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► **B** REGULATION (EC) No 1406/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 June 2002

establishing a European Maritime Safety Agency

(Text with EEA relevance)

(OJ L 208, 5.8.2002, p. 1)

Amended by:

		Official Journal		
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► <b><u>M1</u></b>	Regulation (EC) No 1644/2003 of the European Parliament and of the Council of 22 July 2003	L 245	10	29.9.2003
► <b><u>M2</u></b>	Regulation (EC) No 724/2004 of the European Parliament and of the Council of 31 March 2004	L 129	1	29.4.2004
► <b><u>M3</u></b>	Regulation (EC) No 2038/2006 of the European Parliament and of the Council of 18 December 2006	L 386	14	29.12.2006



**REGULATION (EC) No 1406/2002 OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL**

**of 27 June 2002**

**establishing a European Maritime Safety Agency**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE  
EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and  
in particular Article 80(2) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social  
Committee <sup>(2)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(3)</sup>,

Acting in accordance with the procedure referred to in Article 251 of  
the Treaty <sup>(4)</sup>,

Whereas:

- (1) A large number of legislative measures have been adopted in the Community in order to enhance safety and prevent pollution in maritime transport. In order to be effective, such legislation must be applied in a proper and uniform manner throughout the Community. This will ensure a level playing field, reduce the distortion of competition resulting from the economic advantages enjoyed by non-complying ships and will reward the serious maritime players.
- (2) Certain tasks currently done at Community or national level could be executed by a specialised expert body. Indeed, there is a need for technical and scientific support and a high level of stable expertise to properly apply the Community legislation in the fields of maritime safety and ship pollution prevention, to monitor its implementation and to evaluate the effectiveness of the measures in place. There is a need therefore, within the Community's existing institutional structure and balance of powers, to establish a European Maritime Safety Agency ('the Agency').
- (3) In general terms, the Agency should represent the technical body providing the Community with the necessary means to act effectively to enhance overall maritime safety and ship pollution prevention rules. The Agency should assist the Commission in the continuous process of updating and developing Community legislation in the field of maritime safety and prevention of pollution by ships and should provide the necessary support to ensure the convergent and effective implementation of such legislation throughout the Community by assisting the Commission in performing the tasks assigned to the latter by existing and future Community legislation on maritime safety and ship pollution prevention.

<sup>(1)</sup> OJ C 120 E, 24.4.2001, p. 83 and OJ C 103 E, 30.4.2002, p. 184.

<sup>(2)</sup> OJ C 221, 7.8.2001, p. 64.

<sup>(3)</sup> OJ C 357, 14.12.2001, p. 1.

<sup>(4)</sup> Opinion of the European Parliament of 14 June 2001 (OJ C 53 E, 28.2.2002, p. 312), Council Common Position of 7 March 2002 (OJ C 119 E, 22.5.2002, p. 27) and Decision of the European Parliament of 12 June 2002 (not yet published in the Official Journal) and Council Decision of 25 June 2002.

