

SAFE SURVEYING INTERNATIONAL CONFERENCE

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The new European Agency for Maritime Safety

Documents Explained by

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
establishing a European Maritime Safety Agency

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The EU maritime safety and pollution prevention policy consists of a large number of legal measures which cover the key aspects of the IMO Conventions in force. The main objective is to ensure the efficient and uniform application of the international rules within the European Union. The policy embraces a wide variety of fields, from classification societies to Port State Control, from passenger ships to marine equipment and port reception facilities. With the establishment of an EU maritime safety and pollution prevention policy, some of the Member States' national competencies in these fields have been transferred to the Community level.

In order to be effective, such legislation must be applied in a proper and uniform manner throughout the Community. It is indeed the rigorous implementation of the existing rules which may enhance safety at sea and pollution prevention in the Community waters, and its harmonised application which may ensure a level playing field, reduce the distortion of competition resulting from the economic advantages enjoyed by non-complying ships and reward the serious maritime players.

In the Community, the task of ensuring the proper and convergent implementation of existing legislation is rendered more difficult by the fact that, unlike certain countries such as the USA which have a unitary structure and thus the ability to impose uniform procedures and to verify compliance, the European Union has to work with the diverse administrative traditions of its Member States. The administrative structures involved in maritime safety differ considerably from one Member State to another: some are civil, others are military and they perform very different tasks, from ship inspection as port State or flag State to fisheries protection, customs, combating drug trafficking or immigration controls.

It is for the reasons mentioned above that the Commission started to reflect on the different possibilities to enhance the current system. In its Communication of 21 March 2000 on the safety of the seaborne oil trade¹, the Commission has already tackled this problem and suggested the possibility of creating a European Maritime Safety Agency. The Commission also explained that, in its opinion, it would be somewhat unrealistic, or at least very premature, to envisage setting up an integrated European operational structure or coastguard that would take over the role of the national maritime administrations. On the contrary, the Agency should support the actions of Member States and the Commission in applying Community legislation, monitoring its implementation and evaluating the effectiveness of the measures in force. The Agency should not be empowered to take

¹ COM(2000) 142 final of 21.3.2000

decisions since it would be up to the Member States, and in particular the Commission in its capacity as executor or guardian of Community legislation, to perform the necessary follow-up.

The Commission reiterated this principle in its report for the Biarritz European Council on the Community's strategy for safety at sea². In this document it is stated that, in order to help the Commission ensure that the efficient, harmonious implementation of the existing rules is monitored and checked within the European Union, the Commission is contemplating the creation of a specific structure which might take the form of a European Agency for Maritime Safety.

By means of the present Regulation, the Commission proposes the establishment of a European Maritime Safety Agency. The text of the proposal is the result of a long period of analysis and consultation during which the Commission had the possibility to clarify better what the role of the Agency might be. In addition to the primary objective of ensuring the proper implementation of existing legislation, the Commission considers that the Agency should play a major role in organising appropriate training activities on port and flag State related issues. Indeed, harmonising the training of the Member States' surveyors will help to ensure a uniform EU maritime safety system.

Furthermore, the Commission considers that the Agency can assist the Commission's services in carrying out the large number of time-consuming technical tasks imposed on it by the existing legislation. This will permit the Commission's services to concentrate on policy matters. Finally, another fundamental area of activity for the Agency is that related to the collection, recording and assessment of statistical data in the maritime safety field and on accidental or deliberate pollution at sea, the systematic exploitation of existing databases and, where appropriate, the development of supplementary databases. The data provided by the Agency will enable the Commission and the Member States to take the necessary measures to enhance safety at sea and to evaluate the effectiveness of the measures in place.

It is expected that the Agency will create a solid partnership with and between the Member States in so far as questions of general interest are concerned, that it will take full advantage of the Union's best scientific capabilities and that it will facilitate a quicker Community response and decision-making capacity. The structure of the proposed Agency respects the prerogatives of the Community institutions having the legislative power: the Agency will not interfere in this field. The Commission's prerogatives in terms of budgetary implementation and right of initiative are also respected. In addition to the work already undertaken in order to demonstrate the need for and decide in favour of creating the EMSA, the Commission will carry out, in parallel with the Institutions' discussions on this proposal, further work regarding a cost-benefit analysis.

