



EUROPEAN CLIMATE, INFRASTRUCTURE AND ENVIRONMENT  
EXECUTIVE AGENCY (CINEA)

Department D3 - Natural Resources, Climate, Sustainable Blue Economy and Clean Energy  
Unit D3 - Sustainable Blue Economy

**CINEA/2023/OP/0008**

**Study on flag State responsibilities and “open registers”  
for vessels registration**

**(CINEA/EMFAF/2023/3.6.3)**

**Open procedure**

**TENDER SPECIFICATIONS**

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# 1. SCOPE AND DESCRIPTION OF THE PROCUREMENT

## 1.1. Contracting authority: who is the buyer?

This call for tenders is launched and managed by the European Climate, Infrastructure and Environment Executive Agency (CINEA)<sup>1</sup>, referred to as the *Contracting Authority* for the purposes of this call for tender), acting under the powers delegated by the European Commission.

## 1.2. Subject: what is this call for tenders about?

The subject of this call for tenders is Study on flag State responsibilities and “open registers” for vessels registration - (CINEA/EMFAF/2023/3.6.3).

## 1.3. Lots: is this call for tenders divided into lots?

This call for tenders is not divided into lots.

## 1.4. Description: what do we want to buy through this call for tenders?

The purchases that are the subject of this call for tenders, including any minimum requirements, are described in detail below under section 1.4.2.

Variants (alternatives to the model solution described in the tender specifications) are not allowed. The contracting authority will disregard any variants described in a tender.

### 1.4.1. Background and objectives

#### Objectives (General and Specific):

The main objective of the study is to provide the contracting authority and the European Commission (in particular the Directorate General for Maritime Affairs and Fisheries - DG MARE) with an up-to-date analysis of the economic dynamics and the effects of the use of so-called “open registers” for sea-going vessels (often referred to as “flags of convenience”). The Joint Communication of the Commission and the High Representative for Foreign Affairs and Security Policy on international ocean governance published in June 2022<sup>2</sup> specifically identified the fulfilment of flag States responsibilities by those acting as open registers as one of the priorities for the EU International Ocean Governance agenda. It announced the Commission intention to launch a “*study exposing the models of operators using open registers*

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<sup>1</sup> CINEA was set up by Commission Implementing Decision (EU) 2021/173 of 12 February 2021 establishing the “European Climate, Infrastructure and Environment Executive Agency” (CINEA) and repealing Implementing Decisions 2013/801/EU, 2013/771/EU, 2013/778/EU, 2013/779/EU, 2013/776/EU and 2013/770/EU with effect from 1 April 2021 (OJ L 50, 15.2.2021, p. 9–28).

<sup>2</sup> [EUR-Lex - 52022JC0023 - EN - EUR-Lex \(europa.eu\)](#)

*and the various actors involved in the functioning of these registers, as well as proposing solutions to address problems identified”.*

The study will complement the already very rich literature on this subject in:

1. Identifying the drivers that lead the various economic and public actors to support open registers.
2. Analysing the effects on the EU’s objectives – economic, social, environmental, security, political – in key policy areas, as well as the cumulative effects of this combination of drivers on key policy objectives set out at international and EU level.
3. Screening the international and EU relevant policies and legislation in a cross-cutting manner to provide a summary of the applicable rules and to identify any gaps and loopholes.
4. Identifying possible avenues for improvements at international and EU level.

At the Kick off meeting the authorising authority will provide relevant recent articles, as well as references to EU policy documents and publications.

## **Background:**

### *Introduction*

Although there is no agreed definition of flag of convenience (FoC), the term is commonly used to designate the use of a place, jurisdiction, state or country as a nominal (in name only) "home base" for one's operations or charter, even though no, or virtually, no business is conducted in this country. In the maritime field, it relates to ship-owners registering a vessel in a ship register of a country other than the country of the ship-owner. When ship-owners can easily and quickly change the flag of their ship to reduce costs and avoid flag State laws and obligations, this is referred to as “flag hopping”.

There are many reasons why ship-owners register their ship in a different country. Overall, it can be said that it is to benefit from less severe (application of) regulations of the flag country (each ship being subject to the laws of that country) and/or the non-ratification of international conventions, as compared to the ship-owner’s home country. Interest can arise from: less strict regulations on labour (for example the ability to hire crews from lower-wage countries and apply abusive labour conditions); lower requirements in terms of safety; weaker law enforcement by some flag states allowing for (good & human) trafficking; less strict regulation related to pollution and to the scrapping of vessels; and tax avoidance and evasion. Fishing vessels also register in countries as a means of seeking less fisheries controls (monitoring, control and surveillance) and compliance with conservation and management measures put in place by countries in waters under national jurisdiction or by regional fisheries management organizations (RFMOs).

Countries have different reasons to host “convenience” registers. Granting its “nationality” to a vessel is a long-standing prerogative of each State, and States have traditionally applied restrictions and conditions for registering vessels. The modern practice to register a vessel in a foreign country dates back the 1910s when Panama registered US-owned ships that wanted to escape the alcohol prohibition. The practice significantly took off in the 1950s with a similar

move to Liberia to escape US labour laws, with the fleet register being an American corporate structure involving a joint venture with the Liberian government whose revenue would partly go to the government and to fund social programmes in Liberia.

Because of the facilities offered, this practice is now called “open registers”. The common characteristics of these registers is that they do not require ship-owners to have the nationality of and/or to reside in the host country. In addition, they are often operated by private businesses. By allowing ship-owners to be legally anonymous, thereby to evade taxes, the FoC states in fact lose revenue. By outsourcing their fleet register to private corporations, they renounce their sovereignty as flag state. But most countries seem to find compensations in the registration fees and the economic activities generated in ports. Despite having ratified relevant international maritime and labour conventions, FoC countries often lack resources or political will to enforce international law effectively. This is seen by ship-owners as a comparative advantage that FoC countries have little incentive to put an end to if they want to retain their “client” base.

Overall, the world fleet registered in developing countries accounts for about 75% of the total world fleet, and it is estimated that the 6 top countries listed in terms of number of ships registered account for more than 50% of the world ships and tonnages<sup>3</sup>. In 2021, more than half of all ships owned by Japanese entities were registered in Panama, 25% of ships owned by Greek entities were registered in Liberia and another 22% in Marshall Islands, which are the countries that registered the most substantial increase in registration over the last decade<sup>4</sup>.

### *Rationale for the study*

With the steady expansion of convenient flagging in the second half of the 20th century, the idea of circumscribing the margin of freedom of flag states arose as a means to re-introduce a fairer competition with traditional (developed) maritime States or with developing States wishing to expand their own maritime fleet and trade. The requirement of a “genuine link” of an economic and social nature became a sensitive and contentious issue in the context of the negotiation of the Geneva Convention on the High Seas (1956), its successor the UNCLOS (1982) and the aborted UNCTAD Convention on the Conditions for Registration of Ships (1986).

Under the United Nations Convention on the Law of the Sea (UNCLOS), each State is entitled to determine conditions for the grant of its nationality to ships<sup>5</sup>. It is also generally recognised that a State may not grant its nationality to a ship which has already been granted the nationality of another State. This requirement follows from Article 92(1) of UNCLOS which obliges ships to sail under the flag of one State only<sup>6</sup>. Article 91(1) of UNCLOS provide the requirement of

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<sup>3</sup> The International Transport Workers' Federation (ITF) maintains a list of registries it considers to be flags of convenience (FOC) registries. As of 2021, the list includes 42 countries.

<sup>4</sup> [Merchant fleet – UNCTAD Handbook of Statistics 2022](#)

<sup>5</sup> Article 91 on the nationality of ships of UNCLOS specifies that ([https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)):

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.
2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

<sup>6</sup> Article 92 on the Status of ships:

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

a “genuine link” between the flag States and the ships flying its flag. The need for a genuine link between a ship and its flag State is to secure more effective implementation of the duties of the flag States<sup>7</sup>. Yet, UNCLOS leave entirely unspecified the concept of genuine link.

The absence of international consensus on the definition of a “genuine link” between a ship and a State led to developing alternatives to regulating ship registration. On the one hand, traditional maritime states developed “second registers”, which offer more favourable fiscal conditions to their national fleets engaged in international shipping. This helped ship-owners reduce their costs, thus to re-balance international competition and prevent further increase in transfer to FoC. On the other hand, traditional maritime states pressed for upgrading international rules on safety of navigation, pollution, manning of crews, port state control etc. as a means to increase responsibilities of ship-owners, flag states and port states.

Nevertheless, the erosion of the genuine link has continued and ship registration is nowadays primarily a business decision: ship-owners choose a registration service and a jurisdiction that will minimize costs and risks. This decision is part of a global market of demand and supply of ship registers involving not only flag states and ship-owners but also service providers. Indeed, some of the largest registers are established and managed by foreign private companies on the basis of commercial outsourcing of contracts on behalf of economically vulnerable countries and offer privacy shield to vessels operators to protect their business structure and their operations from scrutiny.

Extensive research has been carried out on the issue of flags of convenience and open registers for many years. But until now research focuses principally on specific aspects:

- International shipping/safety and social conditions: as the oldest user of FoC, there is extensive work on the factors that motivated shipping companies to register their vessels in third countries. It is demonstrated that the main reasons were the search for reduced regulation on maritime safety and social and labour conditions granted to seafarers. While these motivations still play an important role, tax reduction and light oversight of beneficial ownership transparency in FoC countries have taken an increasing place, aligning FoC countries with international tax havens.
- Cruise industry/tax and labour conditions: similarly to the shipping industry, some cruise lines seek more attractive business models by registering their ships in open registry countries to reduce costs and/or escape oversight and jurisdiction on corporate taxation and labour conditions for seafarers.
- Environmental concerns: avoidance of stricter pollution control is the other key driver for ship-owners to register under FoCs. This has been the source of major marine pollution such as oil spills, dumping of sewage and waste, chemical spills, unmonitored exhaust gases. In addition, dismantling of end-of-life vessels at the lowest cost leads to serious environmental and health concerns in receiving countries. Flag hopping is commonly used to reach the most “convenient” countries, with some FoCs hardly used during the operational life of ships but very popular for the ships’ last journey to scrap yards.
- Fisheries/Illegal, Unreported and Unregulated (IUU) fishing: desirable flags are countries that are largely non-cooperative with international efforts to sustainably

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2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

<sup>7</sup> *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment, ITLOS Reports 1999, para. 83.*

manage shared fish stocks and prevent IUU fishing, regardless of their ratification of major international agreements. Vessels carrying out IUU fishing are found generally amongst vessels flying FoC that exhibit patterns of failure in compliance with international obligations or (for flag states from developing countries that operate as FoCs) have low capacity and weak enforcement infrastructure providing further opportunities to fish illegally with low risk of being detected.

- Security: terrorist and piracy organisations have been found to own FoC or stateless vessels to carry out their operations. It has also been shown that due to their for-profit nature, open registers generally lack adequate measures or will for detecting evasion from international sanctions against a particular country (eg. North Korea) and that these flagging services are targeted by sanctions evaders.
- Specific countries: case studies, whether FoC (Panama) or traditional maritime countries (Norway, Korea, Taiwan, China), have shown the dynamics at play in countries that have developed open registers and in those that changed their policies in reaction to the phenomenon of FoC.