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- (4) For the proper achievement of the purposes for which the Agency is established, it is appropriate that the Agency carries out a number of other important tasks aimed at enhancing maritime safety and ship pollution prevention in the waters of the Member States. In this respect, the Agency should work with Member States to organise appropriate training activities on port State control and flag State related issues and to provide technical assistance related to the implementation of Community legislation. It should facilitate cooperation between the Member States and the Commission as provided for in Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC <sup>(1)</sup>, namely by developing and operating any information system necessary for the objectives of that Directive, and in the activities concerning the investigations related to serious maritime accidents. It should provide the Commission and the Member States with objective, reliable and comparable information and data on maritime safety and on ship pollution prevention to enable them to take any necessary initiatives to enhance the measures in place and to evaluate their effectiveness. It should place the Community maritime safety know-how at the disposal of the States applying for accession. It should be open to the participation of these States and to other third countries which have concluded agreements with the Community whereby they adopt and implement Community legislation in the field of maritime safety and prevention of pollution by ships.
- (5) The Agency should favour the establishment of better cooperation between the Member States and should develop and disseminate best practices in the Community. This in turn should contribute to enhancing the overall maritime safety system in the Community as well as reducing the risk of maritime accidents, marine pollution and the loss of human lives at sea.
- (6) In order properly to carry out the tasks entrusted to the Agency, it is appropriate that its officials carry out visits to the Member States in order to monitor the overall functioning of the Community maritime safety and ship pollution prevention system. The visits should be carried out in accordance with a policy to be established by the Agency's Administrative Board and should be facilitated by the authorities of the Member States.
- (7) The Agency should apply the relevant Community legislation concerning public access to documents and the protection of individuals with regard to the processing of personal data. It should give the public and any interested party objective, reliable and easily understandable information with regard to its work.
- (8) For the contractual liability of the Agency, which is governed by the law applicable to the contracts concluded by the Agency, the Court of Justice should have jurisdiction to give judgment pursuant to any arbitration clause contained in the contract. The Court of Justice should also have jurisdiction in disputes relating to compensation for any damage arising from the non-contractual liability of the Agency.
- (9) In order to effectively ensure the accomplishment of the functions of the Agency, the Member States and the Commission should be represented on an Administrative Board entrusted with the necessary powers to establish the budget, verify its execution,

<sup>(1)</sup> See page 10 of this Official Journal.

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adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency, approve its work programme, examine requests for technical assistance from Member States, define a policy for visits to the Member States and appoint the Executive Director. In the light of the highly technical and scientific mission and tasks of the Agency, it is appropriate for the Administrative Board to consist of one representative of each Member State and four representatives of the Commission, being members with a high level of expertise. In order further to ensure the highest level of expertise and experience in the Administrative Board and with a view to involving the sectors most closely concerned in the tasks of the Agency, the Commission should nominate independent professionals from these sectors as board members without the right to vote, on the basis of their personal merit and experience in the field of maritime safety and prevention of pollution by ships and not as representatives of particular professional organisations.

- (10) The good functioning of the Agency requires that its Executive Director be appointed on the grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant for maritime safety and prevention of pollution by ships and that he/she performs his/her duties with complete independence and flexibility as to the organisation of the internal functioning of the Agency. To this end, the Executive Director should prepare and take all necessary steps to ensure the proper accomplishment of the working programme of the Agency, should prepare each year a draft general report to be submitted to the Administrative Board, should draw up estimates of the revenues and expenditure of the Agency and should implement the budget.
- (11) In order to guarantee the full autonomy and independence of the Agency, it is considered necessary to grant it an autonomous budget whose revenue comes essentially from a contribution from the Community.
- (12) Over the past years, as more decentralised agencies have been created, the budgetary authority has looked to improve transparency and control over the management of the Community funding allocated to them, in particular concerning the budgetisation of the fees, financial control, power of discharge, pension scheme contributions and the internal budgetary procedure (code of conduct). In a similar way, Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) <sup>(1)</sup> should apply without restriction to the Agency, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) <sup>(2)</sup>.
- (13) Within five years from the date of the Agency having taken up its responsibilities, the Administrative Board should commission an independent external evaluation in order to assess the impact of this Regulation, the Agency and its working practices on establishing a high level of maritime safety and prevention of pollution by ships,

HAVE ADOPTED THIS REGULATION:

<sup>(1)</sup> OJ L 136, 31.5.1999, p. 1.

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 15.

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## CHAPTER I

**OBJECTIVES AND TASKS***Article 1***Objectives****▼M2**

1. This Regulation establishes a European Maritime Safety Agency ('the Agency') for the purpose of ensuring a high, uniform and effective level of maritime safety, maritime security within the limits of the tasks defined in Article 2(b)(iv), prevention of pollution and response to pollution by ships within the Community.