2. THE COMMUNITY EMSA

2.1. The objective

The objective of the Regulation is to establish a European Maritime Safety Agency, with a view to ensuring a high, uniform and effective level of maritime safety and pollution prevention in the Community. The achievement of these objectives requires the creation of a specialised agency: the EU maritime community needs an efficient body that is able to provide the Member States and the Commission with the

² COM(2000) 603 final of 27.9.2000

necessary technical and scientific support and a high level of expertise to properly apply the Community legislation in the field of maritime safety, monitor its implementation and evaluate the effectiveness of the measures in place. The existing legislation has a highly technical content. Its implementation, as well as its practical monitoring, should be performed by personnel that are highly qualified in the area of maritime safety, having both a comprehensive technical knowledge and being fully familiar with European and international maritime safety and pollution prevention regulations.

2.2. The Agency

2.2.1. The tasks

The Agency will be established as part of the Community system. It will represent the technical body providing the Community with the necessary means to act effectively to enhance overall maritime safety and pollution prevention standards. The Agency shall assist the Commission in the continuous process of updating Community legislation in the field of maritime safety and shall provide the necessary support to ensure the convergent and effective implementation of such legislation throughout the Community. In particular, the Agency shall be active in helping to strengthen the overall Community Port State Control regime and in helping to monitor those classification societies recognised at Community level. A wider description of the Agency's tasks is contained in the "Comments on articles" section below.

2.2.2. Functioning

a) Management bodies

The good functioning of the Agency requires that its Executive Director be left with a high degree of independence and flexibility as to the organisation of the internal functioning of the Agency. Therefore, the Executive Director is entrusted to take all necessary steps to ensure the proper accomplishment of the working programme of the Agency and, in particular, to decide on the implementation of the inspections of the classification societies as well as on the visits to the Member States. Furthermore, the Executive Director will also be responsible for the preparation and execution of the budget and the work programme of the Agency, and for all questions related to personnel.

In order to provide the Executive Director with the necessary legitimacy, it is preferred that he is appointed by the Administrative Board on a proposal from the Commission.

An Administrative Board consisting of representatives nominated by the Commission, the Council and the European Parliament as well as industry representatives, will be in charge of all administrative issues. It will adopt the work programme of the Agency, after approval from the Commission, and its budget at the beginning of the financial year and adapt it to the contributions and fees received. The Administrative Board will also establish procedures on how the Executive Director may take decisions and will exercise disciplinary authority over the high officials of the Agency. Decisions, other than those related to staff issues, which are made by the Executive Director and by the Administrative Board will be subject to appeal by the Commission.

b) Personnel

For carrying out the tasks described above, the Agency needs to have a sufficient number of high-quality staff. The agency staff is to assist the Commission in ensuring that the Community legislation in the field of maritime safety and pollution prevention is kept up to date, as well as to ensure that it is applied in a uniform and effective manner. Qualified personnel shall also participate in the organisation of appropriate training activities for the Member States and for those States applying for accession. The number of staff the Agency might require is estimated at around 55 persons.

The personnel of the Agency will be subject to the Staff Regulations applicable to Officials of the European Communities and the Conditions of Employment of Other Servants. It is envisaged that only a small number of these will be seconded from the Community institutions on a temporary basis. The other personnel will be recruited on the basis of experience and merit. Without prejudice to the need to ensure a stable qualified staff in sufficient number, they will be hired on the basis of temporary renewable contracts so as to ensure a continuous renewal of personnel that are abreast of technological developments.

c) Budget

The Agency needs a budget allocation large enough to hire its personnel as described above, to carry out its tasks and to ensure its smooth and efficient functioning. For the first year this annual budget can be estimated at approximately € 2,625,000, increasing to approximately circa € 7,600,000 when the Agency is fully operational.

The Agency's budget will be mainly financed by a subsidy from the Community. The Agency may charge some fees for its publications or for the training activities. However, the amount of these fees will remain minor in respect of the total budget of the Agency.

The Agency must put in place an appropriate set of rules and controls. The Administrative Board will be entitled to adopt the necessary measures, but the Agency will ultimately be subject to the supervision of the Court of Auditors.

d) Language

The language regime should allow the Agency to work in an efficient and swift manner. The Administrative Board of the Agency is entrusted to take a decision on the language regime of the Agency.

e) Location

The Agency will need to be located in a convenient location that will also enable it to develop working relations with the appropriate Community institutions. Taking into account such requirements and after an evaluation of applications received, the Commission will propose to the competent authorities one or several locations. On the basis of such proposal, the competent authorities will have to define a location at the latest six months after the adoption of this Regulation.

f) Transparency

The Agency will adopt its rules regarding transparency and access to documents in compliance with the decisions of the European Parliament and the Council, in the context of Article 255 of the EC Treaty.