Despite a renewed interest for the various aspects of the FoC phenomenon, there seems to be a lack of overview on the combination of the drivers that lead ship-owners and flag states to opt for FoC. The overlap between some aspects, such as FoC and tax heavens, are more and more studied, but a **complete picture** is missing. Similarly, the **combination of the various impacts** is barely studied, including the socio-economic dependency of the developing countries concerned. Despite some attempts to elaborate data driven indicators, there is therefore insufficient reflection on risk-based approaches that could help shape comprehensive response strategies and policies.

On the policy side, the EU has developed a range of policies and instruments, spanning a large section of its internal and external policies, that are directly or indirectly addressing FoC, primarily their main impacts:

- Maritime safety and pollution: the EU is active to reinforce international conventions on maritime safety and pollution prevention (IMO) and has developed an important domestic legislation on these aspects<sup>8</sup>, together with port state control measures and a satellite based surveillance system (CleanSeaNet).
- Social and labour conditions: the EU is active to implement and reinforce international conventions on living and working conditions on board (ILO), including through port state control inspections, promotes improved conditions within the EU and ratification and implementation of the two ILO conventions on maritime labour and fishing<sup>9</sup>. Child labour and forced labour remain a concern in particular in the fisheries sector, including the non-ratification of the four related conventions on fundamental labour rights.

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<sup>8</sup> See [https://transport.ec.europa.eu/transport-modes/maritime/safety-and-environment/eu-actions-safety-and-environment-protection\\_en](https://transport.ec.europa.eu/transport-modes/maritime/safety-and-environment/eu-actions-safety-and-environment-protection_en)

<sup>9</sup> The EU implements the Maritime Labour Convention 2006 of the International Labour Organisation through Directive 2009/13/EC as amended by Council Directive (EU) 2018/131, OJ L 22, 26.1.2018, and Work in Fishing Convention No 188 through Council Directive (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche) .

- Ship recycling: the EU Ship Recycling Regulation<sup>10</sup> lays down requirements that ships and recycling facilities have to fulfil and establishes a list of safe ship-recycling facilities, in the EU and abroad. Since 31 December 2018, it also requires all large sea-going vessels sailing under an EU Member State flag to use an approved ship recycling facility included in the European List of ship recycling facilities.
- Fight against IUU fishing: the EU applies a zero tolerance policy toward IUU fishing<sup>11</sup> and carries out active dialogues with many countries, possibly leading up to “black listing” and closing its import from non-cooperating countries. The use of FoC facilitates the concealment of the identity of the beneficial owners of fishing vessels, making the imposition of sanctions difficult, while FoC generally do not cooperate with other States concerned by IUU fishing, putting at stake efforts of others in this respect. FoC are often associated with “ports of convenience”, ie weak port control and enforcement in case of use of their facilities to launder IUU fish.
- Non-cooperative jurisdictions for tax purposes: the EU maintains a list of non-cooperative jurisdictions for tax purposes since 2017<sup>12</sup>. The EU list is updated twice a year since 2019, the most recent updating was adopted by Member States meeting within the Council of the European Union on 14 February 2023. The process covers the assessment of 95 jurisdictions, at the exception of least developed countries (eg. Liberia). The analysis of harmful preferential tax regimes, including for shipping (merchant shipping or passenger transport, not in the area of fisheries), is among the criteria for the EU list<sup>13</sup>.
- Fight against money laundering: internationally, the EC is a member of the Financial Action Task Force (FATF), whose standards are integrated into EU law through the Anti-Money Laundering Directive (AMLD)<sup>14</sup>. The FATF’s lists of countries under increased monitoring and subject to a call for action form the baseline for EU decisions to identify third countries as posing a high risk to the EU internal market, thus triggering enhanced due diligence by the private sector vis-à-vis transactions involving such countries. In this context, the AMLD also allows the Commission to carry out autonomous assessments of jurisdictions and to identify high-risk third countries having strategic deficiencies in their regime on anti-money laundering and countering the financing of terrorism. Two criteria for listing countries are relevant for environmental/maritime issues: criminal activities (including environmental crime) and beneficial ownership transparency.
- EU restrictive measures, or sanctions: one of the tools the EU’s Common Foreign and Security Policy (CFSP), there are three types of sanctions regimes in place in the EU<sup>15</sup>: 1) sanctions imposed by the UN, transposed into EU law; 2) reinforced by the EU UN sanctions by applying stricter and additional measures (e.g. vis-à-vis DPRK); 3) fully autonomous EU sanctions regimes (e.g. vis-à-vis Syria, Venezuela, Ukraine, Russia).

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<sup>10</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.

<sup>11</sup> In application of Council Regulation (EC) No 1005/2008, OJ L 286, 29.10.2008

<sup>12</sup> <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>

<sup>13</sup> <https://data.consilium.europa.eu/doc/document/ST-7915-2021-INIT/en/pdf>

<sup>14</sup> Directive 2015/849 as amended by Directive 2018/843, OJ L 156, 19.6.2018

<sup>15</sup> They may target governments of third countries, or non-state entities (e.g. companies) and individuals (such as terrorist groups and terrorists). For a majority of sanctions regimes, measures are targeted at individuals and entities and consist of asset freezes and travel bans. The EU can also adopt sectoral measures, such as economic and financial measures (e.g. import and export restrictions, restrictions on banking services) or arms embargoes (prohibition on exporting goods set out in the EU’s common military list).



There are over 30 EU autonomous and UN transposed sanctions regimes in place globally<sup>16</sup>.

However, the **effectiveness of these policies** could be improved if better connected with each other and if possible gaps were addressed. Recent or ongoing developments at international and/or EU level would need to be examined in this context, such as the work on base erosion and profit shifting within the OECD aimed at preventing international tax avoidance and evasion, including Country-by-country reporting and the OECD agreement on taxation of multinational companies, most notably its Pillar 2, as also reflected in the EU Directive on the minimum level of taxation<sup>17</sup>. The work of the Financial Action Task Force (FATF) on beneficial ownership should also be considered in the analysis.

### **Input by the Contracting Authority:**

The Contracting Authority and the European Commission will provide the necessary background information to the contractor at the project kick-off meeting and throughout the implementation of the project as needed.

#### **1.4.2. Detailed characteristics of the purchase**

The present call aims at purchasing a study focused on the business models of operators offering and using open registers, the roles of the various actors involved in the functioning of these registers, the effects on EU and international policies, the gaps in the international and EU frameworks, and the possible solutions to address problems identified.

The geographical scope is global, outside the European Union.

The study shall cover the following **four tasks** and will be articulated in **7 deliverables**:

#### **Task 1 – Drivers for and models of use of open registers**

The first task shall be to identify and describe the **drivers** that lead the various economic and public actors to offer/use open registers. The analysis shall therefore consider both demand and offer and present the key features of their combination (**Deliverable 1**) by:

- **Describing the overall state and evolution of the global dynamics of demand and offer of open registers**, ie the scope and depth of the phenomenon and the trends over the past decade. This shall follow a sectoral perspective (shipping, cruise, fishing, dismantling of vessels, etc) as well as a cross-sectoral view (outlining the similarities or combinations) and present key statistics (eg. number of vessels registered in open registers, including a break-down by sector; number of vessels registered in open registers which visited EU ports in 2022; amounts of financial flows involved etc).
- **Describing the business models of the economic actors of the value chain and its functioning**: ship-owners, their clients in the respective sectors (shipping, fisheries, cruise, scrapping), service providers (insurance, classification societies, financiers, tax and legal advisors etc), manpower, etc.

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<sup>16</sup> The consolidated list of persons, groups and entities subject to EU financial sanctions can be downloaded from Financial Sanctions Database - FSF platform accessible via the following address: <https://webgate.ec.europa.eu/fsd/fsf>

<sup>17</sup> [Council Directive on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union](#)

- **Describing the policies and legal regimes** or lack thereof in FoC states: key features in terms of conditions for registration (tax regime, hiring of crew and applicable labour standards, business ownership identification and rules on provision of information on beneficial ownership, rules on information to be provided to public authorities, etc); direct and indirect resources for the FoC State's budget (registration fees and indirect economic or fiscal benefits) and their utilisation.
- **Describing the key features of open registers run by private businesses:** commercial, business and financial structure; contracts and fees with FoC states to operate fleet registers, including in relation to implementation and enforcement of domestic and international law; business models of vessels-owners using open registers.

## **Task 2 – Analysis of the effects of open registries**

Task 2 shall analyse the **effects** of the dynamics described in Task 1 and shall be divided in three sub-tasks.

The contractor shall provide 4 deliverables linked to Task 2 each of them consisting in a text accompanied by a table summing up issues and a diagram displaying their interlinkages.

### **Sub-task 2.1 – Effects on the EU's international objectives in key policy areas**

Sub-task 2.1. shall focus on a **sectoral analysis**. It shall consist in analysing how and to what extent the EU's international policy objectives are impacted by the findings of task 1.

The EU's objectives to consider shall be economic, social, labour, environmental, security and political. The key policy areas to analyse shall be the EU international action in maritime safety, environmental protection, fisheries, social protection and labour standards, fight against tax evasion and money laundering, sanctions against third countries, sound governance and sustainable development of developing countries.

The output of sub-task 2.1 will be a **sectoral mapping of issues** (**Deliverable 2**) which shall cover, inter alia:

- For fisheries: the objectives pursued under International Ocean Governance and in particular by the EU sustainable fisheries partnership agreements (SFPAs), the RFMOs to which it belongs, the fight against IUU fishing, and promotion of decent social and working conditions of seafarers.
- For tax good governance: the avoidance and evasion strategies, including the range of techniques used for tax abuses in this context and an estimate of the impact in terms of foregone tax revenue annually for affected FoC states as well as the overall estimated annual tax losses for Member States from this phenomenon.
- For safety and environmental protection: the degree of avoidance of EU requirements related to safety, pollution controls and recycling ships in safe and environmentally sound ship recycling facilities in accordance with EU requirements or other established standards.
- For social and labour conditions: the level of social protection and labour conditions in FoC states as well as of ratification of relevant ILO conventions, and its influence on the decision of shipping companies to register in a specific country.
- For evasion of EU sanctions: an estimate of the size and impact of the 'black fleet'.

Further side effects on other EU policies may be highlighted but will not have to be analysed in-depth.

### **Sub-task 2.2 – Cumulative effects on the EU’s international objectives and international frameworks**

Sub-task 2.2. shall be **cross-sectoral** and shall analyse how the combination of the effects identified in Sub-task 2.1 impacts on the **EU’s international policy objectives**. The output shall be a mapping of the **linkages across policy fields** through which action (or inaction) in one area has impacts on another (other) area(s) (**Deliverable 3**).

The aim is to shed light on the most crucial under-scrutinized links across EU policy fields. This shall notably cover the following combinations:

- Fight against IUU fishing and money laundering and transparency in beneficial ownership
- IUU fishing and labour standards
- Shipping and labour standards
- Cruise and labour standards
- Shipping/Cruise and tax evasion/avoidance
- Port control measures, fight against IUU fishing and sanctions evasion
- Ship recycling, tax evasion and money laundering
- Ship recycling and fight against IUU fishing
- Sanctions evasion, trafficking, piracy and money laundering
- Development and good governance

Sub-task 2.2. shall also contain the same analysis for the **objectives set at international level** in the relevant international organisations and fora. It shall analyse how the combination of effects identified in Sub-task 2.1 impacts on objectives of relevant international organisations and agreements. The output shall be a mapping of the **linkages across policy fields** through which action (or inaction) in one area has impacts on another (other) area(s) (**Deliverable 4**). The linkages will be the same as for Deliverable 3.