2. The Agency shall provide the Member States and the Commission with the technical and scientific assistance needed and with a high level of expertise, in order to help them to apply the Community legislation properly in the field of maritime safety, maritime security within the limits of the tasks defined in Article 2(b)(iv), prevention of pollution caused by ships, to monitor its implementation and to evaluate the effectiveness of the measures in place.

3. The Agency shall provide Member States and the Commission with technical and scientific assistance in the field of accidental or deliberate pollution by ships and support on request with additional means in a cost-efficient way the pollution response mechanisms of Member States, without prejudice to the responsibility of coastal States to have appropriate pollution response mechanisms in place and respecting existing cooperation between Member States in this field. It shall act in support of the Community framework for cooperation in the field of accidental or deliberate marine pollution established by Decision No 2850/2000/EC of the European Parliament and of the Council of 20 December 2000 setting up a Community framework for cooperation in the field of accidental or deliberate marine pollution <sup>(1)</sup> and of the Community mechanism in the field of civil protection assistance interventions established by Council Decision 2001/792/EC, Euratom of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions <sup>(2)</sup>.

*Article 2*

In order to ensure that the objectives set out in Article 1 are met in the appropriate manner, the Agency shall perform the following tasks:

- (a) It shall assist the Commission, where appropriate, in the preparatory work for updating and developing Community legislation in the fields of maritime safety and maritime security, the prevention of pollution and response to pollution caused by ships, in particular in line with the development of international legislation in that field. That task shall include the analysis of research projects carried out in the field of maritime safety and maritime security, the prevention of pollution and response to pollution caused by ships.
- (b) It shall assist the Commission in the effective implementation of Community legislation on maritime safety and maritime security, prevention of pollution and response to pollution caused by ships throughout the Community. In particular, the Agency shall:
  - (i) monitor the overall functioning of the Community port State control regime, which may include visits to the Member States, and suggest to the Commission any possible improvements in that field;

<sup>(1)</sup> OJ L 332, 28.12.2000, p. 1.

<sup>(2)</sup> OJ L 297, 15.11.2001, p. 7.

▼ M2

- (ii) provide the Commission with the technical assistance necessary to take part in the work of the technical bodies of the Paris Memorandum of Understanding on Port State Control;
  - (iii) assist the Commission in the performance of any task assigned to it by existing and future Community legislation on maritime safety, ship pollution prevention and ship pollution response, notably legislation applicable to classification societies, the safety of passenger ships, as well as that applicable to the safety, training, certification and watchkeeping of ships' crews, including the verification of compliance of third countries with the requirements of the 1978 International Convention on Standards of Training, Certification and Watch-keeping, and of the measures taken to prevent fraud involving certificates of competency;
  - (iv) provide the Commission with technical assistance in the performance of the inspection tasks assigned to it pursuant to Article 9(4) of Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security <sup>(1)</sup>. This assistance of the Agency to the Commission will be restricted to ship and relevant companies and Recognised Security Organisations authorised to undertake certain security-related activities in this context.
- (c) It shall work with the Member States to:
- (i) organise, where appropriate, relevant training activities in fields which are the responsibility of the port State and flag State;
  - (ii) develop technical solutions and provide technical assistance related to the implementation of Community legislation;
  - (iii) support with additional means in a cost efficient way, via the Community mechanism in the field of civil protection established by Decision 2001/792/EC, Euratom, their pollution response actions in case of accidental or deliberate pollution caused by ships, when such a request has been presented. In this respect, the Agency shall assist the affected Member State under which the cleaning operations are conducted.
- (d) It shall facilitate cooperation between the Member States and the Commission in the fields covered by Directive 2002/59/EC. In particular, the Agency shall:
- (i) promote cooperation between riparian States in the shipping areas concerned in the fields covered by that Directive;
  - (ii) develop and operate any information system necessary for attaining the objectives of the Directive.
- (e) It shall facilitate cooperation between the Member States and the Commission in the development, with due regard to the different legal systems in the Member States, of a common methodology for investigating maritime accidents according to agreed international principles, in the provision of support to the Member States in activities concerning investigations related to serious maritime accidents, and in the carrying out of an analysis of existing accident investigation reports.
- (f) It shall provide the Commission and the Member States with objective, reliable and comparable information and data on maritime safety, on maritime security and on pollution by ships to enable them to take the necessary steps to improve their actions in

<sup>(1)</sup> OJ L 129, 29.4.2004, p. 6.