3. THE CHOICE OF THE LEGAL BASIS

The legal basis of the proposed Regulation is Article 80 paragraph 2, which is consistent with the objective of the proposal and with all the legislation adopted so far in the maritime field, particularly where safety and environmental protection are concerned.

4. JUSTIFICATION OF THE PROPOSED MEASURE

What are the objectives of the planned action in relation to the obligations of the Community and what is the Community dimension of the problem (for instance how many Member States are involved and what solution has been adopted until now)?

The Treaty provides for the establishment of a common transport policy. The measures envisaged to implement such a policy include measures to improve safety in maritime transport as foreseen in Article 80 (2).

To this end, the main objective of the planned action is to establish a European Maritime Safety Agency. At present, a large number of maritime safety legislative measures are in place in the Community. In order to ensure that this legislation is effective and that safety at sea and marine pollution prevention are enhanced throughout the Community, it is necessary to ensure that such legislation is applied in a uniform manner. The Agency is designed to assist in achieving this objective.

All Member States, both the coastal States and the land-locked ones, are concerned by the enhancement of maritime safety and pollution prevention standards. Indeed higher standards do not exclusively mean cleaner seas and coasts, but also safer navigation and a reduced risk of the loss of ships, cargo and human lives.

So far, all Member States have acted independently in applying the existing Community legislation, with the Commission monitoring the proper transposition of Community legislation into the national legal systems. The Community dimension of the problem requires a more uniform approach from a practical point of view.

Is the envisaged action solely the responsibility of the Community or is the responsibility shared with the Member States?

The Agency will deal with matters of Community competence since it will assist in the implementation of Community legislation.

What is the most efficient solution taking into account the resources of the Community and the Member States?

Taking into consideration the features of the Community maritime safety policy and the need to ensure its uniform application, an action at Community level is the only possible way to guarantee the same level of safety and marine pollution prevention throughout the Union.

What is the concrete added value of the action envisaged by the Community and what would be the cost of inaction?

The Agency will greatly contribute to the proper application of Community legislation across the Union, to developing and disseminating "best practices" among the Member States and to enhancing the overall Community maritime safety and pollution prevention system. This in turn will reduce the risk of maritime accidents, of marine pollution and of the loss of human lives at sea.

Furthermore, a proper and uniform implementation of the existing legislation 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.

It is very difficult to quantify the cost of inaction. Quantifying it would mean, first of all, providing an answer to the question of how many accidents the Agency will prevent. However, it can be stated that if the Agency succeeded in preventing even one major accident - such as the sinking of the ERIKA which caused damages valued at 400 million euros - it will have more than merited its cost.

What forms of actions are available to the Community? (recommendation, financial assistance, regulation, mutual recognition).

Given the objective of the measure, a Regulation is the only possible tool to achieve it. Uniformity and efficiency in the application of Community maritime safety and pollution prevention legislation would not be achieved by a less constraining legislative instrument. A Regulation is the legislative instrument generally used to establish an Agency in the Community.

Is uniform legislation necessary or would a Directive, setting the general objectives and leaving the execution to the Member States, suffice?

As stated in the previous point, the choice of type of legislation is dictated by the very objective of the measure.

5. COMMENTS ON ARTICLES

Chapter I – Objectives and tasks

Article 1

This article specifies that the need to establish a European Maritime Safety Agency is due to the fact that it is necessary to ensure a high, uniform and effective level of maritime safety and pollution prevention in the Community. Furthermore, this article clarifies that the Agency must represent a technical and scientific support for the Member States and for the Commission to properly apply Community legislation in the field of maritime safety, monitor its implementation and evaluate the effectiveness of the measures in place.

Article 2

1. This is the core article defining the tasks which the Agency has to carry out in order to fully achieve the objectives set out in the previous article.

a) The tasks of the Agency shall consist of monitoring the continuous development of international maritime safety legislation and of carrying out an in-depth analysis of research

projects carried out in the field of maritime safety and protection of the marine environment. On the basis of these two activities, or on the basis of its own expertise, the Agency shall draw the attention of the Commission to the possibility of updating Community legislation, - taking into account the need to ensure that such legislation remains effective.

b) In order to monitor the overall functioning of the Community Port State Control regime, the Agency shall carry out visits to the Member States aimed at examining the way in which Member States implement their PSC obligations. These visits will be extremely useful to develop "best practices" and later on to disseminate them throughout the Community. On the basis of the experience gained, both by the visits to the Member States and through the overall monitoring of the Community PSC regime, the Agency will suggest to the Commission possible improvements to the regime. The Agency will also put its experience at the disposal of the Commission and participate in the workings of the technical bodies of the Paris Memorandum of Understanding on Port State Control.