The policy areas to cover shall be maritime security and safety, environmental protection, fisheries, social protection and labour standards, fight against tax evasion and money laundering, EU and UN sanctions against third countries. The core set of international organisations and conventions that shall be examined is the following:

- UNCLOS
- IMO maritime safety (SOLAS):
- IMO environmental protection (MARPOL)
- UNFSA, FAO Code of Conduct, FAO Agreement to Promote Compliance on the High Seas, FAO Port State Measures Agreement, FAO Voluntary Guidelines for Flag State Performance, measures of regional fisheries organisations
- ILO Maritime Labour Convention and Work in Fishing Convention
- OECD Forum on Harmful Tax Practices; Global Forum on Transparency and Exchange of Information
- Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships

- United Nations Security Council sections regime<sup>18</sup>.

Further combinations of effects and other areas of international action may be highlighted but will not have to be analysed in-depth.

### **Sub-task 2.3 – Case studies**

Sub-task 2.3. will consist in presenting a limited number of **case studies** that shall investigate in more detail how the findings of sub-task 2.1 and 2.2 play out in particular countries and/or regions (**Deliverable 5**).

The selection of countries and/or regions shall be agreed with the Contracting Authority and the European Commission at the progress meeting (see timetable 1.4.8). Up to five case studies shall be proposed on the basis of the following criteria:

- countries where the combination of effects on EU policies is likely to be the most intense;
- regions where the number of problem countries across policy fields is high;
- under investigated countries in particular policy fields
- jurisdictions applying no or very low corporate income tax.

### **Task 3 – Overview of existing EU and international policies**

Task 3 shall screen the **international and EU relevant policies and legislation** applicable to open registers and their detrimental impacts (**Deliverable 6**). The impacts to consider shall be those identified in Task 2. The analysis will be both sectoral and cross-sectoral. The output shall be a summary of the applicable rules and their most recent evolution and the identification of any gaps and loopholes. This shall consist in a:

- State of play of Member States' and EU policies/regimes put in place to counter-balance the effects of open registries in the various policy fields, their interplay or lack thereof
- Overview of international regulations directly or indirectly relating to flag registration and open registers, their interplay or lack thereof
- Summary of gaps and loopholes within policy fields and across policy fields

### **Task 4 – Proposals for policy improvements**

Task 4 shall present **possible avenues** for improvements at international and EU level (**Deliverable 7**). It will make operational proposals and assess their respective strengths and weaknesses along the following dimensions:

- Sectoral vs holistic approach
- EU internal policy vs international action at multilateral and bilateral level
- Legislation vs administrative cooperation, at domestic or international level

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<sup>18</sup> <https://www.un.org/securitycouncil/sanctions/information>

- Enforcement of existing regulations (including control and inspection) vs development of new legislation
- Economic and financial incentives vs possibility for implementing corresponding disincentives
- Prevention vs sanctions
- Possible complementarities between different forms of action

## **General guidance on methodology:**

### *Methodology*

Most of the work will consist in desk work, ie. literature review and the contractor's own analysis. For Deliverable 1 (analysis and description of drivers leading economic and public actors to offer/use open registers), a useful reference may be Chien-chang Chou, [Application of ANP to the Selection of Shipping Registry: The Case of Taiwanese Maritime Industry](#) (2018).

This work shall be complemented by:

- Surveys and interviews of representative private and public actors of the value chain and in European and international organisations. A balance will be sought between economic sectors, public and private stakeholders, European (EU institutions and Member States), FoC States and international organisations.
- Field visits: Deliverable 2.3 will be prepared by desk work and will primarily be carried out through a field visit for each case in which the same types of stakeholders as above will be interviewed.

### *Green Public Procurement and events*

In light of the Contracting authority's Environmental Policy, while conceiving their methodology, the tenderers are invited to demonstrate how their project will contribute to reduce the environmental impact of their tasks and deliverables.

☞ In line with the Directive 2014/24/UE of the European Parliament and of the Council on public procurement, tenderers are expected to describe any action they envisage for environment and energy efficient solutions, incorporating these concerns into all aspects of service delivery and infrastructure management.

The services provided by the Contractor must contribute to the Commission's commitment to minimise the environmental impact of its everyday work and continuously improve its environmental performance by integrating environmental criteria into its procurement procedures and organisation of events.

Services need to fulfil a number of standards as to the ethical, social and environmentally friendly origin, production, delivery and distribution of the materials. The principles and strategies linked to the sustainable use of natural resources, waste prevention and recycling will be taken into account. Examples of proofs/labels: compliance with EMAS, ISO 14 001, EU Ecolabel, and other ISO type I label, equivalent labels and standards, etc. Further information and guidelines can be found in the [EMAS](#) dedicated web page.

🔗 Tenderers can refer to the “[Guidelines on organising sustainable meetings and events at the Commission](#)”

The contractor is encouraged to reduce the environmental impact of events or meetings by: choosing venues easily accessible by public transport, proposing accommodation options in certified environmentally friendly hotels, proposing travel itineraries using carbon-offsetting flights or trains (instead of flights), proposing green catering (prefer plant-based food, opt for seasonal and organic food and drinks, avoid food waste and single use plastic, and provide reusable cups/bottles/glasses/cutlery/plates), pay attention to the management of waste and place displays to communicate the sustainable arrangements that have been put in place.

The contractor is encouraged to consider measures for the performance of the tasks under the contract, which increase the social impact of the contract. For instance, this could involve recurring to operators working on the professional integration of disadvantaged persons, women, and long-term unemployed people or considering accessibility for all solutions, facilitating the participation of people with disabilities.

### **1.4.3. Intellectual Property Rights**

The intellectual property rights related to the services/studies are foreseen in Articles I.10 and II.13 of the draft service contract.

#### **Parts of results pre-existing the contract**

If the results are not fully created for the purpose of the contract this should be clearly pointed out in the tender. Information should be provided about the scope of pre-existing materials, their source and when and how the rights to these materials have been or will be acquired.

#### **Plagiarism in the tender**

In the tender all quotations or information originating from other sources and to which third parties may claim rights have to be clearly marked (such as: source publication including date and place, creator, number, full title etc.) in a way allowing easy identification.

### **1.4.4. Confidentiality and Data Protection**

Confidentiality is required of all persons working or collaborating directly or indirectly in the performance of tasks following this call for tender, as they might come into contact with confidential information during the course of their work (see Article II.8 of the draft service contract). Any breach of confidentiality will be treated as professional misconduct and could lead to the termination of the contract as set out in Article II.18 of the draft service contract.

Specific requirements relating to personal data and the protection thereof are set out in the draft service contract. The contractor is equally responsible for ensuring the application of this obligation in respect of any of his/her direct or indirect sub-contractors.

The contractor will ensure compliance with the applicable data protection rules at national and EU levels, including:

- 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<sup>19</sup> and
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)<sup>20</sup>.

During the contract implementation, the contractor must comply with the *Contracting authority*'s personal data protection procedures, including models of data protection notice (e.g. for the website, event, survey, etc.) provided by the *Contracting authority*, and with the general and specific contractual clauses I.7 and II.9., when processing personal data of stakeholders on behalf of *Contracting authority*.

The contractor will cooperate with the *Contracting authority* in ensuring that personal data is handled lawfully and if required not without explicit prior consent of the subjects involved (e.g. beneficiaries and their subcontractors).

In addition, the contractor will ensure that personal data is processed and accessible only within the territory of the European Union and the European Economic Area and will not leave that territory. Access to data may be given on a need to know basis only to authorised persons established in a country which has been recognised by the European Commission as providing adequate protection to personal data.

All websites, platforms, digital applications and online registration forms containing personal data must be hosted within the European Union and abide by the same legal obligations on personal data protection as provided in Article I.7 of the draft service contract.

#### 1.4.5. Performance and quality requirements

All deliverables under this contract will be assessed on the basis of the following quality criteria, and rated (poor/satisfactory/good/very good/excellent) in relation to the following aspects:

- **Relevance:** the deliverables respond to the information and other needs expressed in the tender specifications as well as to the objectives, targets and activities, and are submitted according to the timetable.
- **Appropriate methodology:** the design of the methodology and deliverables is adequate for obtaining the results needed and functional to deliver the impact required under the tender specifications.
- **Reliable data:** data collected are adequate for their intended use and their reliability has been ascertained and established by the contractor.
- **Sound analysis:** data and other information has been systematically analysed to answer relevant questions and needs.

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<sup>19</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1543484984668&uri=CELEX:32018R1725>

<sup>20</sup> <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

- **Valid conclusions:** findings follow logically from and are justified by, the data/information analysis and interpretations based on pre-established criteria and are rational.
- **Helpful recommendations:** all dimensions outlined for Task 4 have been covered and appropriately assessed and compared.
- **Clarity:** reports and other documents are well structured, balanced and written in an understandable manner.

In addition to the general and specific objectives defined in *Section 1.4.1*, the following list shows the expected results in concise and approximate terms, so as to give a general idea of what is requested from the contractor.

<b>Deliverables</b>	<b>Performance indicator(s)</b>
Drivers that lead the various economic and public actors to offer/use open registers. <b>(Deliverable 1)</b>	Completeness Reliable collection of data through the surveys and interviews Statistical robustness, sound analysis of the data Concision
Sectoral mapping of issues <b>(Deliverable 2)</b>	Sound analysis of the data Completeness Concision
Mapping of the linkages across policy fields (EU level) <b>(Deliverable 3)</b>	Clear logical flow from the findings of Deliverables 1 and 2 Completeness Concision
Mapping of the linkages across policy fields (international level) <b>(Deliverable 4)</b>	Clear logical flow from the findings of Deliverables 1 and 2 Completeness Concision
Case studies <b>(Deliverable 5)</b>	Reliable collection of data through the surveys and interviews Analytical coherence with the findings of Deliverables 1 and 2 Concision
Screening of the international and EU relevant policies and legislation applicable to open registers and their detrimental impacts <b>(Deliverable 6)</b>	Completeness Concision
Presentation of possible avenues for improvements at international and EU level <b>(Deliverable 7)</b>	Clear logical flow from the findings of Deliverables 5 and 6 Adequate criteria for comparing possible options Completeness in the comparison and assessment of the options Concision



#### 1.4.6. Deliverables

The contractor must provide the required **deliverables** in accordance with the conditions of the draft service contract.

When requested in the contract the report(s) and linked deliverables will accompany the request(s) for payments.

Each report or document will be submitted in electronic format compatible with Microsoft Office (Word, Excel) and PDF or equivalent in English.

The contractor must ensure that all reports under the contract are drafted in professional/high-quality English using a clear, concise, understandable, user-friendly language.

Materials and deliverables for publication (online and/or printed) will be of the highest linguistic quality and will have been edited and proofread by a native speaker or equivalent. All reports should be consistent in style (headings, margins, citations, bibliography, etc.).

It will remain contractor's responsibility to ensure a properly application of quotation and the verification of improper re-use of existing material.

