Board**

1. Meetings of the Management Board shall be conducted in accordance with its rules of procedure and convened by its Chairperson.
2. The Executive Director of the Agency shall take part in the deliberations except when his or her participation may lead to a conflict of interests, as decided by the Chairperson, or when the Management Board is to take a decision, in accordance with Article 35.
3. The Management Board shall hold an ordinary meeting twice a year. In addition, it shall meet on the initiative of the Chairperson or at the request of the Commission or of one-third of the Member States.
4. When a matter of confidentiality or a conflict of interest arises, the Management Board may decide to examine specific items on its agenda without the members concerned being present. This shall not affect the right of the Member States and of the Commission to be represented by an alternate or by any other person. Detailed rules for the application of this provision shall be laid down in the Management Board's rules of procedure.

5. The Management Board may invite any person whose opinion can be of interest to attend specific agenda items of its meetings as an observer.
6. The members of the Management Board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.
7. The secretariat for the Management Board shall be provided by the Agency.

## *Article 20*

### **Voting rules of the Management Board**

1. The Management Board shall take its decisions by absolute majority of its members with voting rights, except if provided otherwise in this Regulation.
2. [...]
3. Each member shall have one vote. The Executive Director of the Agency shall not vote.
4. In the absence of a member, his or her alternate shall be entitled to exercise the member's right to vote.
5. The rules of procedure shall establish more detailed voting arrangements, including the conditions for a member to act on behalf of another member.

*Article 21*

[...]

1. [...]

2. [...]

(a) [...]

(b) [...]

(c) [...]

3. [...]

4. [...]

5. [...]

6. [...]

7. [...]

## CHAPTER V

### EXECUTIVE DIRECTOR

#### *Article 22*

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

1. The Executive Director shall be appointed by the Management Board on the basis of merit and skills from a list of candidates proposed by the Commission following an open and transparent selection procedure which shall respect the principle of gender balance and geographical balance.
2. For the purpose of concluding the contract of the Executive Director, the Agency shall be represented by the Chairperson of the Management Board.
3. The term of office of the Executive Director shall be five years. In due time before the end of that period, the Commission shall undertake an assessment that takes into account an evaluation of the Executive Director's performance and the Agency's future tasks and challenges and submit it to the Management Board.
4. The Management Board, taking into account the assessment referred to in paragraph 3, may extend once the term of office of the Executive Director, for not more than five years.
5. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post.
6. The Executive Director may be removed from office only upon a decision of the Management Board acting on a proposal which can be submitted by either the Commission or at least one third of the voting members of the Management Board.
7. The Executive Director shall be engaged as a temporary agent of the Agency under Article 2(a) of the Conditions of Employment of Other servants.

## *Article 23*

### **Tasks and responsibilities of the Executive Director**

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

- (g) implement the single programming document, assessing progress compared to the relevant indicators and report to the Management Board on its implementation;
- (h) prepare the Agency's consolidated annual activity report and present it to the Management Board for assessment and adoption;
- (i) respond to any requests for assistance in accordance with Article 17 (5);
- (j) decide to carry out the visits and inspections provided for in Article 10, after consultation of the Commission and following the methodology for visits established by the Management Board in accordance with Article 16 (1) point (g);
- (k) decide to enter into administrative arrangements with other Union bodies working in the Agency's fields of activities provided that the draft arrangement has been submitted for consultation to the Commission first and the Management Board in accordance with Article 11 (5) and provided that the Management Board has not objected within four weeks;
- (l) take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation;
- (m) organise an effective monitoring system in order to be able to compare the Agency's achievements with its objectives and tasks as laid down in this Regulation. To that end, he or she shall establish, in agreement with the Commission and the Management Board, tailored performance indicators allowing for an effective assessment of the results achieved. He or she shall ensure that the Agency's organisational structure be regularly adapted to the evolving needs within the available financial and human resources. In this regard, he or she shall establish regular evaluation procedures that meet recognised professional standards;
- (n) establish and ensure the functioning of an effective and efficient internal control system and report any significant change to it to the Management Board;



- (o) ensure the carrying out of risk assessments and risk management for the Agency;
- (p) prepare a follow-up action plan in relation to the conclusions of internal or external audit reports and evaluations, as well as investigations by OLAF and EPPO, as referred to in Article 38, and report on progress twice a year to the Commission and regularly to the Management Board;
- (q) protect the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, without prejudicing the investigative competence of OLAF and EPPO, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative, including financial penalties;
- (r) prepare an anti-fraud strategy, an efficiency gains and synergies strategy, a strategy for cooperation with third countries or international organisations, or both, and a strategy for the organisational management and internal control systems, for the Agency and present it to the Management Board for approval;
- (s) promote diversity and ensure gender balance as regards the recruitment of the Agency's staff;
- (t) recruit staff on the broadest possible geographical basis;
- (u) design and implement a communication policy for the Agency;
- (v) perform any other tasks entrusted or delegated to him or her by the Management Board or as may be required by this Regulation;

## *Article 24*

### **Participation of third countries**

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

## *CHAPTER VI*

### **FINANCIAL PROVISIONS**

## *Article 25*

### **Financial rules**

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

## *Article 26*

### **Budget**

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

## *Article 27*

### **Establishment of the budget**

1. Each year, the Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following financial year, including the establishment plan, and send it to the Management Board.
2. The Management Board shall, on the basis of that draft, adopt a provisional draft estimate of the Agency's revenue and expenditure for the following financial year.
3. The provisional draft estimate of the Agency's revenue and expenditure shall be sent to the Commission by 31 January each year. The Management Board shall send the final draft estimate to the Commission by 31 March of that year.
4. The Commission shall send the statement of estimates to the budgetary authority together with the draft general budget of the European Union.
5. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the European Union the estimates it considers necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 of the TFEU.
6. The budgetary authority shall authorize the appropriations for the contribution to the Agency.
7. The budgetary authority shall adopt the Agency's establishment plan.
8. The Agency's budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the European Union. Where necessary, it shall be adjusted accordingly.