**▼ M2**

these fields and to evaluate the effectiveness of existing measures. Such tasks shall include the collection, recording and evaluation of technical data in the fields of maritime safety, maritime security and maritime traffic, as well as in the field of marine pollution, both accidental and deliberate, the systematic exploitation of existing databases, including their cross-fertilisation, and, where appropriate, the development of additional databases. On the basis of the data collected, the Agency shall assist the Commission in the publication, every six months, of information relating to ships that have been refused access to Community ports pursuant to Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) <sup>(1)</sup>. The Agency will also assist the Commission and the Member States in their activities to improve the identification and pursuit of ships making unlawful discharges.

- (g) In the course of negotiations with States applying for accession the Agency may provide technical assistance as regards the implementation of Community legislation in the field of maritime safety, maritime security, and prevention of pollution by ships. The Agency may also provide assistance in case of accidental or deliberate marine pollution affecting these States, via the Community mechanism in the field of civil protection established by Decision 2001/792/EC Euratom. These tasks shall be coordinated with the existing regional cooperation programs and shall include, where appropriate, the organisation of relevant training activities.

**▼ B***Article 3***Visits to Member States**

1. In order to perform the tasks entrusted to it, the Agency may carry out visits to the Member States in accordance with the policy defined by the Administrative Board. The national authorities of the Member States shall facilitate the work of the Agency's staff.
2. The Agency shall inform the Member State concerned of the planned visit, the names of the delegated officials, and the date on which the visit starts. The Agency officials delegated to carry out such visits shall do so on presentation of a decision from the Executive Director of the Agency specifying the purpose and the aims of their mission.
3. At the end of each visit, the Agency shall draw up a report and send it to the Commission and to the Member State concerned.

*Article 4***Transparency and protection of information****▼ M1**

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents <sup>(2)</sup> shall apply to documents held by the Agency.

**▼ B**

2. The Agency may communicate on its own initiative in the fields within its mission. It shall ensure in particular that the public and any

<sup>(1)</sup> OJ L 157, 7.7.1995, p. 1. Directive as last amended by Directive 2002/84/EC of the European Parliament and of the Council (OJ L 324, 29.11.2002, p. 53).

<sup>(2)</sup> OJ L 145, 31.5.2001, p. 43.

**▼B**

interested party are rapidly given objective, reliable and easily understandable information with regard to its work.

**▼M1**

3. The Administrative Board shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 within six months after the entry into force of Regulation (EC) No 1644/2003 of the European Parliament and of the Council of 22 July 2003 amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency <sup>(1)</sup>.

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4. The information collected in accordance with this Regulation by the Commission and the Agency shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(2)</sup>.

**▼M1**

5. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.

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## CHAPTER II

## INTERNAL STRUCTURE AND FUNCTIONING

*Article 5***Legal status, regional centres**

1. The Agency shall be a body of the Community. It shall have legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.
3. At the request of the Commission, the Administrative Board may decide, with the agreement of the Member States concerned, to establish the regional centres necessary in order to carry out tasks related to the monitoring of navigation and maritime traffic, as provided for in Directive 2002/59/EC.
4. The Agency shall be represented by its Executive Director.

*Article 6***Staff**

1. The Staff Regulations of officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purposes of the application of those Staff Regulations and conditions of Employment shall apply to the staff of the Agency. The Administrative Board, in agreement with the Commission, shall adopt the necessary detailed rules of application.

<sup>(1)</sup> OJ L 245, 29.9.2003, p. 10.

<sup>(2)</sup> OJ L 8, 12.1.2001, p. 1.



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2. Without prejudice to Article 16, the powers conferred on the appointing authority by the Staff Regulations and the Conditions of employment of other servants shall be exercised by the Agency in respect of its own staff.

