

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on multiannual funding for the action of the European Maritime Safety Agency in the field of
response to *marine* pollution caused by ships and **■** oil and gas installations

(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 Regions¹,

Acting in accordance with the ordinary legislative procedure²,

Whereas:

¹ OJ C 327, 12.11.2013, p. 108.

² OJ C , , p. .

- (1) Regulation (EC) No 1406/2002 of the European Parliament and of the Council ³ established a European Maritime Safety Agency (‘the Agency’) for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships.
- (2) Regulation (EC) No 724/2004 of the European Parliament and of the Council ⁴, which amended Regulation (EC) No 1406/2002, assigned to the Agency tasks in the fields of prevention and response to pollution caused by ships, following accidents in European waters, particularly those of the oil tankers ‘Erika’ and ‘Prestige’.
- (3) Regulation (EU) No 100/2013 of the European Parliament and of the Council ⁵, amending Regulation (EC) No 1406/2002, assigned to the Agency tasks with regard to response to marine pollution caused by oil and gas installations and extended the Agency's services to the countries covered by the enlargement policy and by the European Neighbourhood Policy.
- (4) Regulation (EC) No 2038/2006 of the European Parliament and of the Council ⁶ established a multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships which expires on 31 December 2013.

³ ***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).

⁴ ***Regulation (EC) No 724/2004 of the European Parliament and of the Council of 31 March 2004 amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency*** (OJ L 129, 29.4.2004, p. 1).

⁵ ***Regulation (EU) No 100/2013 of the European Parliament and of the Council of 15 January 2013 amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency*** (OJ L 39, 9.2.2013, p. 30).

⁶ ***Regulation (EC) No 2038/2006 of the European Parliament and of the Council of 18 December 2006 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships*** (OJ L 394, 30.12.2006, p. 1).

- (4a) *Given the potentially devastating ecological impact and huge economic costs of pollution incidents, as well as the possible socio-economic impact of such incidents on other sectors, such as tourism and fisheries, the Agency should have sufficient means to allow it to carry out its assigned tasks in relation to response to marine pollution by ships and oil and gas installations. Those tasks are important in preventing further damage of both a monetary and non-monetary nature.*
- (5) For the purposes of implementing the tasks of preventing and responding to pollution by ships, the Administrative Board of the Agency adopted on 22 October 2004 an Action Plan for Oil Pollution Preparedness and Response, which determines the Agency's oil pollution response activities and is aimed at optimum use of the financial resources available to the Agency. On 12 June 2007, the Administrative Board adopted an Action Plan for Hazardous and Noxious Substances Pollution Preparedness and Response. In accordance with Article 15 of Regulation (EC) No 1406/2002, both action plans are updated yearly through the Agency's annual work programme.
- (5a) *Regard should be given to the existing agreements on accidental pollution, which facilitate mutual assistance and cooperation between Member States in this field, as well as to the relevant international conventions and agreements for the protection of European maritime areas from pollution incidents requiring parties to take all appropriate measures to prepare for and respond to an oil pollution incident.*
- (6) The pollution response action of the Agency, as specified in the Action Plans, relates to activities in the fields of information, cooperation and coordination, *including with regard to marine pollution caused by hazardous and noxious substances.* ■ *Above all, this response action relates to the provision of operational assistance to the affected Member States or third countries sharing a regional sea basin with the Union by supplying, on request, additional anti-pollution vessels to combat oil pollution* ■ *caused by ships as well as marine pollution caused by oil and gas installations.* The Agency should pay particular attention to those areas identified as most vulnerable without prejudice to any other area in need.

- (7) The activities of the Agency in this field should ■ comply with existing cooperation arrangements providing for mutual assistance in the event of a maritime pollution incident. The Union has acceded to various regional organisations and is preparing accession to other regional organisations.
- (8) The Agency's action should be coordinated with the activities of the bilateral and regional agreements that the Union has acceded to. In the event of a maritime pollution incident, the Agency should assist the affected *Member State(s) or third countries sharing a regional sea basin with the Union*, under whose authority clean-up operations are conducted.
- (9) The Agency should play an active role in maintaining and developing further the *European Satellite Oil Monitoring Service (CleanSeaNet)* for surveillance, the early detection of pollution and *the* identification of the responsible ships or oil and gas installations, *for example in the case of discharges of oil from ships and operational releases and accidental spills from offshore platforms*. *That service* should improve the availability of data and the effectiveness *and timeliness* of the response to pollution.
- (10) The additional means to be provided by the Agency to the affected States should be made available through the Community Civil Protection Mechanism established by Council Decision 2007/779/EC, Euratom ■ ⁷.
- (10a) *The information related to public and private pollution response mechanisms and associated response capabilities in the various regions of the Union should be made available by Member States through the Common Emergency Communication and Information System (CECIS) established by Decision 2007/779/EC, Euratom, when available for that purpose.***

