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COMMISSION STAFF WORKING DOCUMENT

SUMMARY OF THE IMPACT ASSESSMENT

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

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

Lead DG: MOVE

1. THE PROCEDURE

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

Preparations for the impact analysis started in 2007. An inter-service steering group was established.

Two different independent sources of expertise have been used. Firstly, as foreseen by Article 22 of the Regulation establishing the European Maritime Safety Agency (EMSA), EMSA's Administrative Board commissioned an external evaluation. On the basis of the final evaluation report, the Administrative Board adopted recommendations in June 2008. Secondly, the Commission services commissioned a study under a framework contract for assistance regarding impact assessments. Finally, the EMSA 5-year strategy approved by the EMSA Administrative Board in March 2010 was also taken into account.

2. THE PROBLEM

EMSA was created in 2002 as part of the second maritime safety package in a general effort to improve maritime safety in European waters after a number of maritime accidents, some of them leading to environmental catastrophes in Europe. The Agency started activities in early 2003. The first full year of operations was 2004.

The external evaluation confirms that EMSA has filled a gap in the maritime safety area in the European Union. Furthermore, stakeholders consider the EMSA Regulation and EMSA itself as highly relevant. However, the external evaluation highlights that EMSA's effectiveness and efficiency can be further improved in a number of areas and that some clarifications are desirable. Therefore, two different sets of problems need to be tackled:

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

Without acting, the inconsistency between EMSA's founding Regulation and new EU legislation in the area of maritime safety will lead to uncertainties regarding EMSA's tasks and to a lack of visibility in the sense of "who is doing what?" It is therefore necessary to better specify EMSA's tasks and to define precisely EMSA's assistance to the Commission and the Member States in the light of various new developments

(third maritime safety package, integrated EU maritime policy and here in particular maritime surveillance, discussions on a European Coastguard service, maritime research, the role of the EU in international organisations relevant for maritime transport, relations with neighbouring countries). It has to be ensured that EMSA remains able to meet the legitimate requirements of its stakeholders also in the future in line with the developments in the area of maritime safety.

The second set of problems to be addressed in this revision concerns governance issues. Experience over the past years has shown that some governance provisions need to be clarified further in order to better define the roles and responsibilities of the Agency, the Administrative Board, the Member States and the Commission. EMSA has currently a double role between on the one hand, monitoring Member States through inspections and visits, and on the other hand, providing technical assistance, training and maritime support services to the Member States. Furthermore, the Board members representing Member States are faced with a potential conflict of interest. On the one hand, they decide as Board members on EMSA's activities and resources, on the other hand they represent national administrations, which are themselves subject to visits and inspections by EMSA to check the conformity of national regulations and practice with the applicable EU law. The problematic character of the underlying provisions requires corrective action.

3. THE OBJECTIVES

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

The first specific policy objective is to ensure a better match between EMSA's tasks as enshrined in its founding Regulation and the different elements of the EU maritime safety legislation. This may encompass the extension of EMSA's tasks to new fields in the areas of maritime safety, maritime security, prevention of and response to pollution. The second specific policy objective is to clarify the governance issues, which have come up in the first years of EMSA's existence, with a view to better identify the responsibilities of the different actors (Agency, Administrative Board, Commission, and Member States). Finally, the third specific policy objective is to help improving the visibility of the EU at the international scene by providing state-of-the-art technical assistance to Member States and the Commission in all areas of the Agency's expertise.

4. THE IMPACT ASSESSMENT

Two separate set of options were considered, the first set concerns EMSA's tasks and the second set concerns EMSA's governance.

The following options were examined regarding EMSA's tasks:

- Option 1: "do nothing" (i.e. leave Regulation 1406/2002 unchanged);
- Option 2: "minimal" revision limited to tasks arising from the implementation of the third EU maritime safety package;

- Option 3: "medium" revision encompassing option 2 plus taking over a large part of the activities of the Paris Memorandum of Understanding in the area of Port State Control (Paris MoU);

- Option 4: "large" revision encompassing option 3 plus new tasks in the areas of security, research and general maritime policy.