3. The Agency's staff shall consist of officials assigned or seconded by the Commission or Member States on a temporary basis and of other servants recruited by the Agency as necessary to carry out its tasks.

*Article 7***Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency and to its staff.

*Article 8***Liability**

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

2. The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.

3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.

4. The Court of Justice shall have jurisdiction in disputes relating to the compensation for damage referred to in paragraph 3.

5. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of employment applicable to them.

*Article 9***Languages**

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community <sup>(1)</sup> shall apply to the Agency.

2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre of the bodies of the European Union.

*Article 10***Creation and powers of the Administrative Board**

1. An Administrative Board is hereby set up.

2. The Administrative Board shall:

(a) appoint the Executive Director pursuant to Article 16;

**▼M1**

(b) shall adopt the annual report on the Agency's activities and forward it by 15 June at the latest to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States.

<sup>(1)</sup> OJ 17, 6.10.1958, p. 385/58. Regulation as last amended by the 1994 Act of Accession.

**▼ M1**

The Agency shall annually forward to the budgetary authority all information relevant to the outcome of the evaluation procedures;

**▼ B**

- (c) examine, in the framework of the preparation of the work programme, requests from Member States for technical assistance, as referred to in Article 2(c)(ii);

**▼ M2**

- (d) adopt, by 30 November each year, and taking the opinion of the Commission into account, the work programme of the Agency for the coming year and forward it to the Member States, the European Parliament, the Council and the Commission; this work programme shall be adopted without prejudice to the annual Community budgetary procedure. In the event that the Commission expresses, within 15 days from the date of adoption of the work programme, its disagreement with the said programme, the Administrative Board shall re-examine the programme and adopt it, possibly amended, within a period of two months, in second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States;

**▼ B**

- (e) adopt the final budget of the Agency before the beginning of the financial year, adjusting it, where necessary, according to the Community contribution and any other revenue of the Agency;
- (f) establish procedures for decision-making by the Executive Director;
- (g) define a policy for the visits to be carried out pursuant to Article 3;
- (h) perform its duties in relation to the Agency's budget pursuant to Articles 18, 19 and 21;
- (i) exercise disciplinary authority over the Executive Director and the heads of unit referred to in Article 15(3);
- (j) establish its rules of procedure;

**▼ M2**

- (k) adopt, following the procedures set out in (d), a detailed plan for the Agency's pollution preparedness and response activities, aiming at the optimum use of the financial means available to the Agency;

**▼ M3**

- (l) review the financial execution of the detailed plan referred to in (k) and the budgetary commitments provided for in Regulation (EC) No 2038/2006 of the European Parliament and of the Council of 18 December 2006 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships <sup>(1)</sup> on the basis of the report provided for in Article 15(2)(g) of this Regulation. This review shall be carried out when the statement of estimates of the Agency's revenue and expenditure for the following financial year are produced, as provided for in Article 18(5) of this Regulation.

**▼ B***Article 11***Composition of the Administrative Board**

1. The Administrative Board shall be composed of one representative of each Member State and four representatives of the Commission, as well as of four professionals from the sectors most concerned, nominated by the Commission, without the right to vote.

<sup>(1)</sup> OJ L 394, 30.12.2006, p. 1

**▼M2**

Board members shall be appointed on the basis of their degree of relevant experience and expertise in the field of maritime safety, maritime security, prevention of pollution and response to pollution caused by ships.

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2. Each Member State and the Commission shall appoint their members of the Administrative Board as well as an alternate who will represent the member in his/her absence.
3. The duration of the term of office shall be five years. The term of office may be renewed once.
4. When appropriate, the participation of representatives of third countries and the conditions thereof shall be established in the arrangements referred to in Article 17(2).