Ensuring a high level of performance of the classification societies recognised at Community level implies two tasks: carrying out inspections of such organisations, to monitor their fulfilment of the provisions of Council Directive 94/57/EC, and helping to continuously monitor their safety and pollution prevention performance. With both tasks, the Agency shall provide support to the Commission and the Member States.

The Agency shall assist the Commission and the Member States in ensuring the proper implementation of all the remaining Community maritime safety legislation, particularly in the fields of safety of passenger ships and marine equipment, and including Community legislation applicable to crews.

c) The availability of objective, reliable and comparable information and data on maritime safety and pollution is the key element enabling the Commission and the Member States to take the necessary steps to enhance the existing measures and to evaluate their effectiveness. A number of databases already exist in this field, others will have to be developed. The Agency shall organise a coherent work programme, including the cross fertilisation of existing databases, in order to provide the Community with the information and data mentioned above, whilst avoiding any duplication of existing activities. On the basis of the data collected, the Agency will assist the Commission in the publication, every six months, of information relating to ships that have been refused access to Community ports in application of the provisions of the Directive on Port State Control. On that basis, the Agency will also assist the Commission and the Member States in their activities to improve the identification and pursuit of ships which make unlawful discharges.

d) The Agency shall assist the Commission and the Member States in the field of the surveillance of navigation and maritime traffic. In this respect the Agency shall facilitate co-operation between the Member States and the Commission as provided for in the Community legislation on the European maritime traffic reporting system.

e) The Council of Transport Ministers of 26 June 2000 requested the Commission to consider developing, when appropriate, a European database on accidents and incidents at sea, as an important tool to prevent future accidents and for devising new initiatives based on formal safety assessments. The Agency is entrusted with this task, as well as designing a common methodology for investigating maritime accidents within the Community. On the basis of the experience gained, the Agency will offer its support to the Member States in the activities concerning the investigations related to serious maritime casualties in EU waters. Another important activity of the Agency in this field shall be that of analysing existing

accident investigation reports in order to learn how to avoid similar events in the future and to disseminate the results of its analysis.

f) The Agency has an active role in the convergent and effective implementation of Community maritime safety legislation throughout the Community. It shall organise appropriate training activities on port and flag State related issues, since training is considered to be the first element towards a harmonised Community system.

g) The Agency shall provide technical assistance for those States applying for accession with respect to their implementation of Community legislation in the field of maritime safety. In this context, the Agency shall contribute to explaining the systems in place in the Community for the implementation of the maritime safety legislation and disseminate the Community's "best practices". However, the Agency is not supposed to carry out practical activities in the States applying for accession, such as providing personnel to carry out tasks aimed at restructuring the existing maritime administrations of these countries, but shall simply provide theoretical support. Finally, the Agency shall organise appropriate training activities for these States.

2. In order to ensure that the technical and scientific knowledge of the Agency is put at the disposal of the Community, for the control of the implementation of Community legislation by Member States and whenever it is needed for activities not specifically foreseen in its work programme, the Agency is requested to carry out any specific task only at the request of the Commission. The Agency cannot be entrusted with any tasks at the request of a Member State.

Article 3

In order to achieve the objectives of the Regulation and to accomplish its tasks in the best possible way, the Agency shall carry out visits to the Member States. These visits will focus on the implementation of the Member State's Port State Control obligations but also on other aspects linked to the implementation of the Community maritime safety and pollution prevention legislation. These visits will help the Agency to understand the functioning of the maritime administrations of the Member States, to highlight possible shortcomings of the Community system as well as "best practices" implemented by the Member States. On the basis of the experience gained, the Agency will be able to suggest possible improvements to the overall system and, in a second stage, to disseminate the "best practices". The Commission will analyse the reports produced by the Agency following each visit in order to decide whether any follow-up measures are necessary.

Article 4

Since the Agency is entrusted to develop and exploit databases and since certain data may be of a personal nature, it is important to specify that the information collected within the framework of the application of this Regulation by the Commission and the Agency shall be subject to Directive 95/46/EC of the Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data³.

Chapter II: Internal structure and functioning

Article 5

³ OJ L 281, 23.11.1995.