⁷ **Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism (OJ L 314, 1.12.2007, p. 9).**

- (10b) *In order to make the Agency's operational assistance more efficient in view of the extension of the Agency's pollution response mandate to third countries sharing a regional sea basin with the Union, the Agency should make every effort to encourage those third countries to pool information and cooperate in maintaining the list of response mechanisms and associated response capabilities.*
- (10c) *In order to improve the effectiveness of the Agency's pollution response activities, Member States should share with the Agency scientific studies they may have carried out on the effects of chemicals used as dispersants which could be relevant for those activities.*
- (11) In order to ensure thorough implementation *of the Agency's Action Plans*, the Agency should be provided with a viable and cost-effective system for financing, in particular, *the provision of* operational assistance to the affected States.
- (12) Financial security should therefore be provided for the funding of the tasks entrusted to the Agency in the field of pollution response and associated actions on the basis of a multiannual commitment. *The size of that multiannual commitment should take account of the expansion of the Agency's remit with regard to pollution response, but also of the need for the Agency to increase the efficiency in using the funds allocated to it, in a context of budgetary constraints.* The annual amounts of the Union contribution should be determined by the Budgetary Authority in accordance with the annual budgetary procedure. *It is of particular importance that the Commission carry out a mid-term evaluation of the Agency's ability to fulfil its responsibilities in an effective and cost-efficient manner, in the field of response to marine pollution caused by ships and oil and gas installations.*
- (13) The amounts to be committed for the funding of pollution response should cover the period from 1 January 2014 to 31 December 2020, in line with the new multiannual financial framework. A financial envelope covering the same period should therefore be provided.

- (14) The Agency's support to countries covered by the enlargement policy and by the European Neighbourhood Policy should be financed through existing Union programmes for these countries and should therefore not be part of this multiannual financial framework.
- (15) In order to optimise the allocation of commitments and take into account any changes with regard to activities in response to pollution caused by ships, it is necessary to ensure continuous monitoring of the particular needs for action so as to allow for adaptation of the annual financial commitments.
- (16) In accordance with Regulation (EC) No 1406/2002, the Agency should report on the financial execution of the multiannual framework in its annual report.
- (16a) It is appropriate to ensure continuity in the funding support provided under the action of the European Maritime Safety Agency in the field of response to marine pollution caused by ships and oil and gas installations, and to align the period of application of this Regulation with that of Council Regulation (EU, Euratom) No 1311/2013⁸. Therefore, this Regulation should apply from 1 January 2014,***

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the detailed arrangements for the financial contribution of the Union to the budget of the European Maritime Safety Agency for the implementation of the tasks assigned to it in the field of responding to **marine** pollution caused by ships and **oil and gas** installations, pursuant to Articles 1 and 2 of Regulation (EC) No 1406/2002.

The activities of the Agency in this field shall not relieve coastal states of their responsibility to have appropriate pollution response mechanisms in place.

⁸ ***Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014–2020 (OJ L 347, 20.12.2013, p. 884).***

Article 2
Definitions

For the purposes of this Regulation the following definitions shall apply:

- (a) 'oil' means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products as established by the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990;
- (b) 'hazardous and noxious substances' means any substance other than oil which, if introduced into the marine environment, is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, as established by the Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, 2000, *of the International Maritime Organisation*;
- (ba) *'oil and gas installation' means a stationary fixed or mobile facility, or a combination of facilities permanently interconnected by bridges or other structures, used for offshore oil or gas operations or in connection with those operations; this includes mobile offshore drilling units only if they are stationed in offshore waters for drilling, production or other activities associated with offshore oil or gas operations, as well as infrastructure and facilities used to transport the oil and gas onshore and to onshore terminals.*

Article 3

Scope

The financial contribution of the Union referred to in Article 1 shall be allocated to the Agency with the aim of financing actions in the field of response to **marine** pollution caused by ships and oil and gas installations as mentioned in the **detailed plan established in accordance with Article 10(2)(k) of Regulation (EC) No 1406/2002**, in particular those relating to:

- (a) operational assistance and supporting with additional means, such as stand-by anti-pollution ships, satellite images and equipment, pollution response actions **upon request** of the affected **Member States or third countries sharing a regional sea basin with the Union in accordance with Articles 2(3)(d) and 2(5) of Regulation No (EC) 1406/2002** in the event of accidental or deliberate **marine** pollution caused by ships or oil and gas installations;
- (b) cooperation and coordination and the provision to the Member States and the Commission of technical and scientific assistance in the framework of the relevant activities of the EU Civil Protection Mechanism, the International Maritime Organization and the relevant regional **organisations**;
- (c) information, in particular the **gathering**, analysis and dissemination of best practices, **expertise**, techniques and innovations **in the field of responding to marine pollution caused by ships and oil and gas installations**.