*Article 12***Chairmanship of the Administrative Board**

1. The Administrative Board shall elect a Chairperson and a Deputy-Chairperson from among its members. The Deputy Chairperson shall automatically take the place of the Chairperson if he/she is prevented from attending to his/her duties.
2. The terms of office of the Chairperson and Deputy Chairperson shall be three years and shall expire when they cease to be members of the Administrative Board. The terms of office shall be renewable once.

*Article 13***Meetings**

1. The meetings of the Administrative Board shall be convened by its Chairperson.
2. The Executive Director of the Agency shall take part in the deliberations.
3. The Administrative Board shall hold an ordinary meeting twice a year. In addition, it shall meet on the initiative of the Chairperson or at the request of the Commission or of one-third of the Member States.
4. When there is a matter of confidentiality or conflict of interest, the Administrative Board may decide to examine specific items of its agenda without the presence of the members nominated in their capacity as professionals from the sectors most concerned. Detailed rules for the application of this provision may be laid down in the rules of procedure.
5. The Administrative Board may invite any person whose opinion can be of interest to attend its meetings as an observer.
6. The members of the Administrative Board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.
7. The secretariat for the Administrative Board shall be provided by the Agency.

*Article 14***Voting**

1. The Administrative Board shall take its decisions by a two-thirds majority of all members with the right to vote.
2. Each member shall have one vote. The Executive Director of the Agency shall not vote.

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In the absence of a member, his/her alternate shall be entitled to exercise his/her right to vote.

3. The rules of procedure shall establish the more detailed voting arrangements, in particular, the conditions for a member to act on behalf of another member.

*Article 15***Duties and powers of the Executive Director**

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties, without prejudice to the respective competencies of the Commission and the Administrative Board.

2. The Executive Director shall have the following duties and powers:

**▼M2**

(a) he/she shall prepare the work programme and the detailed plan for the Agency's pollution preparedness and response activities, and submit them to the Administrative Board after consultation of the Commission. He/she shall take the necessary steps for their implementation. He/she shall respond to any requests for assistance from the Commission or from a Member State in accordance with Article 10(2)(c). For information purposes, he/she shall transmit the plan to the Committee established by Article 4 of Decision No 2850/2000/EC as well as to the Committee referred to in Article 9 of Decision 2001/792/EC, Euratom;

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(b) he/she shall decide to carry out the visits provided for in Article 3, after consultation of the Commission and following the policy established by the Administrative Board according to Article 10(2)(g);

(c) he/she shall take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation;

(d) he/she shall organise an effective monitoring system in order to be able to compare the Agency's achievements with its operational objectives. On this basis the Executive Director shall prepare a draft general report each year and submit it to the Administrative Board. He/she shall establish regular evaluation procedures that meet recognised professional standards;

(e) he/she shall exercise, in respect of the staff, the powers laid down in Article 6(2);

(f) he/she shall draw up estimates of the Agency's revenue and expenditure, in accordance with Article 18, and shall implement the budget in accordance with Article 19;

**▼M3**

(g) he/she shall submit a report to the Commission and the Administrative Board, by 31 January each year, concerning the financial execution of the detailed plan for the Agency's pollution preparedness and response activities and give an update of the status of all actions funded under that plan. The Commission shall in turn submit this report for information to the European Parliament, the Committee established by Article 4 of Decision No 2850/2000/EC and the Committee referred to in Article 9 of Decision 2001/792/EC, Euratom.

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3. The Executive Director may be assisted by one or more Heads of Unit. If the Executive Director is absent or indisposed, one of the heads of unit shall take his place.

*Article 16***Appointment of the Executive Director****▼M2**

1. The Executive Director of the Agency shall be appointed by the Administrative Board on grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant for maritime safety, maritime security, prevention of pollution and response to pollution caused by ships. The Administrative Board shall take its decision by a four-fifths majority of all members with the right to vote. The Commission may propose a candidate or candidates.

**▼B**

Power to dismiss the Executive Director shall lie with the Administrative Board, according to the same procedure.

