Amended proposal for a Regulation of the European Parliament and of the Council establishing a European Maritime Safety and Ship Pollution Prevention Agency (1)

(2002/C 103 E/11)

(Text with EEA relevance)

COM(2001) 676 final — 2000/0327(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 13 December 2001)


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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,

Having regard to the opinion of the Economic and Social Committee (1),

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

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

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.

(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 and Ship Pollution Prevention Agency.

(1) OJ C 221, 7.8.2001, p. 54.
(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 and the Commission 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) 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.

(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.

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.

1. This Regulation establishes a European Maritime Safety and Ship Pollution Prevention Agency (the ‘Agency’) for the purpose of ensuring a high, uniform and effective level of maritime safety and pollution prevention from ships within the Community.

Unchanged
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/.../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 data (1).

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.

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/.../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, 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.

The Administrative Board shall be composed of one representative of each Member State, four representatives of the Commission, 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.

Representatives shall be appointed on the basis of their degree of relevant experience and expertise in the field of maritime safety.

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. The terms of office shall be renewable once.

2. The terms of office of the Chairman and Deputy Chairman shall be five years. 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.

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 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, and forward 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.

7. After the adoption of the general Budget by the budgetary authority, the Administrative Board shall adopt the Agency's final budget and work programme, adjusting them where necessary to the Community subsidy. It shall forward them without delay to the Commission and to the budgetary authority.

8. The establishment plan shall be authorised by the Budget of the Union.

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. It 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**

**Combating fraud**

1. In order to combat fraud and other unlawful activities, the provisions of 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) (1) shall apply without restriction.

2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-Fraud Office (OLAF) (2) and shall issue, without delay, the appropriate provisions applicable to all the employees of the Agency.

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.

**Article 21**

**Evaluation**

1. Within five years from the date of the Agency having taken up its responsibilities, the Agency shall 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**

**Evaluation**

1. Within five years from the date of the Agency having taken up its responsibilities, the Agency 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.

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. The evaluation shall take into account the views of interested parties, both at Community and national level. It shall be carried out following consultation of the parties involved.

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, which shall forward them to the Council and the European Parliament. An action plan with a timetable shall be included if appropriate. Both the evaluation findings and recommendations shall be made public.

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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

Start of the Agency's activities

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

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.