This article specifies that the Agency is an independent body of the Community. The competent authorities will have to decide its location at the latest six months after the adoption of the Regulation, on the basis of a proposal from the Commission. Furthermore, it is specified that the Agency, following a specific request from the Commission, may decide to establish regional centres in some Member States in order to carry out tasks linked to the surveillance of navigation and maritime traffic, and particularly to ensure the best traffic conditions in sensitive zones, as foreseen in the Community legislation on the European maritime traffic reporting system.

Article 6

The Staff Regulations of the Community institutions will also apply to the staff of the Agency. It is envisaged that only a small number of these will be seconded from the Community institutions on a temporary basis. The other personnel will be recruited on the basis of experience and merit from national administrations or from industry on a temporary basis.

Article 7

This provision stipulates that, like the European Communities, the Agency should also benefit from the same privileges and immunities as set out in the Protocol on the Privileges and Immunities of the European Communities.

Article 8

The regime of contractual and non-contractual liability of the Agency corresponds to the regime applicable to the Community by virtue of Article 288 of the Treaty.

Article 9

The Administrative Board of the Agency is entrusted to take a decision on the language regime of the Agency. The language regime should allow the Agency to work in an efficient and swift manner.

Article 10

This article lays down the powers of the Administrative Board, which forms part of the management bodies of the Agency. It has a supervisory function in appointing the Executive Director, in adopting the annual report, the work programme – after approval by the Commission – and in taking budgetary decisions. Moreover, it shall ensure that the Agency works with the necessary transparency and neutrality and shall adopt, therefore, procedures on how the Executive Director may take decisions.

Article 11

This provision specifies that the Administrative Board will be composed of four representatives of the Commission, four representatives of the Council, four representatives nominated by the European Parliament and four representatives from the industry nominated by the Commission.

Article 12

This article specifies that the Administrative Board will elect its Chairman and Deputy Chairman from among its members.

Article 13

This article provides for ordinary, as well as extraordinary, meetings of the Administrative Board, which must be attended by the Executive Director, and may be attended by outside observers. The Executive Director shall not have the right to vote.

Article 14

A two third majority will be required for decisions of the Administrative Board, with each member having one vote.

Article 15

This provision sets out the functions and powers of the Executive Director, who shall not accept any instructions from any government or any other organisation. However, he will have to follow up any instruction or request for assistance formulated by the Commission in relation to the tasks set out in Article 2. The Executive Director is also the manager of the Agency and is therefore responsible for the preparation and execution of the budget and of the working programme, as well as for all questions related to personnel.

Article 16

The Executive Director, together with one or more Heads of Unit, are appointed by the Administrative Board which exercises disciplinary authority on them. The appointment of the Executive Director is made for a limited, renewable period.

Article 17

Member States and natural or legal persons shall have the possibility to appeal against any act of the Agency which is of direct and individual concern to them. Therefore any act carried out by the Executive Director and by the Administrative Board may be referred to the Commission in order to examine the legality of that act.

Article 18

This article stipulates that the Agency shall be open to the participation of European countries, which have entered into agreements with the European Community whereby they have adopted and are applying the Community law in the field covered by this regulation.

Chapter III - Financial Requirements

Article 19

The Agency's budget will be mainly financed by a subsidy from the Community. Services that it provides (such as publications, training or others) may be paid for in the form of fees.

The Agency requires a sufficient budget allocation to hire its personnel, as described above, to carry out its tasks and to ensure it functions smoothly and efficiently.

The Executive-Director will establish a preliminary draft budget to be adopted by the Board and then forwarded to the Commission, which will in turn process it in accordance with standard budgetary procedures. Article 279 of the EC Treaty applies.

Article 20

This article specifies that the Executive Director will be responsible for the implementation of the budget. Financial control will be ensured by the Financial Controller of the Commission. The Court of Auditors will examine the Agency accounts and publish an annual report. The discharge of the Agency budget will be given by the Administrative Board to the Executive Director on the recommendation of the European Parliament.

Article 21

This article provides that within five years from the date the Agency has taken up its responsibilities, the Agency in collaboration with the Commission shall carry out an independent evaluation on the implementation of this Regulation. On the basis of the findings of this evaluation, the Administrative Board will issue recommendations regarding changes to this regulation, the Agency and its working practices to the Commission.

Article 22

This article specifies that, for the purpose of guiding the Agency in preparing and implementing the budget, a Financial regulation will be adopted by the Administrative Board following the agreement of the Commission and the opinion of the Court of Auditors.