All studies produced for the European Commission and Executive Agencies shall conform to the corporate visual identity of the European Commission by applying the graphic rules set out in the European Commission's Visual Identity Manual, including its logo.

The contractor should submit **the deliverables** in accordance with the following timetable:

<b>Deliverables</b>	<b>Expected submission</b>
Deliverable 1: description of the drivers that lead the various economic and public actors to offer/use open registers.	TO + 6 months
Deliverable 2: sectoral analysis (mapping of impacts on the EU's international policy objectives)	TO + 6 months
Deliverable 3: mapping of the linkages across policy fields (impacts on the EU's international policy objectives)	TO + 6 months
Deliverable 4: mapping of the linkages across policy fields (impacts on objectives set at international level in the relevant international organisations and fora)	TO + 6 months
Deliverable 5: case studies	TO + 11 months
Deliverable 6: screening of the international and EU relevant policies and legislation applicable to open registers and their detrimental impacts	TO + 11 months
Deliverable 7: presentation of possible avenues for improvements at international and EU level	TO + 11 months

##### 1.4.6.1 Intermediate outputs and deliverables

###### Inception report

The inception report will cover all the tasks under the contract and provide a comprehensive overview of the methodology, organisation of work and timelines for the implementation of all tasks and for the submission of all deliverables to the contracting authority. The inception report shall not be longer than 20 pages. The Inception report will also include the power point presentation from the kick off meeting (see timetable 1.4.7).

### **Interim report**

The interim report shall be no longer than 30 pages (excluding annexes) and shall present a detailed overview, including the achievements and deliverables performed during the second phase of implementation, as defined in these tender specifications. It shall describe the progress achieved and follow-up actions for all tasks and raise any problems encountered with sufficient information to permit reorientation if appropriate. The report shall also include the following Annexes:

- Deliverable 1 - Description of the drivers that lead the various economic and public actors to offer/use open registers
- Deliverable 2 - Mapping of impacts on the EU's international policy objectives
- Deliverable 3 - Mapping of linkages across policy fields and their cumulative impacts on EU international policy objectives
- Deliverable 4 - Mapping of impacts and of their linkages across policy fields at international level
- Deliverable 5 - Preliminary findings of the case studies
- Preliminary outline of Deliverable 6 - Summary of the EU and international applicable rules and their most recent evolution and identification of any gaps and loopholes
- Preliminary outline of Deliverable 7 - Proposals for policy improvements. The outline will suggest a matrix for exploring the dimensions identified under Task 4

The draft interim report shall be presented during the interim meeting with an accompanying power point presentation on the progress made that shall be annexed to the report.

The final version of the interim report shall be accompanied by a request for interim payment, through the submission of an invoice of 30% of the contract value.

The contracting authority will approve any submitted documents or deliverables and pay in compliance with the rules laid down in the special conditions of the service contract (Draft service contract - section I.5. Payment arrangements).

### **Final report**

A draft final report shall be submitted to the Contracting authority 30 calendar days before the end of the contract for comments. It will be presented at the final meeting to the Contracting authority and the European Commission.

The template for the final report will be communicated to the contractor in due time.

The final report must include all the elements specified in Section 4 "Tasks" and all deliverables shall be annexed to the final report:

- Deliverable 1: Description of the drivers that lead the various economic and public actors to offer/use open registers
- Deliverable 2: Mapping of impacts on the EU's international policy objectives
- Deliverable 3: Mapping of linkages across policy fields and their cumulative impacts on EU international policy objectives
- Deliverable 4: Mapping of impacts and of their linkages across policy fields at international level
- Deliverable 5: Case studies
- Deliverable 6: Summary of the EU and international applicable rules and their most recent evolution and identification of any gaps and loopholes
- Deliverable 7: Proposals for policy improvements

It should also include a section on uncertainties and how they might be resolved in the future.

The final report must include:

1) An abstract of no more than 200 words, in English including:

- key words to facilitate electronic information retrieval;
- specific identifiers which must be incorporated on the cover page provided by the Contracting Authority;
- the following disclaimer:

*This document has been prepared for the European Climate, Infrastructure and Environment Executive Agency (CINEA), however, it reflects the view of the authors and the European Commission or the European Climate, Infrastructure and Environment Executive Agency (CINEA) are not liable for any consequence stemming from the reuse of this publication."*

2) A publishable executive summary of maximum 10 pages, in English, including:

- Non-technical language for the general public including main findings, conclusions and, if applicable, recommendations;
- The rationale and description of methods, presentation and discussion of results, including full and traceable documentation of sources, and data gathered for the Deliverables;
- Specific identifiers which must be incorporated on the cover page provided by the Contracting Authority;
- The following disclaimer:

*This document has been prepared for the European Climate, Infrastructure and Environment Executive Agency (CINEA), however, it reflects the view of the authors and the European Commission or the European Climate, Infrastructure and Environment Executive Agency (CINEA) are not liable for any consequence stemming from the reuse of this publication."*

The final report must be submitted to the Contracting authority at the end of the contract and shall be accompanied by a request for payment of the balance.

The contracting authority will approve any submitted documents or deliverables and pay in compliance with the rules laid down in the special conditions of the service contract (see Draft service contract - section I.5. Payment arrangements).

#### **1.4.7. Meetings**

During the implementation of the contract, the contractor will have regular communication with the Contracting Authority and the European Commission.

Four official meetings will be held during the course of the contract: a kick-off, a progress, an interim and a final meeting. The kick-off and final meetings will be held in Brussels at the Contracting authority's premises. In such case, the necessary costs will be borne by the contractor. It will be jointly agreed whether the two other meetings will take place in Brussels or remotely through videoconference.

Between the four official meetings referred above, one monthly online informal meeting will be organised between, at least, the project manager and the Contracting Authority and the European Commission, to follow up the progress of the project.

For each meeting, the contractor shall provide the minutes of the meeting within a week after the meeting.

##### **Kick off meeting**

The kick-off meeting shall take place within two weeks from the signature of the contract. During the kick-off meeting, the contractor shall provide a presentation and the work plan proposed in the tender that will be further developed, updated and discussed.

##### **Progress meeting**

The progress meeting shall take place at the latest 4 months after the signature of the contract. On the basis of a power point presentation to be submitted not less than 5 working days before the meeting, the meeting will assess how the development of the study is progressing and will discuss:

- the preliminary findings of Deliverables 1 and 2
- the preliminary outline of Deliverables 3 and 4
- the proposal for the selection of up to 5 case studies under Deliverable 5

##### **Interim meeting**

The interim meeting shall take place 15 days after the submission of the draft interim report and at the latest 6,5 months after the signature of the contract. The meeting will assess how the development of the study is progressing, any problems encountered and will discuss preliminary outline of Deliverables 6 and 7.

##### **Final meeting**

The final meeting shall take place 15 days after the submission of the draft final report and at the latest at the 11 months +15 days after the signature of the contract. The final meeting will be the occasion for the contractor to present the whole study to the Contracting Authority and the European Commission.

#### 1.4.8. Indicative timetable

The tenderer shall propose in its offer a detailed work plan, which clearly indicates the sequences and timing of the work. It must take into consideration the following indicative timetable elements:

<b>Timetable</b> (months/days)	<b>Meetings</b>	<b>Actions</b>
Reference date (T0)		Start date of the contract
T0 + 10 days		Draft Inception report
T0 + 15 days	Kick-off meeting	
One week after the KO meeting		Kick-off meeting minutes
T0 + 1 month		Inception report
Maximum 5 days before the Progress meeting		Submission of power point presentation for progress meeting
T0 + 4 months	Progress meeting	
One week after the Progress meeting		Progress meeting minutes
T0 + 6 months		Submission of draft interim report
T0+ 6,5 months	Interim meeting	Discussion of the draft Interim report
One week after the interim meeting		Interim meeting minutes
T0 + 7 months		Submission of final version <b>Interim report</b> Request for interim payment 30% of the contract value
T0 + 11 months		Draft final report
T0 + 11,5 months	Final meeting	
One week after the final meeting		Final meeting minutes
T0 + 12 months		Final report Request for balance payment End date of the contract

#### 1.4.9. Content, structure and graphic requirements of publishable deliverables

The contractor must deliver the study and other deliverables as indicated above.

The study as described in paragraph 1.4.6.2. will be published on the internet.

## Requirements for publication on Internet

The Commission is committed to making online information as accessible as possible to the largest possible number of users including those with visual, auditory, cognitive or physical disabilities, and those not having the latest technologies. The Commission supports the Web Content Accessibility Guidelines 2.0 of the W3C.

For the publishable versions of the study report, abstract and executive summary, the contractor must respect the W3C guidelines for accessible pdf documents as provided at: <http://www.w3.org/WAI/>.

For full details on the Commission policy on accessibility for information providers, see: [https://european-union.europa.eu/accessibility-statement\\_en](https://european-union.europa.eu/accessibility-statement_en)

## Graphic requirements

The contractor must deliver the study report and all publishable deliverables in full compliance with the corporate visual identity of the European Commission, by applying the graphic rules set out in the European Commission's Visual Identity Manual, including its logo. The graphic rules, the Manual and further information are available at:

[http://ec.europa.eu/dgs/communication/services/visual\\_identity/index\\_en.htm](http://ec.europa.eu/dgs/communication/services/visual_identity/index_en.htm)

## Standard WORD template

A simple Word template will be provided to the contractor after contract signature. The contractor must fill in the cover page in accordance with the instructions provided in the template. The use of templates for studies is exclusive to European Commission's contractors. No template will be provided to tenderers while preparing their tenders.

### 1.5. Place of performance: where will the contract be performed?

The services will be performed at the following locations:

- the contractor's premises
- Third countries (outside the EU) as necessary to perform Sub-task 2.3.
- Brussels for in-person meetings

### 1.6. Nature of the contract: how will the contract be implemented?

The procedure will result in the conclusion of a direct contract.

In direct contracts all the terms governing the provision of the services are defined at the outset. Once signed, they can be implemented directly without any further contract procedures.

👉 Tenderers need to take full account of the full set of procurement documents, including the provisions of the draft service contract as the latter will define and govern the contractual relationship(s) to be established between the *Contracting authority* and the successful tenderer(s). Special attention is to be paid to the provisions specifying the rights and obligations of the contractor, in particular those on payments, performance of the contract, confidentiality, and checks and audits.

👉 Please be aware that if a tenderer to whom the contract is awarded (any of the group members in case of a joint tender) has established debt(s) owed to the Union, the European Atomic Energy Community or an executive agency when the latter implements the Union budget, such debt(s) may be offset, in line with Articles 101(1) and 102 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (Financial Regulation) ( ) and the conditions set out in the draft contract, against any payment due under the contract. The contracting authority will verify the existence of overdue debts of the successful tenderer(s) (any of the group members in case of a joint tender), and, if any such debt is found, will inform the tenderer (the group leader in case of a joint tender who will then have the obligation to inform all other group members before signing the contract) that the debt(s) may be offset against any payment under due the contract.

### **1.7. Volume and value of the contract: how much do we plan to buy?**

The maximum total amount of all purchases under this call for tenders is indicated under Section II.1.5 of the contract notice and is EUR 400.000 including all charges and expenses and excluding any renewals. No contract offer above this amount will be considered.

### **1.8. Duration of the contract: how long do we plan to use the contract?**

The contract resulting from the award of this call for tenders will be concluded for at most 12 months. The details of the contract duration are set out in the draft contract.

