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## **PROGRESS REPORT**

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From : The Presidency

To : COREPER/Council

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No. Cion prop. : 15717/10 MAR 111 CODEC 1210

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Subject : ***Preparation of the Council meeting (Transport, Telecommunications and Energy) on 31 March 2011***

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

- Policy debate/Progress report

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## **Introduction**

1. On 28 October 2010, the Commission transmitted the above proposal to the Council and the European Parliament. The proposed Regulation aims at extending the European Maritime Safety Agency's (EMSA) tasks to reflect new needs, in particular needs arising from the adoption of the so-called "third maritime package".

EMSA's updated mandate would:

- allow the Stand-by Oil Spill Response Vessels under contract by EMSA to intervene also in case of oil pollution caused by offshore installations, in the aftermath of the "Deepwater Horizon" oil spill in the Mexican Gulf;

- increase EMSA's involvement in EU research (analysis of research projects and identification of research priorities);
- extend EMSA's technical assistance to all European Neighbourhood Policy countries in order to promote the EU maritime safety policy in all the regional seas bordering the EU;
- emphasise the role of EMSA's operational vessel traffic monitoring services as basis for extended transport and maritime information services, including in the context of the development of a Common Information Sharing Environment for the EU maritime domain;
- extend EMSA's assistance in the development and implementation of EU policies, such as Motorways of the Sea, e-maritime as well as environmental aspects of shipping including climate change.

Furthermore, the Commission proposes some changes to the governance structure of the Agency. In particular, the proposal introduces a comitology procedure (advisory procedure) for the purpose of defining the Agency's inspections policy, it gives the Executive Director the right to conclude administrative agreements with other bodies working in the Agency's fields of activities, and it sets out a new procedure for the appointment of the Executive Director.

2. The Commission proposal was first presented to the Shipping Working Party on 25 November 2010. On that occasion, the Shipping Working Party also examined the impact assessment. The Working Party has examined the proposal at several meetings since then. Based on the examination of the above proposal by the Shipping Working Party, the Presidency can draw the following conclusions:

## The position of Member States in relation to the Regulation

3. The main concerns expressed by Member States relate to the proposed extension of the tasks of the Agency – and the ensuing impact on the Agency’s budget – and the changes to the Agency’s governance structure.
4. As regards EMSA’s tasks, a majority of delegations question the scope of the proposed tasks of the Agency. This is particularly the case for the proposed increased role for EMSA when it comes to research and to “*EU policies related to the Agency’s tasks*” such as Motorways of the Sea, the European Maritime Transport Space without Barriers, eMaritime, inland waterways and environmental issues (including climate change). In this context, the Presidency would like to point out that certain recently adopted texts foresee that tools managed by EMSA are utilised for such “non-core business” tasks. This is the case for SafeSeaNet in the context of the Directive on reporting formalities<sup>1</sup>. Another example is mentioned in the Council conclusions on full integration of waterborne transport into the EU transport and logistics chains<sup>2</sup> from December 2010, where EMSA is tasked with the development of the Blue Belt pilot project, the aim of which is to facilitate customs procedures for short sea shipping. Furthermore, some delegations consider that the Agency’s operational assistance when it comes to response to pollution, in particular from offshore installations, needs to be further clarified. It should be made perfectly clear, they argue, that such assistance should only be provided upon the request of the affected Member State(s).
5. Linked to the extension of the tasks are the budgetary consequences. On this issue, a majority of delegations question the increase of the Agency’s staff. The Commission, in its proposal, envisages that 18 posts would be needed to take on the new tasks. Of these 18 posts, 6 would be provided through internal redeployment within EMSA, while the remaining 12 would be new posts, to be phased in over three years.

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<sup>1</sup> Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC, OJ L 283, 29.10.2010, p. 1.

<sup>2</sup> Doc. 16266/10.