Chapter IV - Final Provisions

Article 23

This article specifies that, while the Regulation enters into force according to Article 24, the Agency will only be operational 12 months later. This will provide sufficient time for its establishment.

Article 24

This article lays down the date when the Regulation enters into force.

6. FINAL CONSIDERATIONS

A financial statement is attached to this proposal. An impact assessment form has not been attached since the proposal does not affect businesses.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

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 Commission⁴,

Having regard to the opinion of the Economic and Social Committee⁵,

Having regard to the opinion of the Committee of the Regions⁶,

Acting in accordance with the procedure referred to in Article 251 of the Treaty⁷,

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 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.

⁴ OJ C, , p. .

⁵ OJ C, , p. .

⁶ OJ C, , p. .

⁷ OJ C, , p. .

- (3) In general terms, the Agency shall represent the technical body providing the Community with the necessary means to act effectively to enhance overall maritime safety and pollution prevention -rules. The Agency shall assist the Commission in the continuous process of updating Community legislation in the field of maritime safety and shall provide the necessary support to ensure the convergent and effective implementation of such legislation throughout the Community. In particular, the Agency shall be active in helping to strengthen the overall Community Port State Control regime and in helping to monitor those classification societies recognised at Community level.
- (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 pollution prevention in the Community waters. The Agency shall organise appropriate training activities on Port State Control and Flag State related issues. It shall provide the Commission and the Member States with objective, reliable and comparable information and data on maritime safety and on pollution prevention to enable them to take any necessary initiatives to enhance the measures in place and to evaluate their effectiveness. It shall facilitate co-operation between the Member States and the Commission as provided for in the Community legislation on the European maritime traffic reporting system. It shall co-operate with the Commission and the Member States in the activities concerning the investigations related to serious maritime accidents in EU waters. It shall put the Community maritime safety know-how at the disposal of the States applying for accession and will be open to their participation.
- (5) The Agency will favour the establishment of better co-operation between the Member States and will develop and disseminate best practices in the Community. This in turn will 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 to properly 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 pollution prevention system.
- (7) For the contractual liability of the Agency, which is governed by the law applicable to the contract concluded by the Agency, the Court of Justice of the European Communities shall have jurisdiction to give judgement pursuant to any arbitration clause contained in the contract. The Court of Justice shall also have jurisdiction in disputes relating to compensation for any damage arising from the non-contractual liability of the Agency.
- (8) In order to effectively control the functions of the Agency, the Member States, the Commission and the European Parliament shall be represented on an Administrative Board entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency, approve its work programme and to appoint the Executive Director.
- (9) The good functioning of the Agency requires that its Executive Director be left with a high degree of independence and flexibility as to the organisation of the internal functioning of the Agency; to this end, the Executive Director shall take all necessary steps to ensure the proper accomplishment of the working programme of the Agency, shall prepare each year a draft general report to be submitted to the

Administrative Board, shall draw up estimates of the revenues and expenditure of the Agency and shall implement the budget.

- (10) 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.

HAVE ADOPTED THIS REGULATION:

CHAPTER I: OBJECTIVES AND TASKS

Article 1

Aims

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 and pollution prevention 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 Community legislation in the field of maritime safety properly, to monitor its implementation and to evaluate the effectiveness of the measures in place.

Article 2

Tasks

1. 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 in the process of updating Community legislation in the field of maritime safety, 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 the protection of the marine environment.
 - b) It shall assist the Commission in the effective implementation of Community legislation on maritime safety throughout the Community. In particular, the Agency shall:
 - 1) monitor the overall functioning of the Community port State control regime, including visits to the Member States, and suggest to the Commission any possible improvements in that field;
 - 2) 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;
 - 3) assist the Commission in the following areas:

- the performance of inspections of the classification societies which are recognised, or are due to be recognised, at Community level on the basis of Council Directive 94/57/EC;
 - without prejudice to Directive 94/57/EC, the continuous monitoring of safety and pollution prevention performance by the classification societies which are recognised, or are due to be recognised, on the basis of Council Directive 94/57/EC;
 - the continuous monitoring of the proper implementation of Community legislation on the safety of passenger ships, in particular Council Directives 98/18/EC and 99/35/EC;
 - the continuous monitoring of the proper implementation of Council Directive 96/98/EC on marine equipment;
 - the performance of any other task assigned to the Commission by Community legislation on maritime safety, including Community legislation applicable to ships' crews.
- c) It shall provide the Commission and the Member States with objective, reliable and comparable information and data on maritime safety to enable them to take the necessary steps to improve maritime safety 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 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 the Directive on port State control. On that basis, 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.
- d) It shall carry out tasks relating to the surveillance of navigation and maritime traffic, as laid down in Directive 2001/xx/EC on the introduction of a Community monitoring and information system for maritime traffic, in order to facilitate cooperation between the Member States and the Commission in this field.
- e) It shall develop, in cooperation with the Commission and the Member States, a common methodology for investigating maritime accidents within the Community, support the Member States in activities concerning investigations related to serious maritime accidents in waters under the sovereignty of the Member States, and carry out an analysis of existing accident investigation reports.
- f) It shall organise appropriate training activities in fields which are the responsibility of the port State and flag State.
- g) It shall provide technical assistance to States applying for accession as regards the implementation of Community legislation in the field of maritime safety. That task shall include the organisation of appropriate training activities.
2. With regard to performance of the tasks referred to in paragraphs (a), (b), (d) and (g), the Agency shall only act at the request of the Commission. The Agency may

perform other specific tasks if circumstances so demand, but exclusively at the request of the Commission.

Article 3 *Visits to the Member States*

1. In order to perform the tasks entrusted to it, the Agency shall carry out visits to the Member States. The national authorities of the Member States shall facilitate the work of the Agency's staff in order to ensure that such visits proceed smoothly. The Agency's officials are entitled:
 - a) to examine files, data, reports and any other relevant documents concerning the implementation of safety at sea and the prevention of pollution at sea;
 - b) to make copies of all or part of such files, data, reports and other documents;
 - c) to ask for oral explanations on the spot;
 - d) to have access to any premises, land or means of transport.
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 exercise their powers 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.

Article 4 *Dissemination and protection of information*

1. The information collected in the framework of the application of this Regulation by the Commission and the Agency shall be subject to Directive 95/46/EC of the Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁸.
2. The officials and other servants of the Agency shall be required, even after their duties have ceased, not to disclose any information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

CHAPTER II: INTERNAL STRUCTURE AND FUNCTIONING

Article 5 *Legal status, location, regional centres*

1. The Agency shall be a body of the Community. It shall have legal personality.

⁸ OJ L 281, 23.11.1995.

2. The location of the Agency shall be decided by the competent authorities, at the latest six months after the adoption of this Regulation, on a proposal from the Commission.
3. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. At the request of the Commission, the Agency 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 2001/xx/EC on the introduction of a Community monitoring and information system for maritime traffic.
4. The Agency shall be represented by its Executive Director.

Article 6 *Staff*

1. The Agency's staff shall be subject to the rules and regulations applicable to officials and other servants of the European Communities. The Administrative Board, in agreement with the Commission, shall adopt the necessary detailed rules of application.
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 Community officials seconded by the institutions and assigned to the Agency as temporary staff and other servants recruited by the Agency.

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 of the European Communities shall have jurisdiction to give judgement 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 Agency's language regime shall be agreed by the Administrative Board.
2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre of the Bodies of the Union.

Article 10
Creation and powers of the Administrative Board

1. The Agency shall have an Administrative Board.
2. The Administrative Board shall:
 - a) appoint the Executive Director in application of Article 16;
 - b) adopt, before 31 March each year, the general report of the Agency for the previous year and forward it to the Commission, the Council and the European Parliament;
 - c) adopt, before 30 October each year, and after approval by the Commission, the work programme of the Agency for the coming year and forward it to the Commission, the Council and the European Parliament;
 - d) 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;
 - e) establish procedures for decision-making by the Executive Director;
 - f) perform its duties in relation to the Agency's budget pursuant to Articles 19, 20 and 22;
 - g) exercise disciplinary authority over the Executive Director and the Heads of Unit referred to in Article 15(3).

Article 11
Composition of the Administrative Board

The Administrative Board shall be composed of four representatives of the Commission, four representatives of the Council, four representatives of the European Parliament and four representatives of the professional sectors most concerned nominated by the Commission, and their alternates. The duration of the term of office shall be five years. The term of office may be renewed once.

Article 12
Chairmanship of the Administrative Board

1. The Administrative Board shall elect a Chairman and a Deputy Chairman from among its members. The Deputy Chairman shall automatically take the place of the Chairman if he is prevented from attending to his duties.
2. The terms of office of the Chairman and Deputy Chairman 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 Chairman.
2. The Executive Director of the Agency shall take part in the deliberations. He shall not have the right to vote.
3. The Administrative Board shall hold an ordinary meeting once a year. In addition, it shall meet on the initiative of the Chairman or at the request of the Commission or of one-third of the Member States.
4. The Administrative Board may invite observers to attend its meetings.