The execution of the tasks shall not start before the contract has been signed. Work will follow the timetable detailed in Section 1.4.8.

### **1.9. Electronic exchange system: can exchanges under the contract be automated?**

For all exchanges with the contractor during the implementation of the contract resulting from this call for tenders as well as for future possible subsequent proceedings, including, but not limited to, for the purposes of EDES ([European Union's Early Detection and Exclusion System](#)), the contracting authority may use an electronic exchange system meeting the requirements of Article 148 of the Financial Regulation. At the request of the contracting authority, the use of such a system shall become mandatory for the contractor at no additional cost for the contracting authority. Details on specifications, access, terms and conditions of use will be provided in advance.

## 2. GENERAL INFORMATION ON TENDERING

### 2.1. Legal basis: what are the rules?

This call for tenders is governed by the provisions of (the Financial Regulation).

The *Contracting authority* has chosen to award the contract resulting from this call for tenders through an open procedure pursuant to Article 164(1) (a) of the Financial Regulation. In an open procedure any interested economic operator (any natural or legal person who offers to supply products, provide services or execute works) may submit a tender.

The call for tenders is based on the amended 2022-2023 EMFAF Work Programme, set up by the Commission Implementing Decision of 8.2.2023 amending the Commission Implementing Decision C(2022)371 of 26.1.2022 on the financing of the European Maritime, Fisheries and Aquaculture Fund and the adoption of the work programme for 2022 and 2023.

### 2.2. Entities subject to restrictive measures and rules on access to procurement: who may submit a tender?

Tenderers must ensure that no involved entities (see Section 2.4) nor any subcontractors, including those which do not need to be identified in the tender (see Section 2.4.2), are subject to EU restrictive measures adopted under Article 29 of the Treaty on the European Union (TEU) or Article 215 of the Treaty on the Functioning of the EU (TFEU)[1], consisting of a prohibition to make available or transfer funds or economic resources or to provide financing or financial assistance to them directly or indirectly, or of an asset freeze. The prohibition applies throughout the whole performance of the contract.

🔔 Following the Council Implementing Decision (EU) 2022/2506, as of 16th December 2022, no legal commitments can be signed with Hungarian public interest trusts established under Hungarian Act IX of 2021 or any entity they maintain. This applies to all contractual level commitments, including subcontractors.

Participation in this call for tenders is open on equal terms to all natural and legal persons coming within the scope of the [Treaties](#), as well as to international organisations.

It is also open to all natural and legal persons established in a third country, which has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement<sup>21</sup>.

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<sup>21</sup> Third countries with a special agreement in the field of public procurement that have been given access to procurement procedures of the Union institutions, agencies and bodies regardless of the value of the purchase are: Albania, Bosnia and Herzegovina, Iceland, Liechtenstein, Montenegro, Norway, North Macedonia and Serbia.



The Agreement on Government Procurement <sup>(22)</sup> concluded within the World Trade Organisation does not apply. Therefore, the participation to this call for tenders is not open to natural and legal persons established in the countries that have ratified this Agreement.

The rules on access to procurement do not apply to entities on whose capacity tenderers rely to fulfil the selection criteria nor to subcontractors. Subcontracting may not be used with the intent or effect to circumvent the rules on access to procurement.

To enable the contracting authority to verify the access, each tenderer must indicate its country of establishment (in case of a joint tender – the country of establishment of each group member) and must present the supporting evidence normally acceptable under the law of that country. The same document(s) could be used to prove country/-ies of establishment and the delegation(s) of the authorisation to sign as described in *Section 4.3*.

### **2.3. Registration in the Participant Register: why register?**

Any economic operator willing to participate in this call for tenders must be registered in the Participant Register - an online register of organisations and natural persons (participants) participating in calls for tenders or proposals of the European Commission and other EU institutions/bodies.

On registering each participant obtains a Participant Identification Code (PIC, 9-digit number) which acts as its unique identifier in the Participant Register. A participant needs to register only once – the information provided can be further updated or re-used by the participant in other calls for tenders or calls for proposals of the European Commission and other EU institutions/bodies.

🔔 **Each participant needs to ensure that its SME status in the Participant Register is registered and kept up to date.**

At any moment during the procurement procedure the Research Executive Agency Validation Services (hereafter *the EU Validation Services*) may contact the participant and ask for supporting documents on legal existence, status and financial capacity. The requests will be made through the register's messaging system to the e-mail address of the participant's contact person indicated in the register. It is the responsibility of the participant to provide a valid e-mail address and to check it regularly.

The documents that may be requested by *the EU Validation Services* are listed in the [EU Grants and Tenders Rules on Legal Entity Validation, LEAR appointment and Financial Capacity assessment](#).

🔔 **Please note that a request for supporting documents by the *EU Validation Services* in no way implies that the tenderer has been successful.**

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(22) [https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm).

## **2.4. Ways to submit a tender: how can economic operators organise themselves to submit a tender?**

Economic operators can submit a tender either as a sole economic operator (sole tenderer) or as a group of economic operators (joint tenderer). In either case, subcontracting is permitted.

Tenders must be drawn and submitted in complete independence and autonomously from the other tenders. A declaration in this regard by each tenderer (in case of a joint tender, by each of its members) shall be requested.

A natural or legal person cannot participate at the same time and within the same procedure either as member of two or more groups of economic operators or as a sole tenderer and member of another group of economic operators. In such case, all tenders in which that person has participated, either as sole tenderer or as member of a group of economic operators, will be rejected.

Economic operators linked by a relationship of control or of association (e.g. belonging to the same economic/corporate group) are allowed to submit different and separate tenders provided that each tenderer is able to demonstrate that its tender was drawn independently and autonomously.

A natural or legal person may act as subcontractor for several tenderers as long as the tenders are drawn and submitted in complete independence and autonomously from each other. However, cross subcontracting among tenderers is forbidden, more precisely an entity “A” may participate as tenderer (either as sole tenderer or as member of a group of economic operators) and as subcontractor to another tenderer “B” within the same procurement procedure. However, in this case it is forbidden that tenderer “B” (or any of its participating members in case of a group of economic operators) is at the same time subcontractor for tenderer “A” (or for the group of economic operators in which “A” participates) within the same procurement procedure. In this case, both tenders A and B shall be rejected.

In order to fulfil the selection criteria set out in Section 3.2 the tenderer can rely on the capacities of subcontractors (see Section 2.4.2) or other entities that are not subcontractors (see Section 2.4.3).

An **“involved entity”** is any economic operator involved in the tender. This includes the following four categories of economic operators:

- sole tenderer,
- group members (including group leader),
- identified subcontractors (see Section 2.4.2), and
- other entities (that are not subcontractors) on whose capacity the tenderer relies to fulfil the selection criteria.

The role of each entity involved in a tender must be clearly specified in the eSubmission application: i) sole tenderer, ii) group leader (in case of a joint tender), iii) group member (in case of a joint tender), or iv) subcontractor <sup>(23)</sup>.

For an entity on whose capacities the tenderer relies to fulfil the selection criteria (that is not a subcontractor), this role is defined in the commitment letter (*Annex 5.2*).

#### **2.4.1. Joint tenders**

A joint tender is a situation where a tender is submitted by a group (with or without legal form) of economic operators regardless of the link they have between them in the group. The group as a whole is considered a tenderer<sup>24</sup>.

All group members assume joint and several liability towards the contracting authority for the performance of the contract as a whole.

Group members must appoint from among themselves a group leader (the group leader) as a single point of contact authorised to act on their behalf in connection with the submission of the tender and all relevant questions, clarification requests, notifications, etc., that may be received during the evaluation, award and until the contract signature. All group members (including the group leader) must sign an Agreement/Power of attorney drawn up in the model attached in *Annex 3*.

The joint tender must clearly indicate the role and tasks of each group member, including those of the group leader who will act as the contracting authority's contact point for the contract's administrative or financial aspects and operational management. The group leader will have full authority to bind the group and each of its members during contract execution.

If the joint tender is successful, the contracting authority shall sign the contract with the group leader, authorised by the other members to sign the contract also on their behalf via the Agreement/Power of attorney drawn up in the model attached in *Annex 3*.

Changes in the composition of the group during the procurement procedure (after the deadline for submission of tenders and before contract signature) shall lead to rejection of the tender, with the exception of the following case(s):

- case of a merger or takeover of a group member (universal succession), provided that the following cumulative conditions are fulfilled:
  - the new entity is not subject to restrictive measures, has access to procurement (see Section 2.2) and is not in an exclusion situation (see Section 3.1),
  - all the tasks assigned to the former entity are taken over by the new entity member of the group,

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<sup>(23)</sup> Only identified subcontractors (see Section 2.4.2) must be specified in the eSubmission application.

<sup>24</sup> References to *tenderer* or *tenderers* in this document shall be understood as covering both sole tenderers and groups of economic operators submitting a joint tender.

- the group meets the selection criteria (see Section 3.2),
  - the change must not make the tender non-compliant with the procurement documents,
  - the terms of the originally submitted tender are not altered substantially and the evaluation of award criteria of the originally submitted tender are not modified,
  - the new entity undertakes to replace the former entity for the implementation of the contract, in case of an award.
- case where a group member is subject to restrictive measures or does not have access to procurement (see Section 2.2) or is in an exclusion situation (see Section 3.1), provided the following cumulative conditions are fulfilled:
    - none of the remaining group members is subject to restrictive measures (see Section 2.2),
    - all the remaining group members have access to procurement (see Section 2.2),
    - the remaining group members meet the selection criteria (see Section 3.2),
    - the change must not make the tender non-compliant with the procurement documents,
    - the terms of the originally submitted tender are not altered substantially and the evaluation of award criteria of the originally submitted tender are not modified,
    - the continuation of the participation of the remaining group members in the procurement procedure does not put the other tenderers in a competitive disadvantage,
    - the remaining group members undertake to implement the contract, in case of an award, without the excluded group member.

The replacement of the group member not having access to procurement or in a situation of exclusion is not allowed.

#### 2.4.2. Subcontracting

Subcontracting is the situation where the contractor enters into legal commitments with other economic operators, which will perform part of the contract on its behalf. The contractor retains full liability towards the *Contracting authority* for performance of the contract as a whole.

The following shall not be considered subcontracting:

- a) Use of workers posted to the contractor by another company owned by the same group and established in a Member State (“intra-group posting” as defined by Article 1, 3, (b) of [Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#)).
- b) Use of workers hired out to the contractor by a temporary employment undertaking or placement agency established in a Member State (“hiring out of workers” as defined by Article 1, 3, (c) of [Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#)).
- c) Use of workers temporarily transferred to the contractor from an undertaking established outside the territory of a Member State and that belongs to the same group (“intra-corporate transfer” as defined by Article 3, (b) of [Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer](#)).
- d) Use of staff without employment contract (“self-employed persons working for the contractor”), without the tasks of the self-employed persons being particular well-defined parts of the contract.

- e) Use of suppliers and/or transporters by the contractor, in order to perform the contract at the place of performance, unless the economic activities of the suppliers and/or the transporting services are within the subject of this call for tenders (see *Section 1.4*).
- f) Performance of part of the contract by members of an EEIG (European Economic Interest Grouping), when the EEIG is itself a contractor or a group member.

