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NOTE

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

SILENCE PROCEDURE

1. Following the Shipping Working Party meeting on 23 June 2016, delegations will find attached a revised compromise text concerning the above proposal.
2. In the absence of comments from delegations by **Tuesday 28 June 2016, 17:00 CET**, the text in the annex will be considered as agreed.

THE PRESIDENCY COMPROMISE PROPOSAL

3. As a preliminary remark, the Presidency would like to underline that it was agreed within the Council preparatory bodies, earlier this year, that the article and recital which are common to the three proposals in the "border package" should, as far as possible, have the same wording. This was also the clear understanding during the negotiations with the Parliament on the proposal for a Regulation establishing a European Border and Coast Guard Agency. The Presidency therefore suggests to include the modifications to that proposal, which were agreed with the Parliament at the trilogue on 21 June 2016, in this proposal without changes. For ease of reference, those modifications are marked in **~~bold/strikethrough~~ italics**.
4. The Parliament has made it clear that the main concern it has with the initial text proposed by the Council for the amended EMSA Regulation is the fact that Council decided to make the task of cooperation on coastguard functions an ancillary task for the Agency, rather than a core task as proposed by the Commission. To address that concern, the Presidency proposes to put the cooperation with the other two agencies as a separate task, and not include it in Article 2 (core tasks) or Article 2a (ancillary task) of the EMSA Regulation. Consequently, the first paragraph of Article 1 in the current proposal has been deleted. Only one element, the words "each within their mandate", has been preserved from that paragraph and included in Article 2b(1) for legal reasons.
5. Furthermore, to address concerns expressed by delegations during the negotiations within the Council preparatory bodies, the Presidency has included two conditions, taken from Article 2a on ancillary tasks, namely that the "tasks set out in [Article 2b] shall not be detrimental to the Agency's tasks referred to in Article 2 [i.e. core tasks] and not infringe upon Member States' rights and obligations, in particular as flag States, port States and coastal States".
6. Finally, in response to requests from some Member States to clarify the decision-making procedure and to ensure the involvement of the Administrative Board in the decisions, paragraph 2 of Article 2b has been amended and a recital has been added.

7. The Parliament has indicated, informally, that if a text which is acceptable to the Commission were to be approved by the Council preparatory bodies, the rapporteur would propose identical amendments to the plenary.
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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C ..., p. **Opinion of 16 March 2016 (not yet published in the Official Journal).**

Whereas:

(1) National authorities carrying out coastguard 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. The European Border *and Coast* Guard Agency, the European Fisheries Control Agency and the European Maritime Safety Agency should therefore strengthen their cooperation, within their mandate, both with each other and with the national authorities carrying out coastguard functions to increase maritime situational awareness as well as to support coherent and cost-efficient action.

(1a) The implementation of this Regulation does 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 maritime international instruments.

(1b) In order to allow for an efficient and effective support to national authorities carrying out coastguard functions, the Agency should make use of available state-of-the-art technology, such as remotely piloted aircraft systems.

(1ba) It is appropriate that the Administrative Board of the Agency be fully involved in the decision-making on issues referred to in this Regulation, which might have an impact on the Agency's other tasks and budget, including the working arrangement for co-operation between agencies.

(1c) Regulation (EC) No 1406/2002 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments

The following article is inserted in Regulation (EC) No 1406/2002 is amended as follows:

(1) ~~In Article 2a, the following paragraph is inserted:~~

~~"4. The Agency shall cooperate with the European Border and Coast Guard Agency and the European Fisheries Control Agency, each within their mandate, to support the national authorities carrying out coastguard functions, as set out in Article 2b:~~

~~(a) by providing services, information, equipment and training, as well as~~

~~(b) by coordinating multipurpose operations.~~

~~The second sentence of paragraph 1 applies."~~

(2) ~~The following Article 2b is inserted:~~

"Article 2b

European cooperation ***on in support of national authorities carrying out*** coastguard functions

1. The Agency shall, in cooperation with the European Border ***and Coast*** Guard Agency and the European Fisheries Control Agency, **each within their mandate**, support national authorities carrying out coastguard 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 the 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) capacity building by elaborating guidelines, recommendations and best practices as well as by *providing supporting the training and exchange of staff, with a view to enhancing the exchange of information and cooperation on coastguard functions, taking into account relevant initiatives in this field;*
- (ca) enhancing the exchange of information and cooperation on coastguard functions including by analysing operational challenges and emerging risks in the maritime domain;*
- (d) capacity sharing by planning and implementation of multipurpose operations and the sharing of assets and other capabilities, to the extent those are coordinated by the agencies; *and* with the agreement of *the competent authorities of* the Member States concerned.

2. Without prejudice to the powers of the Administrative Board of the Agency set out in Article 10(2), the modalities of the cooperation on coastguard functions of the Agency with 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 the agencies. Such arrangement shall be approved by the Administrative Boards of the Agency, 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 and 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, containing guidelines, recommendations and best practices for the exchange of information. The Commission shall adopt the handbook in the form of a recommendation.

3a. The tasks set out in this Article shall not be detrimental to the Agency's tasks referred to in Article 2 and not infringe upon Member States' rights and obligations, in particular as flag States, port States and coastal States."

Article 2

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 Strasbourg,

For the European Parliament

For the Council

The President The President