Article 14
Voting

1. The Administrative Board shall take its decisions by a two-thirds majority.
2. Each member shall have one vote.

Article 15
Duties and powers of the Executive Director

1. The Agency shall be managed by its Executive Director, who shall neither seek nor take instructions from any Government or from any other body. However, he must carry out any instruction or request for assistance from the Commission relating to the tasks set out in Article 2.
2. The Executive Director shall have the following duties and powers:
 - a) The Executive Director shall prepare the work programme and submit it to the Administrative Board after having received the approval of the Commission. He shall take the necessary steps for its implementation. He shall respond to any requests for assistance from the Commission.
 - b) The Executive Director shall decide to carry out the visits provided for in Article 3, following the prior agreement of the Commission.
 - c) The Executive Director 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) The Executive Director 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 shall establish regular evaluation procedures that meet recognised professional standards.
 - e) The Executive Director shall exercise in respect of the staff the powers laid down in Article 6(2).
 - f) The Executive Director shall draw up estimates of the Agency's revenue and expenditure, in accordance with Article 19, and shall implement the budget pursuant to Article 20.
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 *Internal appointment*

1. The Executive Director of the Agency shall be appointed by the Administrative Board on a proposal from the Commission. Power to dismiss the Executive Director shall lie with the Administrative Board, acting on a proposal from the Commission.
2. The term of office of the Executive Director shall be five years. This term of office is renewable once.

Article 17 *Verification of lawfulness*

1. Any Member State, any member of the Administrative Board and any third party directly and individually concerned may refer any act undertaken by the Agency to the Commission in order to have its lawfulness verified. Referral to the Commission shall be made within a period of fifteen days starting on the day on which the contested act came to the knowledge of the person concerned. The Commission shall take a decision within a period of one month. The failure of the Commission to take a decision within that period shall mean that the appeal has been turned down.
2. The provisions of paragraph 1 above shall not apply to staff matters.

Article 18 *Participation of third countries*

1. The Agency shall be open to the participation of European countries, which have entered into agreements with the European Community whereby they have adopted and are applying the Community law in the field covered by this Regulation.

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 19

Budget

1. The Agency's revenues shall consist of:
 - a contribution from the Community;
 - charges for publications, training and/or any other services provided by the Agency.
2. The Agency's expenditure shall include staff, administrative, infrastructure and operational expenses.
3. The Executive Director shall draw up an estimate of the Agency's revenues and expenditure for the following financial year and shall forward it to the Administrative Board together with an establishment plan.
4. Revenue and expenditure shall be in balance.
5. The Administrative Board shall, by 31 March at the latest, adopt the draft budget and forward it to the Commission, which on that basis shall enter the relevant estimates in the preliminary draft general budget of the European Communities which it puts before the Council and the European Parliament in accordance with Article 272 of the Treaty.
6. The Administrative Board shall adopt the Agency's budget, adjusting it where necessary to the Community subsidy.

Article 20

Implementation and control of the budget

1. The Executive Director shall implement the Agency's budget.
2. Control of commitment, payment of all expenditure and control of the existence and recovery of all Agency revenue shall be carried out by the Financial Controller of the Commission.
3. By 31 March each year at the latest, the Executive Director shall submit to the Commission, the Administrative Board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous year.

The Court of Auditors shall examine these accounts in accordance with Article 248 of the Treaty. They shall publish a report on the Agency's activities each year.

4. The European Parliament shall, on a recommendation from the Administrative Board, give a discharge to the Executive Director of the Agency in respect of the implementation of the budget.

Article 21
Evaluation

1. Within five years from the date of the Agency having taken up its responsibilities, the Agency in collaboration with the Commission shall carry out an independent evaluation on the implementation of this Regulation.
2. The evaluation will assess the impact this Regulation, the Agency and its working practices will have had in establishing a high level of maritime safety. The Administrative Board issues specific terms of reference in agreement with the Commission.
3. The Administrative Board shall receive the evaluation findings 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 made public.

Article 22
Financial provisions

The Administrative Board, after receiving the agreement of the Commission and the opinion of the Court of Auditors, shall adopt the Agency's Financial Regulation, which shall in particular specify the procedure to be used for drawing up and implementing the Agency's budget, in accordance with Article 142 of the Financial Regulation applicable to the general budget of the European Union.

CHAPTER IV: FINAL PROVISIONS

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 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.