The persons mentioned in points a, b, c and d above will be considered as “personnel” of the contractor as defined in the contract.

All contractual tasks may be subcontracted unless the procurement documents expressly reserve the execution of certain critical tasks to the sole tenderer itself, or in case of a joint tender, to a member of the group.

By filling in the form available in *Annex 4 List of Subcontractors*, tenderers are required to:

- i. give an indication of the proportion of the contract that they intend to subcontract, as well as to identify and describe briefly the envisaged contractual roles/tasks of subcontractors meeting any of these conditions (hereafter referred to as *identified subcontractors*):
  - subcontractors on whose capacities the tenderer relies upon to fulfil the selection criteria as described under *Section 3.2*;
  - subcontractors whose intended individual share of the contract, known at the time of submission, is above 15 %.

Any such identified subcontractor must provide the tenderer with a commitment letter drawn up in the model attached in *Annex 5.1* and signed by its authorised representative.

👉 Each tenderer shall identify such subcontractors and provide the commitment letters with its tender. The information must be true and correct at the time of submitting the tender. Any changes or additions regarding the envisaged subcontractors after the deadline for submission of tenders must be justified to the contracting authority. The above rules apply also where the economic operators, which will perform part of the contract on behalf of a successful tenderer, belong to the same economic/corporate group as the sole tenderer or a member of the group submitting the joint tender.

- ii. list all other subcontractors who do not meet any of the conditions above. Those subcontractors are **not** requested to provide a commitment letter.

Changes concerning subcontractors identified in the tender (withdrawal/replacement of a subcontractor, additional subcontracting) during the procurement procedure (after the submission deadline and before contract signature) require the prior written approval of the *Contracting authority* subject to the following verifications:

- any new subcontractor is not subject to restrictive measures, has access to procurement if the rules on access to procurement apply also to subcontractors (see *Section 2.2*) and is not in an exclusion situation (see *Section 3.1*);
- the tenderer still fulfils the selection criteria and the new subcontractor fulfils the selection criteria applicable to it individually, if any;
- the terms of the originally submitted tender are not altered substantially, i.e. all the tasks assigned to the former subcontractor are taken over by another involved entity, the

change does not make the tender non-compliant with the Tender specifications, and the evaluation of award criteria of the originally submitted tender is not modified.

Subcontracting to subcontractors identified in a tender that was accepted by the *Contracting authority* and resulted in a signed contract, is considered authorised.

#### **2.4.3. Rules common to subcontractors and entities (not subcontractors) on whose capacities the tenderer relies to fulfil the selection criteria**

If a successful tenderer intends to rely on another entity to meet the minimum levels of economic and financial capacity, the contracting authority may require the entity to sign the contract or, alternatively, to provide a joint and several first-call financial guarantee for the performance of the contract.

With regard to technical and professional selection criteria, a tenderer may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required, i.e. the latter will either assume the role of subcontractors or will fall within the exceptions listed in Section 2.4.2 and will then assume the role of entities (not subcontractors) on whose capacities the tenderer relies to fulfil the selection criteria.

🔔 Relying on the capacities of other entities is only necessary when the capacity of the tenderer is not sufficient to fulfil the required minimum levels of capacity. Abstract commitments that other entities will put resources at the disposal of the tenderer will be disregarded.

### 3. EVALUATION AND AWARD

The evaluation of the tenders that comply with the submission conditions will consist of the following elements:

- Check if the tenderer is not subject to restrictive measures and has access to procurement (see Section 2.2);
- Verification of administrative compliance (if the tender is drawn up in one of the official EU languages and the required documents signed by duly authorised representative(s) of the tenderer);
- Verification of non-exclusion of tenderers on the basis of the exclusion criteria;
- Selection of tenderers on the basis of selection criteria;
- Verification of compliance with the minimum requirements specified in the procurement documents;
- Evaluation of tenders on the basis of the award criteria.

The *Contracting authority* will evaluate the abovementioned elements in the order that it considers to be the most appropriate. If the evaluation of one or more elements demonstrates that there are grounds for rejection, the tender will be rejected and will not be subjected to further full evaluation. The unsuccessful tenderers will be informed of the ground for rejection without being given feedback on the non-assessed content of their tenders. Only tenderer(s) for whom the verification of all elements did not reveal grounds for rejection can be awarded the contract resulting from this call for tenders.

The evaluation will be based on the information and evidence contained in the tenders and, if applicable, on additional information and evidence provided at the request of the *Contracting authority* during the procedure. If any of the declarations or information provided proves to be false, the *Contracting authority* may impose administrative sanctions (exclusion or financial penalties) on the entity providing the false declarations/information.

For the purposes of the evaluation related to exclusion and selection criteria the *Contracting authority* may also refer to publicly available information, in particular evidence that it can access on a national database free of charge.

#### 3.1. Exclusion criteria

The objective of the exclusion criteria is to assess whether the tenderer is in any of the exclusion situations listed in Article 136(1) of the Financial Regulation.

Tenderers found to be in an exclusion situation will be rejected.

As evidence of non-exclusion each tenderer needs to submit with its tender a **Declaration on Honour**<sup>25</sup> in the model available in *Annex 2*.<sup>26</sup> The declaration must be signed by an authorised

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<sup>25</sup> The European Single Procurement Document (ESPD) may not be used yet in the *Contracting authority*'s calls for tenders.

<sup>26</sup> Unless the same declaration has already been submitted for the purposes of another award procedure of the *Contracting authority*, the situation has not changed, and the time elapsed since the issuing date of the declaration does not exceed one year.

representative of the entity providing the declaration. Where the declaration has been signed by hand, the original does not need to be submitted to the contracting authority, but the latter reserves the right to request it from the tenderer at any time during the record-keeping period specified in Section 4.3.

The initial verification of non-exclusion of tenderers will be done on the basis of the submitted declarations and consultation of the **European Union's Early Detection and Exclusion System**.

At any time during the procurement procedure, the contracting authority may request the documents mentioned in the Declaration on Honour as supporting evidence on non-exclusion (the documentary evidence). It may also request information on natural or legal persons that are members of the administrative, management or supervisory body or that have powers of representation, decision or control, including legal and natural persons within the ownership and control structure and beneficial owners, and appropriate evidence that none of those persons are in one of the exclusion situations referred to in Section A point (1) (c) to (f) of the Declaration on Honour.

All tenderers are invited to prepare in advance the documentary evidence, since they may be requested to provide such evidence within a short deadline. In any event, the tenderer proposed by the evaluation committee for the award of the contract will be requested to provide such evidence.

☞ If the tenderer does not provide valid documentary evidence within the deadlines set by the contracting authority, the latter reserves the right to reject the tender. In any event, in case a tenderer proposed for the award of the contract fails to comply with the above evidence requirement, its tender will be rejected, unless the tenderer can justify the failure on the grounds of material impossibility to provide such evidence.

**Annex 1** specifies which of the involved entities participating in a tender need to provide the Declaration on Honour and, when requested by the contracting authority, the supporting evidence.

### **3.2. Selection criteria**

The objective of the selection criteria is to assess whether the tenderer has the economic, financial, technical and professional capacity to perform the contract.

The selection criteria for this call for tenders, including the minimum levels of capacity, the basis for assessment and the evidence required, are specified in the following subsections.

Tenders submitted by tenderers not meeting the minimum levels of capacity will be rejected.

When submitting its tender each tenderer shall declare on honour that it fulfils the selection criteria for the call for tenders. The model Declaration on Honour available in **Annex 2** shall be used.

The initial assessment of whether a tenderer fulfils the selection criteria will be done on the basis of the submitted declaration(s).



The subsections below specify which selection criteria evidence must be provided with the tender or may be requested later, at any time during the procurement procedure within a deadline given by the contracting authority <sup>(27)</sup>.

The evidence must be provided in accordance with the applicable basis for assessment of each criterion: in case of a consolidated assessment – only by the involved entities who contribute to the fulfilment of the criterion, and in case of individual assessment – by each entity to whom the criterion applies individually.

In case not all selection criteria evidence is requested with the tender, all tenderers are invited to prepare in advance the documentary evidence, since they may be requested to provide such evidence within a short deadline. In any event, the tenderer proposed by the evaluation committee for the award of the contract will be requested to provide such evidence.

👉 If the tenderer does not provide valid documentary evidence within the deadlines set by the contracting authority, the contracting authority reserves the right to reject the tender. In any event, in case a tenderer proposed for the award of the contract fails to comply with the above evidence requirement, its tender will be rejected, unless there is a ground for a waiver. Please note that a request for evidence in no way implies that the tenderer has been successful.

### **3.2.1. Legal and regulatory capacity**

Tenderers do not need to prove specific legal and regulatory capacity to perform the contract.

Involved entities (see Section 2.4) and all subcontractors, including those which do not need to be identified in the tender (see Section 2.4.2), must not be subject to EU restrictive measures adopted under Article 29 of the Treaty on the European Union (TEU) or Article 215 of the Treaty on the Functioning of the EU (TFEU) ( ) that constitute a legal impediment to perform the contract. This requirement will be assessed by reference to the EU restrictive measures in force. Therefore, the tenderer is not required to submit any evidence of not being subject to EU restrictive measures.

### **3.2.2. Economic and financial capacity**

Tenderers must comply with the following selection criteria in order to prove that they have the necessary economic and financial capacity to perform the contract.

#### **Criterion F1**

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<sup>(27)</sup> The obligation to provide the supporting evidence will be waived in the following situations:

- if the same documents have already been provided in a previous award procedure of the European Commission and are still up-to-date;
- if such evidence can be accessed by the contracting authority on a national database free of charge, in which case the economic operator shall provide the contracting authority with the internet address of the database and, if needed, the necessary identification data to retrieve the document.

<b>Minimum level of capacity</b>	Average yearly turnover of the last two financial years for which the accounts have been closed, shall be above EUR 400.000.
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. a consolidated assessment of the combined capacities of all <i>involved entities</i> will be carried out (members of the group, subcontractors and other entities (that are not subcontractors) on whose capacity the tenderer relies to fulfil the selection criteria.
<b>Evidence</b>	Copy of the profit and loss accounts and balance sheets for the last two years for which accounts have been closed from each concerned <i>involved entity</i> , or, failing that, appropriate statements from banks. The most recent year must have been closed within the last 18 months.

☞ The evidence of economic and financial capacity does not need to be provided with the tender but may be requested by the contracting authority or the EU Validation Services at any time during the procedure.

### 3.2.3. Technical and professional capacity

☞ With regard to technical and professional selection criteria, a tenderer may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. The entity on whose capacity the tenderer relies will either assume the role of a subcontractor or fall within the exceptions listed in Section 2.4.2.

Tenderers must comply with the following selection criteria in order to prove that they have the necessary technical capacity to perform the contract.

**Tenders must provide in their tender the table in *Annex 2.1* of these tender specifications, exhaustively completed with all the necessary information.**

#### A. Criteria relating to tenderers:

Criterion T1	
The tenderer must prove experience in the field of international maritime law/international law of the sea with a focus on flags registration	
<b>Minimum level of capacity</b>	At least 2 peer-reviewed papers or at least 1 project completed (or ongoing) on analysis of flag registration published in the past 7 years preceding the tender submission deadline.
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the consolidated assessment of combined capacities of all <i>involved entities</i> will be carried out (members of the group and subcontractors).
<b>Evidence</b>	Reference to the peer-reviewed papers shall be provided in the form of a URL if it is on the internet or a document annexed to the tender if on paper.