The Member States who are objecting to this rather limited increase in staff argue that national administrations, in the current economic context, are facing important staff/budget cuts or, in the best of cases, are submitted to a “zero growth” policy. Furthermore, these delegations fear that the Agency, with reference to the new tasks, will ask for further increases of staff/budget in the years to come. At least one delegation considers it unacceptable to take decisions that might have a budgetary impact beyond the current financial perspectives (which expire in 2013). The Commission has recalled that the EMSA Regulation is not a financing decision and that the Budgetary Authority decides on the Agency's establishment plan and the EU contribution to the Agency's budget in the framework of the annual budgetary procedure.

6. As regards the Agency's governance structure, the main concern expressed by a broad majority of delegations is what they consider to be a shift of competences from the Administrative Board to the Executive Director and the Commission. According to these Member States, the most important aspect of this “shift” is the introduction of a comitology procedure (advisory procedure) for the visits/inspections to be carried out by the Agency on behalf of the Commission. According to the current Regulation, the Administrative Board decides on the policy for visits to Member States. In the new Commission proposal, the term “visits” is replaced by “inspections”. Furthermore, the decision of the Administrative Board is replaced by a comitology procedure<sup>3</sup>, to align the provisions with those applicable to other regulatory agencies. Furthermore, the Executive Director is given the power to decide to carry out inspections, after consultation of the Commission, without any reference to the Administrative Board, contrary to what is the case in the existing Regulation. The Commission's argument for this modification is that there is a potential risk of conflict of interests, when those subject to visits/inspections (the Member States) are the ones who decide on the policy for visits/inspections (the Member States' representatives in the Administrative Board).

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<sup>3</sup> Through the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS).

A second aspect is the proposed right of the Executive Director to conclude administrative agreements with other bodies working in the Agency's fields of activities "*after having informed the Administrative Board*". This is a new provision, and many delegations argue that it gives too broad powers to the Executive Director. The Commission's intention is to consolidate current practice for the sake of transparency. It should be recalled that the Agency has legal personality and that the Executive Director manages and represents the Agency.

Finally, when it comes to the appointment of the Executive Director, the current Regulation foresees that he or she is appointed by the Administrative Board, and that the Commission may propose candidates. According to the Commission proposal, the Administrative Board should choose from a list of candidates proposed by the Commission. Furthermore, the proposal foresees that, before appointment, the candidate selected may be invited to make a statement before the European Parliament. The reason for amending these provisions is, according to the Commission, to align them with those applicable to other regulatory agencies.

### **Work within the Council**

7. As indicated above, the Shipping Working Party has been examining the proposal since the end of November 2010.
8. As regards the extension of EMSA's tasks, the Presidency has put forward several compromise proposals with a view to defining more clearly the limits of the Agency's mandate. However, a majority of delegations continue to have serious misgivings on several points which touch upon important aspects of the proposal. This is particularly the case for EMSA's involvement in EU policies which are lying outside the Agency's core business (maritime safety) but are in the interest of the EU's waterborne transport policy in general (such as Maritime Transport Space without Barriers, eMaritime, inland waterways and environmental issues).

9. As regards the governance aspects, significant progress has been made at working party level. However, some clarifications are still needed. Furthermore, it should be noted that the Commission maintains some reservations on the amendments made to its proposal in this respect, in particular with regard to visits/inspections.

## **Conclusion**

10. Against the background of the above and in order to enable the Council preparatory bodies to advance in its work on the above proposal, the following questions would need to be addressed and decided at a political level. Therefore ministers are invited to reply to the two questions below at the TTE Council on 31 March 2011:

- (1) The proposed revision of the EMSA Regulation foresees a limited extension of EMSA's tasks, based on EMSA's current expertise and tools. This expertise and these tools can be relevant for other EU activities and be in the interest of the Union's waterborne transport policy. Such activities could include research as well as Motorways of the Sea, the European Maritime Transport Space without Barriers, e-maritime, inland waterways, the Marine Strategy Framework Directive, climate change and the analysis of the safety of mobile offshore gas and oil installations.**

**Given the above, could you envisage an extension of EMSA's tasks? In the affirmative, could you indicate which new tasks could be attributed to the Agency and under which conditions?**

- (2) Do you think that EMSA's governance structure could be improved? Do you agree with the proposed revision of the EMSA Regulation in this respect?**

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