9. For any building project likely to have significant implications for the budget of the Agency the provisions of Delegated Regulation (EU) No 715/2019 shall apply.

#### *Article 28*

### **Implementation of the budget**

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

#### *Article 29*

### **Presentation of accounts and discharge**

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

7. The final accounts shall be published in the Official Journal of the European Union by 15 November of the following financial year.
8. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September. The Executive Director shall also send that reply to the Management Board.
9. The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 261(3) of the Financial Regulation.
10. On a recommendation from the Council acting by a qualified majority, the European Parliament shall, before 15 May of year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

## *CHAPTER VII*

### **STAFF**

#### *Article 30*

#### **General provision**

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

#### *Article 31*

#### **Seconded national experts and other staff**

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

## *CHAPTER VIII*

### **GENERAL AND FINAL PROVISIONS**

#### *Article 32*

#### **Legal status and seat**

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

2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may in particular, acquire and dispose of movable and immovable property and be a party to legal proceedings.
3. The Agency shall be represented by its Executive Director.
4. The seat of the Agency shall be in Lisbon, the Portuguese Republic.
5. [...]

### *Article 33*

#### **Fees and charges payable to the Agency**

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

[...]

2. Fees and charges shall be levied for services, referenced in Article 26 (3) point (c), provided by the Agency, in particular to third countries and the industry, for tasks falling under its competencies. Those services shall not be detrimental to the tasks of the Agency and the priorities set out by the Management Board.

Member States shall pay no fees or charges for the services provided to them by the Agency.



3. All fees and charges shall be expressed, and payable, in euro. Fees and charges shall be set in a transparent, fair and uniform manner. The specific needs of small and medium-sized enterprises, including the possibility of splitting payments into several instalments and phases, shall be taken into account. The apportionment of the fees shall be clearly identified in the accounts. Reasonable deadlines shall be set for the payment of fees and charges.

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

#### *Article 34*

[...]

1. [...]

2. [...]

#### *Article 35*

### **Privileges and immunities**

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

## *Article 36*

### **Language arrangements**

1. The provisions laid down in Council Regulation No 1<sup>32</sup> shall apply to the Agency.
2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre of the Bodies of the European Union.

## *Article 37*

### **Transparency**

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>33</sup> shall apply to documents held by the Agency.
2. The Management Board shall, within six months of the date of its first meeting, adopt the detailed rules for applying Regulation (EC) No 1049/2001.
3. Decisions taken by the Agency under Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 of the TFEU respectively.
4. The processing of personal data by the Agency shall be subject to Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>34</sup>.

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<sup>32</sup> OJ 17, 6.10.1958, p. 385/58. Regulation as last amended by the Regulation (EC) No 1791/2006 of 20 November 2006 adapting certain Regulations and Decisions by reason of the accession of Bulgaria and Romania.

<sup>33</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

<sup>34</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

## Article 38

### Combating fraud

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

## Article 39

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

The Agency shall adopt own security rules equivalent to the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in the Commission Decisions (EU, Euratom) 2015/443<sup>35</sup> and 2015/444<sup>36</sup>. The security rules of the Agency shall include provisions for the exchange, processing and storage of such information.

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<sup>35</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

<sup>36</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

**Liability**

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

## *Article 41*

### **Evaluation and review**

1. No later than five years after the [date of entry into force], and every five years thereafter, the Management Board shall commission an independent external evaluation, to assess particularly the impact, effectiveness and efficiency of the Agency and its working practices. The evaluation shall, in particular, address the possible need to modify the mandate of the Agency, and the financial implications of any such modification.
2. The Management Board shall receive the evaluation and issue conclusions on the report. Both the evaluation findings and conclusions shall be forwarded by the Commission to the European Parliament and the Council. The findings of the evaluation shall be made public.
3. On the occasion of every second evaluation, there shall also be an assessment of the results achieved by the Agency having regard to its objectives, mandate and tasks. If the Commission considers that the continuation of the Agency is no longer justified with regard to its assigned objectives, mandate and tasks, it may propose that this Regulation be amended accordingly or repealed.

## *Article 42*

### **Administrative inquiries of the European Ombudsman**

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

## *Article 43*

### **Transitional provisions**

1. By way of derogation from Article 15 of this Regulation, the members of the Administrative Board appointed under Regulation (EC) No 1406/2002 before [date of entry into force] shall remain in

office as members of the Management Board until the expiry date of their term of office, without prejudice to the right of each Member State to appoint a new representative.

2. The Executive Director of the Agency appointed on the basis of Article 16 of Regulation (EU) No 1406/2002 shall remain assigned to the post of the Executive Director with the tasks and responsibilities provided for in Article 23 of this Regulation.

3. [...]

4. The entry into force of this Regulation is without prejudice to all employment contracts in force on [date of entry into force].

#### *Article 44*

#### **Repeal**

Regulation (EC) No 1406/2002 is repealed.

#### *Article 45*

#### **Entry into force**

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

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**LIST OF LEGAL ACTS AS REFERRED TO IN ARTICLE 10.1**

Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over

Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community

Directive 2001/96/EC of the European Parliament and of the Council of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers

Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC

Directive 2003/25/EC of the European Parliament and of the Council of 14 April 2003 on specific stability requirements for ro-ro passenger ships

Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations

Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control

Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council

Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships

Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC

Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC

Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels.

Directive (EU) 2017/2110 of the European Parliament and of the Council of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC

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