	<p>A list of projects meeting the minimum level of capacity. The list shall include details of their title and main activities, start and end date, total project amount, role of implementing entity (leader, partner, subcontractor, etc.) and amount invoiced. In case of projects still on-going only the portion completed during the reference period will be taken into consideration.</p> <p><b>As supporting documents</b> for each project reference the <i>Contracting authority</i> may request statements issued by the clients and take contact with them.</p>
<b>Criterion T2</b>	
The tenderer must prove experience in the field of international maritime transport and maritime labour law/conventions	
<b>Minimum level of capacity</b>	At least 2 peer-reviewed papers published or at least 1 project completed (or ongoing) in the field of maritime transport and maritime labour law/conventions with a focus on flags registration and comparison between third countries maritime laws and international legislation, in the past 7 years preceding the tender submission deadline.
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the consolidated assessment of combined capacities of all <i>involved entities</i> will be carried out (members of the group and subcontractors).
<b>Evidence</b>	<p>Reference to the peer-reviewed papers shall be provided in the form of a URL if it is on the internet or a document annexed to the tender if on paper.</p> <p>A list of projects meeting the minimum level of capacity. The list shall include details of their start and end date, total project amount and scope, role and amount invoiced. In case of projects still on-going only the portion completed during the reference period will be taken into consideration.</p> <p><b>As supporting documents</b> for each project reference the <i>Contracting authority</i> may request statements issued by the clients and take contact with them.</p>
<b>Criterion T3</b>	
The tenderer must prove experience in the field of international fisheries management and the fight against IUU fishing	
<b>Minimum level of capacity</b>	At least 2 peer-reviewed papers on published or at least 1 project completed (or ongoing) in the field of IUU fishing and flags of convenience mapping, analysing the relation with environmental/organised crime and comparison between third countries fisheries laws and international legislation, in the past 7 years preceding the tender submission deadline.

	At least 1 peer-reviewed paper or project completed (or ongoing) in the field of fisheries management published in the past 7 years preceding the tender submission deadline. The tenderer must prove experience in regional fisheries organisations management (RFMOs) measures, EU sustainable fisheries partnership agreements (SFPAs) and IUU fishing (including the Port State Measures Agreement).
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the consolidated assessment of combined capacities of all <i>involved entities</i> will be carried out (members of the group and identified subcontractors).
<b>Evidence</b>	Reference to the peer-reviewed papers shall be provided in the form of a URL if it is on the internet or a document annexed to the tender if on paper.  A list of projects meeting the minimum level of capacity. The list shall include details of their start and end date, total project amount and scope, role and amount invoiced. In case of projects still on-going only the portion completed during the reference period will be taken into consideration.
<b>Supporting documents</b>	As supporting documents for each project reference the <i>Contracting authority</i> may request statements issued by the clients and take contact with them.
<b>Criterion T4</b>	
The tenderer must prove experience in the field of international cooperation in corporate tax law, non-cooperative jurisdictions and/or money laundering	
<b>Minimum level of capacity</b>	At least 2 peer-reviewed papers on published or at least 1 project completed (or ongoing) in corporate tax law and business law, analysing the relation with organised crime, trafficking and money laundering and comparison between third countries laws and international legislation, in the past 7 years preceding the tender submission deadline.  At least 1 peer-reviewed paper or project completed (or ongoing) in the field of international finance. The tenderer must prove experience in fiscal governance in developing countries.
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the consolidated assessment of combined capacities of all <i>involved entities</i> will be carried out (members of the group and identified subcontractors).
<b>Evidence</b>	Reference to the peer-reviewed papers shall be provided in the form of a URL if it is on the internet or a document annexed to the tender if on paper.  A list of projects meeting the minimum level of capacity. The list shall include details of their start and end date, total project amount and scope, role and amount invoiced. In

	<p>case of projects still on-going only the portion completed during the reference period will be taken into consideration.</p> <p>As <b>supporting documents</b> for each project reference the <i>Contracting authority</i> may request statements issued by the clients and take contact with them.</p>
<b>Criterion T5</b>	
The tenderer must prove capacity to draft reports in English	
<b>Minimum level of capacity</b>	The tenderer must provide one document of at least 10 pages (report, study, peer review article, etc.) published or delivered to a client in the last 2 years in English. This is not necessary if any one of the papers provided to cover for criteria T1, T4 and T5 are in English.
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the consolidated assessment of combined capacities of all <i>involved entities</i> will be carried out (members of the group and identified subcontractors).
<b>Evidence</b>	<p>The document shall be provided in the form of a URL if it is on the internet or a document annexed to the tender list of projects meeting the minimum level of capacity. The list shall include details of their start and end date, total project amount and scope, role and amount invoiced. In case of projects still on-going only the portion completed during the reference period will be taken into consideration.</p> <p>As <b>supporting documents</b> for each project reference the <i>Contracting authority</i> may request statements issued by the clients and take contact with them.</p>

## B. Criteria relating to the team delivering the service:

Tenderers must comply with the following selection criteria in order to prove that they have the necessary professional capacity to perform the contract.

The team delivering the service should include, as a minimum, the following profiles.

Evidence will consist in CVs of the team responsible to deliver the service. Each CV should indicate the intended function in the delivery of the service.

The contractor shall ensure that the staff members listed in the technical offer are effectively available when the contract begins.

<b>Criterion P1</b>	
<b>1 Project Manager</b>	
<b>Minimum level of capacity</b>	One Project Manager: At least 5 years' experience in project management in the field of maritime law, including overseeing project delivery, quality control of

	delivered service, client orientation and conflict resolution experience in at least 4 projects of at least € 100.000 each project, and coverage of at least 2 countries worldwide, with experience in management of a team of at least 2 people.
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the consolidated assessment of combined capacities of all <i>involved entities</i> (members of the group and identified subcontractors) will be carried out.
<b>Evidence</b>	CV with a list of not more than 2 relevant completed or ongoing projects managed meeting the minimum level of capacity.
<b>Criterion P2</b>	
<b>Language Quality check (at least 2)</b>	
<b>Minimum level of capacity</b>	Language quality check: at least 2 members of the team should have at least C2 level in the Common European Framework for Reference for Languages in English <sup>28</sup> or be native speaker.
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the consolidated assessment of combined capacities of all <i>involved entities</i> (members of the group and identified subcontractors) will be carried out.
<b>Evidence</b>	CV with relevant past experience of at least 5 years and language certificate demonstrating at least the C2 level in English, unless native speaker.
<b>Criterion P3</b>	
<b>1 Expert in maritime economics</b>	
<b>Minimum level of capacity</b>	One expert in performing economic analysis of the links between different sectors related to/involved in vessel registration: at least 5 years of professional experience in the field.
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the consolidated assessment of combined capacities of all <i>involved entities</i> (members of the group and identified subcontractors) will be carried out.
<b>Evidence</b>	CV with a list of relevant projects managed, their duration (start-end date), and a list of peer-reviewed publications.

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28 Common European Framework of Reference for Languages: Learning, teaching, assessment (CEFR); [www.coe.int/lang-CEFR](http://www.coe.int/lang-CEFR)

<b>Criterion P4</b>	
<b>3 Experts in international and EU policy/legislation</b>	
<b>Minimum level of capacity</b>	Three experts in EU legislation and policy objectives, monitoring its implementation and establishing links with international legislation with at least 5 years of professional experience in the field of fisheries and maritime policy; maritime transport and safety; maritime law/labour conventions; environmental crime policy; tax/corporate law; sound governance in developing countries; and sanctions against third countries. The experts shall have experience in drafting recommendations/proposals to improve political management.
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the consolidated assessment of combined capacities of all <i>involved entities</i> (members of the group and identified subcontractors) will be carried out.
<b>Evidence</b>	CV with a list of relevant projects managed, their duration (start-end date), and a list of peer-reviewed publications.
<b>Criterion P5</b>	
<b>1 Expert in the Port State Measures Agreement (PSMA)</b>	
<b>Minimum level of capacity</b>	One expert in the implementation of the PSMA in EU and third countries. The expert must have at least 5 years of experience in assessing relationships between designated ports and flag countries. The expert must have experience in the field (Port State Measures Agreement).
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the consolidated assessment of combined capacities of all <i>involved entities</i> (members of the group and identified subcontractors) will be carried out.
<b>Evidence</b>	CV with a list of relevant projects managed, their duration (start-end date), and a list of peer-reviewed publications.
<b>Criterion P6</b>	
<b>1 Expert in coordinating surveys</b>	
<b>Minimum level of capacity</b>	One expert in designing surveys, coordinating data collection, analysing results and summarising conclusions



	with at least 3 years of professional experience in the field (coordination of surveys).  The expert shall have experience on stakeholder engagement in the field.
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the consolidated assessment of combined capacities of all <i>involved entities</i> (members of the group and identified subcontractors) will be carried out.
<b>Evidence</b>	CV with a list of relevant projects managed, their duration (start-end date), and a list of peer-reviewed publications.

☞ All of the above specified evidence of technical and professional capacity must be provided with the tender.

☞ The supporting documents may be requested by the Contracting authority at any time during the procedure.

☞ Involved entities (see Section 2.4) and all subcontractors, including those which do not need to be identified in the tender (see Section 2.4.2), must not be subject to conflicting interests, which may negatively affect the contract performance. Where the *Contracting authority* has established such conflicting interests, it may conclude that the tenderer or an involved entity does not possess the required professional capacity to perform the contract to an appropriate quality standard.

The presence of conflicting interests shall be examined during the evaluation phase based on the statements made through the ***Annex 2 Declaration on Honour*** and, where applicable, the commitment letters (***Annex 5.1 and Annex 5.2***).

### **3.3. Compliance with the conditions for participation and minimum requirements specified in the procurement documents**

By submitting a tender a tenderer commits to perform the contract in full compliance with the terms and conditions of the procurement documents for this call for tenders.

Particular attention is drawn to the minimum requirements specified in *Section 1.4* of these specifications and to the fact that tenders must comply with applicable data protection, environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU.

The minimum requirements shall be observed throughout the entire duration of the contract. Compliance with these requirements is mandatory and cannot be subject to any assumptions, limitations, conditions, or reservations on the part of a tenderer.

Tenderers must declare when submitting their tenders in eSubmission whether their tenders comply with the minimum requirements specified in the procurement documents.



👉 **Tenders that are not compliant with the applicable minimum requirements shall be rejected.**

### 3.3. Award criteria

The objective of the award criteria is to evaluate the tenders with a view to choosing the most economically advantageous tender.

Tenders will be evaluated on the basis of the following award criteria and their weighting:

1. Price : 30%

The price considered for evaluation will be the total price of the tender, quoted under "A. Total price of the contract" (as per *Annex 6 Price and breakdown of costs*) covering all the requirements set out in the Tender specifications.