Article 4
Union funding

Within the limits of the multiannual financial framework, the Agency shall be given the appropriations necessary to fulfil its responsibilities in the field of response to marine pollution caused by ships and oil and gas installations in an effective and cost-efficient manner.

The financial envelope for the implementation of the tasks referred to in Article 3 for the period from 1 January 2014 to 31 December 2020 shall be EUR 160.500.000 expressed in current prices.

Annual appropriations shall be determined by the budgetary authority within the limits of the financial framework. In this connection the necessary funding of operational assistance to the Member States pursuant to Article 3(a) shall be guaranteed.

Article 5
Monitoring existing capabilities

In order to define the requirements for, ***and to improve the efficiency***, of the ***Agency's*** provision of operational assistance ■, ***for example in the form of*** anti-pollution vessels ***additional to Member States' capacities***, the Agency shall ***maintain*** a list of the public and, where available, private pollution response mechanisms and associated response capabilities in the various regions of the Union.

The Agency shall maintain that list on the basis of information that Member States shall provide.

In maintaining the list, the Agency shall aim at obtaining information on pollution response mechanisms and associated response capabilities from third countries sharing a regional sea basin with the Union.

The Agency's Administrative Board shall take this list *and other appropriate information relevant to the pollution response objectives set out in Article 1 of Regulation (EC) No 1406/2002, such as that contained in risk assessments and scientific studies on the effects of chemicals used as dispersants*, into account before deciding on the Agency's pollution response activities in the framework of the annual work programmes. *In this context, the Agency shall pay particular attention to those areas identified as most vulnerable without prejudice to any other area in need.*

Article 6

Protection of Union financial interests

1. The Commission and the Agency shall ensure that, when actions funded under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by means of effective checks and the recovery of any amounts unduly paid and, where irregularities are detected, by effective, proportional and dissuasive penalties, in accordance with Council Regulations (EC, Euratom) No 2988/95⁹ and (Euratom, EC) No 2185/96¹⁰ and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹¹.

⁹ *Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests* (OJ L 312, 23.12.1995, p. 1).

¹⁰ *Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities* (OJ L 292, 15.11.1996, p. 2).

¹¹ *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).

2. For the Union actions funded under this Regulation, the notion of irregularity referred to in Article 1(2) of Regulation (EC, Euratom) No 2988/95 shall mean any infringement of a provision of Union law or any breach of a contractual obligation resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it, by an unjustified item of expenditure.
3. The Commission and the Agency shall, each within its respective sphere of competence, ensure that best value for money is achieved in the funding of Union actions under this Regulation.

Article 7

Mid-term evaluation

The Commission shall submit to the European Parliament and *to* the Council, on the basis of information provided by the Agency, a report on the implementation of this Regulation no later than 31 December 2017. The report, which shall be established without prejudice to the role of the Administrative Board of the Agency, shall set out the results of the utilisation of the Union contribution referred to in Article 4 as regards commitments and expenditure covering the period between 1 January 2014 and 31 December 2016.

In the report, the Commission shall present an evaluation of the Agency's ability to fulfil its responsibilities in an effective and cost-efficient manner. For the period of 2018–2020, based on the evaluation and considering the need for the Agency to carry out the tasks assigned to it, the Commission shall, if necessary, propose an appropriate adjustment, to a maximum of 8%, of the multiannual financial envelope allocated to the Agency for the implementation of the tasks referred to in Article 3. The possible adjustment shall remain within the limits of the current multiannual financial framework. This is without prejudice to the annual budgetary procedures or the upcoming review of the multiannual financial framework.

The report shall contain information on the socio-economic, ecological and financial implications, if available, of the Agency's response preparedness relating to marine pollution caused by ships and oil and gas installations.

Furthermore, on the basis of the report, the Commission may, if appropriate, propose amendments to this Regulation, in particular in order to take account of scientific progress in the field of combating marine pollution caused by ships and oil and gas installations, including with regard to pollution caused by hazardous and noxious substances, as well as of relevant changes to the instruments, establishing regional organisations, whose activities are covered by the Agency's activities with regard to pollution response and to which the Union has acceded.

Article 8

Entry into force *and date of application*

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

It shall apply from 1 January 2014 to 31 December 2020.

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

[...]