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

Regarding the tasks of the Agency, the likely economic, social and environmental impacts of the policy options are limited due to the limited scope of the modifications under consideration. Furthermore, it is not possible to quantify accurately the impacts of the options under consideration. Indeed, all EMSA's tasks are shaped as technical assistance to the Commission and to Member States. The contribution of technical assistance to the policy objectives is not measurable with the current instruments available.

No measurable impact in terms of competitiveness of the shipping sector could be established for any of the options in terms of costs or benefits. It is however assumed that EMSA's assistance to Member States and the Commission would indirectly benefit the shipping sector as Member States and the Commission should be in a better position to carry out their regulatory activities. By definition, EMSA's technical assistance should create neither administrative burden nor costs for the Member States. While the possible savings expected for Member States are difficult to quantify, during stakeholder consultations a high number of Member States' representatives expected to realise savings at national level from EMSA's extended technical assistance. The main economic impact identified concerns the increase of the EMSA budget by the required administrative and operational credits in order to carry out additional tasks.

The social impact of all options is marginal. Some indirect positive effects can be construed for the safety and the working/living conditions of seafarers and passengers on board of vessels.

Regarding the environmental impact, it is expected that options 2 to 4 provide positive environmental impact as the measures under consideration would contribute to safer ships and safer shipping.

Due to EMSA's current experience in similar activities, it was concluded that EMSA should be either effective or even highly effective in carrying out the great majority of the potential tasks. These concerns all tasks under options 2 and 3 while under option 4 the 2 tasks related to research and the 2 tasks related to cooperation with neighbouring third countries were rated "fairly effective" as both would constitute rather new areas of activities for the agency. Almost all possible new tasks under options 2 to 4 present a high added value for the EU.

When assessing the feasibility of the different options under consideration, the Commission services had also to take into account the availability of budgetary

means. The financial perspectives up to 2013 do not allow providing the required budgetary resources to EMSA in order to carry out all possible and desirable new tasks. Therefore, the Commission services had to select amongst the tasks identified in the impact assessment according to their relevance and their added value for the EU. Meanwhile, EMSA has already been implementing some of the new tasks on the basis of its current Regulation and with its current budgetary means.

The following options were examined regarding EMSA's governance:

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

The radical solution of option 3 was disregarded at an early stage as the administrative costs of the transformation were considered disproportionate. Furthermore, a splitting of the Agency into two distinct sub-entities would have created unwanted and counterproductive inefficiencies. It was thus decided to keep EMSA's character as a so-called "regulatory" agency with a high degree of autonomy in a single structure. As it has been assumed that the governance-related aspects of the revision would not produce any negative impact in economic, social or environmental terms, it has been decided to pursue with option 2. Indeed, it would not make sense not to address governance issues in the course of revising EMSA's tasks like option 1 would have required.

In the light of the on-going inter-institutional deliberations on the EU agency system, it was decided at an early stage of the preparation of the proposal to put aside any issue of horizontal nature (for example the structure and the voting rights of the Administrative Board) and to concentrate on the few governance issues which are specific to EMSA (for example the organisation of inspections of EU Member States). The proposal contains thus a limited number of improvements and clarifications regarding the governance of the Agency.

5. CONCLUSION

The Commission services conclude that option 4 which encompasses as explained above options 2 and 3 is the preferred option for the revision of EMSA's tasks, thus ensuring that the Agency will continue to provide valuable technical assistance to the Commission and the Member States in all relevant fields of its remit. However, in the light of the budgetary situation explained in the previous point, the Commission services have opted for a more limited approach to option 4. Taking into account the aforementioned budgetary situation and the developments and investments already undertaken between 2008 and 2011, the costs of EMSA's further extension are limited to 18 additional new posts to be phased in from 2012 to 2014, out of which 6 posts should be provided by EMSA through internal redeployment. The budgetary impact is estimated at approximately 3.9 M EUR for the period 2012-2015.