2. Quality : 70%

The quality of the tender will be evaluated based on the following criteria:

Quality award Criterion	Explanation of the criterion's scope	Maximum number of points per criterion (out of 100)	Minimum points to be obtained (at least 50% per criterion and 60% in total)
✓ Quality of the proposed methodology	<p>This criterion will assess the quality of the proposed methodology, its coherence and its adequacy for the tasks and deliverables under the contract in order to achieve results that meet the objectives of this tender.</p> <p>The points will be allocated as follows:</p> <p>Task 1: quality, relevance, adequacy, effectiveness and innovation of the proposed approach (maximum 20 points - minimum 10)</p> <p>Task 2: quality, relevance, adequacy, effectiveness and innovation of the proposed approach (maximum 20 points – minimum 10)</p> <p>Task 3: quality, relevance, adequacy, effectiveness and</p>	80 points	40 points

	<p>innovation of the proposed approach (maximum 20 points – minimum 10)</p> <p>Task 4: quality, relevance, adequacy, effectiveness and innovation of the proposed approach (maximum 20 points – minimum 10)</p> <p>The tenderer shall provide in the reports mentioned in section 1.4.6.1. a clear description of the objectives, method, inputs, effort (expressed as proportion of total budget), and expected outcomes.</p>		
✓ Organisation of the work and resources	<p>This criterion will assess how the roles and responsibilities of the proposed team and of the different economic operators (in case of joint tenders, including subcontractors if applicable) are distributed for each task. It also assesses the global allocation of time and resources to the project and to each task or deliverable, and whether this allocation is adequate for the work.</p> <p>The tender should provide details on the allocation of time and human resources and the rationale behind the choice of this allocation. Details should be provided as part of the technical offer. <b>Units costs/prices are to be included in the financial offer only.</b></p>	10 points	5 points
✓ Quality control measures	<p>This criterion will assess the quality control system applied to the service foreseen in this tender specification concerning the quality of the deliverables, the language quality check, and continuity of the service in case of absence of the member of the team. The quality system should be detailed in the tender and specific to the tasks at hand; a</p>	10 points	5 points

	generic quality system will result in a low score.		
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The result of the technical evaluation is the sum of the points obtained based on the evaluation of each criterion (maximum 100 points).

Only those tenders that score:

- at least 50 % for each criterion and
- at least 60 % of the total points will be considered for the award of the contract.

Tenders not reaching the minimum quality threshold will not be further assessed. Their financial tenders will therefore not be considered for determining the cheapest reference price.

### 3.4. Award (ranking of tenders)

Tenders shall be ranked according to the best price-quality ratio in accordance with the formula below:

score for tender X	=	cheapest reference price	*	100	*	price weighting (30 %)	+	total quality score for all award criteria of tender X	*	quality weighting (70 % )
		reference price of tender X								

Should the outcome of the formula lead to two or more tenders with the same result, the tenderer who has been awarded the highest marks for quality will be deemed to be the most economically advantageous tender. This approach will continue to be applied to each of the award criteria in the descending order listed in below until a most economically advantageous tender can be determined:

1. Criterion 1. Quality of the proposed methodology
2. Criterion 2. Organisation of the work and resources
3. Criterion 3. Quality control measures

👉 The contract shall be awarded to the tender ranked first, which complies with the minimum requirements specified in the procurement documents and is submitted by a tenderer not subject to restrictive measures, having access to procurement, not in an exclusion situation and fulfilling the selection criteria.

👉 Detection of abnormally low tenders.

Tenderers must be aware of Point 23 of Annex I to the Financial Regulation on abnormally low tenders and of the possibility for rejection of the tender based on it.

## 4. FORM AND CONTENT OF THE TENDER

### 4.1. Form of the tender: how to submit the tender?

Tenders are to be submitted via the eSubmission application according to the instructions laid down in the Invitation letter and the eSubmission Quick Guide available at the link below:

[https://wikis.ec.europa.eu/display/FTPPortal/Open+procedures\\_EN](https://wikis.ec.europa.eu/display/FTPPortal/Open+procedures_EN)

👉 Make sure you prepare and submit your tender in eSubmission early enough to ensure it is received within the deadline indicated under Section IV.2.2 of the contract notice and/or on TED eTendering.

### 4.2. Content of the tender: what documents to submit with the tender?

The documents to be submitted with the tender in eSubmission are listed in *Annex 1*.

The following requirements apply to the technical and financial tender (to be uploaded as eSubmission):

- *Technical tender*

The technical tender must provide all the information needed to assess the compliance with *Section 1.4* of these specifications and the award criteria. Tenders deviating from the minimum requirements or not covering all the requirements may be rejected on the basis of non-compliance and not evaluated further.

For the appraisal, the written submission shall include a clear and detailed description of the organisation, resources and methodology proposed. Tenderers will provide a practical and detailed description of the resources and services proposed to achieve the objectives and results set out in *Section 1.4* above.

The tender should provide details on the allocation of time and human resources and the rationale behind the choice of this allocation. Details should be provided as part of the technical offer, i.e. the allocation should be indicated for each task and should specify the role, the names and the estimated number of days/units for each member of the team. This is not a request for a budget, as the budget should be only part of the financial offer.

- *Financial tender*

A complete financial tender, including the breakdown of the price needs to be submitted. For this purpose, the Financial Model in *Annex 6* shall be used .

The financial offer shall be:

- expressed in euros. Tenderers from countries outside the euro zone have to quote their prices in euro. The price quoted may not be revised in line with exchange rate movements. It is for the tenderer to bear the risks or the benefits deriving from any variation.

- quoted free of all duties, taxes and other charges, i.e. also free of VAT.

The quoted price must be a fixed amount which includes all charges (including travel and subsistence). Travel and subsistence expenses are not refundable separately.

👉 The European Union Institutions are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965 annexed to the Treaty on the Functioning of the European Union. Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact its national authorities to clarify the way in which the European Union is exempt from VAT.

### 4.3. Signature policy: how can documents be signed?

Where a document needs to be signed, the signature must be either hand-written, or a qualified electronic signature as defined in [Regulation \(EU\) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market \(the eIDAS Regulation\)](#).

Tenderers are strongly encouraged to sign with a QES<sup>29</sup> all documents requiring a signature and only exceptionally to sign such documents by hand as hand-written signatures lead to an additional administrative burden for both the tenderer and the contracting authority. The originals of any hand-signed documents (other than the contract) do not need to be submitted to the contracting authority but the tenderer must keep them for a period of five years starting from the notification of the outcome of the procedure or, where the tenderer has been awarded a contract resulting from this call for tenders and the contract has been signed, the payment of the balance.

All documents must be signed by the signatories (when they are individuals) or by their duly authorised representatives.

For the following documents, when signed by representatives, tenderers must provide evidence for the delegation of the authorisation to sign:

- The Declaration on Honour of the tenderer (in case of joint tender – the Declarations on Honour of all group members) (*Annex 2*);
- (in the case of joint tender) the Agreement/Power(s) of attorney drawn up using the model attached in *Annex 3*).

The delegation of the authorisation to sign on behalf of the signatories (including, in the case of proxy(-ies), the chain of authorisations) must be evidenced by appropriate written evidence (copy of the notice of appointment of the persons authorised to represent the legal entity in

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<sup>29</sup> See [here](#) how to apply a QES on a document exchanged with a European institution, body or agency.

signing contracts (together or alone), or a copy of the publication of such appointment if the legislation which applies to signatory requires such publication or a power of attorney).

A document that the *Contracting authority* can access on a national database free of charge does not need to be submitted if the *Contracting authority* is provided with the exact internet link and, if applicable, the necessary identification data to retrieve the document.

#### **4.4. Confidentiality of tenders: what information and under what conditions can be disclosed?**

Once the *Contracting authority* has opened a tender, it becomes its property and shall be treated confidentially, subject to the following:

- For the purposes of evaluating the tender and, if applicable, implementing the contract, performing audits, benchmarking, etc., the *Contracting authority* is entitled to make available (any part of) the tender to its staff and the staff of other Union institutions, agencies and bodies, as well to other persons and entities working for the *Contracting authority* or cooperating with it, including contractors or subcontractors and their staff provided that they are bound by an obligation of confidentiality.
- After the signature of the award decision tenderers whose tenders were received in accordance with the submission modalities, who have access to procurement, who are not found to be in an exclusion situation referred to in Article 136(1) of the FR, who are not rejected under Article 141 of the FR, whose tenders are not found to be incompliant with the procurement documents, and who make a request in writing will be notified of the name of the tenderer to whom the contract is awarded, the characteristics and relative advantages of the successful tender and its total financial tender amount. The *Contracting authority* may decide to withhold certain information that it assesses as being confidential, in particular where its release would prejudice the legitimate commercial interests of economic operators or might distort fair competition between them. Such information may include, without being limited to, confidential aspects of tenders such as unit prices included in the financial offer, technical or trade secrets<sup>30</sup>.
- The *Contracting authority* may disclose the submitted tender in the context of a request for public access to documents, or in other cases where the applicable law requires its disclosure. Unless there is an overriding public interest in disclosure<sup>31</sup>, the *Contracting authority* may refuse to provide full access to the submitted tender, redacting the parts (if any) that contain confidential information, the disclosure of which would undermine the protection of commercial interests of the tenderer, including intellectual property.

👉 The *Contracting authority* will disregard general statements that the whole tender or substantial parts of it contain confidential information. Tenderers need to mark clearly the information they consider confidential and explain why it may not be disclosed. The

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<sup>30</sup> For the definition of trade secrets please see Article 2 (1) of DIRECTIVE (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

<sup>31</sup> See Article 4 (2) of the REGULATION (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Contracting authority reserves the right to make its own assessment of the confidential nature of any information contained in the tender.
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## **APPENDIX: LIST OF REFERENCES**

<b><i>Award criteria</i></b>	See Section 3.4
<b><i>Contracting authority</i></b>	See Section 1.1
<b><i>Entities on whose capacities the tenderer relies to fulfil the selection criteria</i></b>	See Section 2.4.3
<b><i>EU Validation services</i></b>	See Section 2.3 <a href="#">EU Grants and Tenders Rules on Legal Entity Validation, LEAR appointment and Financial Capacity assessment</a>
<b><i>Exclusion criteria</i></b>	See Section 3.1
<b><i>Financial Regulation</i></b>	<a href="#">Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union</a>
<b><i>Group leader</i></b>	See Section 2.4.1
<b><i>Identified subcontractors</i></b>	See Section 2.4.2
<b><i>Involved entities</i></b>	See Section 2.4
<b><i>Joint tender</i></b>	See Section 2.4.1
<b><i>Participating entities</i></b>	See Section 1.1
<b><i>Participant Register</i></b>	See Section 2.3 <a href="https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/participant-register">https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/participant-register</a>
<b><i>Selection criteria</i></b>	See Section 3.2
<b><i>Sole tenderer</i></b>	See Section 2.4
<b><i>Subcontracting/subcontractor</i></b>	See Section 2.4.2
<b><i>Treaties</i></b>	The EU Treaties: <a href="https://europa.eu/european-union/law/treaties_en">https://europa.eu/european-union/law/treaties_en</a>

# ANNEXES

**Annex 1 - List of documents to be submitted with the tender or during the procedure**

**Annex 2 - Declaration on honour on exclusion and selection criteria**

**Annex 2.1 - Technical and professional capacity**

**Annex 3 - Agreement/Power(s) of attorney**

**Annex 4 - List of subcontractors**

**Annex 5.1 - Commitment letter by an identified subcontractor**

**Annex 5.2 - Commitment letter by an entity on whose capacities is being relied**

**Annex 6 - Financial tender form**

**Draft service contract and Annexes**