2. The term of office of the Executive Director shall be five years. This term of office is renewable once.

*Article 17***Participation of third countries****▼M2**

1. The Agency shall be open to the participation of third countries, which have entered into agreements with the European Community, whereby they have adopted and are applying the Community law in the field of maritime safety, maritime security, prevention of pollution and response to pollution caused by ships.

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2. Under the relevant provisions of these agreements, arrangements will be developed which shall, *inter alia*, specify the nature and the extent of the detailed rules for the participation by these countries in the work of the Agency, including provisions on financial contributions and staff.

## CHAPTER III

**FINANCIAL REQUIREMENTS***Article 18***Budget**

1. The Agency's revenues shall consist of:

- (a) a contribution from the Community;
- (b) possible contributions from any third country which participates in the work of the Agency in accordance with Article 17;
- (c) charges for publications, training and/or any other services provided by the Agency.

2. The Agency's expenditure shall cover staff and administrative, infrastructure and operational expenses.

**▼M1**

3. The Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following year and shall forward it to the Administrative Board, together with a draft establishment plan.

▼ M1

4. Revenue and expenditure shall be in balance.
5. Each year the Administrative Board, on the basis of a draft statement of estimates of revenue and expenditure, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year.
6. This statement of estimates, which shall include a draft establishment plan together with the provisional work programme, shall by 31 March at the latest be forwarded by the Administrative Board to the Commission and to the States with which the Community has concluded agreements in accordance with Article 17.
7. The statement of estimates shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft general budget of the European Union.
8. On the basis of the statement of estimates, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.
9. The budgetary authority shall authorise the appropriations for the subsidy to the Agency.

The budgetary authority shall adopt the establishment plan for the Agency.

10. The budget shall be adopted by the Administrative Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

11. The Administrative Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of the budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Administrative Board within a period of six weeks after the date of notification of the project.

#### *Article 19*

##### **Implementation and control of the budget**

1. The Executive Director shall implement the Agency's budget.
2. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the general Financial Regulation.
3. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be forwarded to the European Parliament and the Council.

**▼M1**

4. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, under Article 129 of the general Financial Regulation, the Executive Director shall draw up the Agency's final accounts under his own responsibility and submit them to the Administrative Board for an opinion.
5. The Administrative Board shall deliver an opinion on the Agency's final accounts.
6. The Executive Director shall, by 1 July at the latest following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Administrative Board's opinion.
7. The final accounts shall be published.
8. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Administrative Board.
9. The Executive Director shall submit to the European Parliament, at the latter's request, all information necessary for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the general Financial Regulation.
10. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

**▼B***Article 20***Combating fraud**

1. In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 shall apply without restriction to the Agency.
2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by OLAF and shall issue, without delay, the appropriate provisions applicable to all of its staff.
3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks of the recipients of the Agency's funding and the agents responsible for allocating it.

**▼M1***Article 21***Financial provisions**

The financial rules applicable to the Agency shall be adopted by the Administrative Board after the Commission has been consulted. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup> unless such a departure is specifically required for the Agency's operation and the Commission has given its prior consent.

<sup>(1)</sup> OJ L 357, 31.12.2002, p. 72; corrigendum in OJ L 2, 7.1.2003, p. 39.

▼ B

## CHAPTER IV

### FINAL PROVISIONS

#### *Article 22*

##### **Evaluation**

1. Within five years from the date of the Agency having taken up its responsibilities, the Administrative Board shall commission an independent external evaluation on the implementation of this Regulation. The Commission shall make available to the Agency any information the latter considers relevant to that evaluation.

▼ M2

2. The evaluation shall assess the impact of this Regulation, the Agency and its working practices. The Administrative Board shall issue specific terms of reference in agreement with the Commission, following consultations with the parties involved.

▼ B

3. The Administrative Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission. Both the evaluation findings and recommendations shall be forwarded by the Commission to the European Parliament and the Council and shall be made public.

#### *Article 23*

##### **Start of the Agency's activities**

The Agency shall be operational within twelve months of the entry into force of this Regulation.

#### *Article 24*

##### **Entry into force**

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.