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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:

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► <u>M1</u>	Regulation (EC) No 1644/2003 of the European Parliament and of the Council of 22 July 2003	L 245	10	29.9.2003
► <u>M2</u>	Regulation (EC) No 724/2004 of the European Parliament and of the Council of 31 March 2004	L 129	1	29.4.2004
► <u>M3</u>	Regulation (EC) No 2038/2006 of the European Parliament and of the Council of 18 December 2006	L 394	1	30.12.2006
► <u>M4</u>	Regulation (EU) No 100/2013 of the European Parliament and of the Council of 15 January 2013	L 39	30	9.2.2013



**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 ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

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

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').

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

⁽²⁾ OJ C 221, 7.8.2001, p. 64.

⁽³⁾ OJ C 357, 14.12.2001, p. 1.

⁽⁴⁾ 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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- (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.
- (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 ⁽¹⁾, 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.

⁽¹⁾ See page 10 of this Official Journal.

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- (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, 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.

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- (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) ⁽¹⁾ 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) ⁽²⁾.
- (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:

CHAPTER I

OBJECTIVES AND TASKS**▼M4***Article 1***Objectives**

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, prevention of, and response to, pollution caused by ships as well as response to marine pollution caused by oil and gas installations.

2. To that end, the Agency shall cooperate with the Member States and the Commission and provide them with technical, operational and scientific assistance in the fields mentioned in paragraph 1 of this Article within the limits of the core tasks set out in Article 2 and, as and when applicable, the ancillary tasks set out in Article 2a, in particular in order to help the Member States and the Commission to apply the relevant legal acts of the Union properly. As regards the field of response to pollution, the Agency shall provide operational assistance only upon the request of the affected State(s).

⁽¹⁾ OJ L 136, 31.5.1999, p. 1.

⁽²⁾ OJ L 136, 31.5.1999, p. 15.

▼ **M4**

3. By providing the assistance referred to in paragraph 2, the Agency shall, where appropriate, contribute to the overall efficiency of maritime traffic and maritime transport as set out in this Regulation, so as to facilitate the establishment of a European Maritime Transport Space without Barriers.

*Article 2***Core tasks of the Agency**

1. In order to ensure that the objectives set out in Article 1 are met in the appropriate manner, the Agency shall perform the core tasks listed in this Article.

2. The Agency shall assist the Commission:

- (a) in the preparatory work for updating and developing relevant legal acts of the Union, in particular in line with the development of international legislation;
- (b) in the effective implementation of relevant binding legal acts of the Union, in particular by carrying-out visits and inspections as referred to in Article 3 of this Regulation and by providing technical assistance to the Commission 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 ⁽¹⁾. In this regard, it may address suggestions to the Commission for any possible improvements of those binding legal acts;
- (c) in the analysis of ongoing and completed research projects relevant to the objectives of the Agency; this may include the identification of possible follow-up measures resulting from specific research projects;
- (d) in the performance of any other task assigned to the Commission in legislative acts of the Union regarding the objectives of the Agency.

3. The Agency shall work with the Member States to:

- (a) organise, where appropriate, relevant training activities in fields which are the responsibility of the Member States;
- (b) develop technical solutions, including the provision of relevant operational services, and provide technical assistance, to the building up of the necessary national capacity for the implementation of relevant legal acts of the Union;
- (c) provide, at the request of a Member State, appropriate information resulting from the inspections referred to in Article 3 in order to support the monitoring of the recognised organisations that carry out certification tasks on behalf of the Member States in accordance with Article 9 of Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations ⁽²⁾ without prejudice to the rights and obligations of the flag State;

⁽¹⁾ OJ L 129, 29.4.2004, p. 6.

⁽²⁾ OJ L 131, 28.5.2009, p 47.

▼M4

- (d) support with additional means in a cost efficient way pollution response actions in case of pollution caused by ships as well as marine pollution caused by oil and gas installations, when a request has been presented by the affected Member State under the authority of which the cleaning operations are conducted, without prejudice to the responsibility of coastal States to have appropriate pollution response mechanisms in place while respecting existing cooperation between Member States in this field. As appropriate, requests for mobilisation of anti-pollution actions shall be relayed through the EU Civil Protection Mechanism established by Council Decision 2007/779/EC, Euratom ⁽¹⁾.

4. The Agency shall facilitate cooperation between the Member States and the Commission:

- (a) in the field of traffic monitoring covered by Directive 2002/59/EC, the Agency shall in particular promote cooperation between riparian States in the shipping areas concerned, as well as develop and operate the European Union Long-Range Identification and Tracking of Ships European Data Centre and the Union Maritime Information and Exchange System (SafeSeaNet) as referred to in Articles 6b and 22a of that Directive as well as the International Long-Range Identification and Tracking information data exchange system in accordance with the commitment made in the International Maritime Organisation ('IMO');
- (b) by providing, upon request and without prejudice to national and Union law, relevant vessel positioning and Earth observation data to the competent national authorities and relevant Union bodies within their mandate in order to facilitate measures against threats of piracy and of intentional unlawful acts as provided for in applicable Union law or under internationally agreed legal instruments in the area of maritime transport, subject to applicable data protection rules and in accordance with administrative procedures to be established by the Administrative Board or the High Level Steering Group established in accordance with Directive 2002/59/EC, as appropriate. The provision of long-range identification and tracking of ships data shall be subject to the consent of the flag State concerned;
- (c) in the field of the investigation of marine casualties and incidents in accordance with Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector ⁽²⁾; the Agency shall, if requested by the relevant Member States and assuming that no conflict of interest arises, provide operational support to these Member States concerning investigations related to serious or very serious casualties and it shall carry out analysis of safety investigation reports with a view to identify added value at Union level in terms of any relevant lessons to be drawn. On the basis of data provided by the Member States, in accordance with Article 17 of that Directive, the Agency shall compile a yearly overview of marine casualties and incidents;

⁽¹⁾ OJ L 314, 1.12.2007, p. 9.

⁽²⁾ OJ L 131, 28.5.2009, p. 114.

▼ **M4**

- (d) in providing objective, reliable and comparable statistics, information and data, to enable the Commission and the Member States to take the necessary steps to improve their actions and to evaluate the effectiveness and cost-efficiency of existing measures. Such tasks shall include the collection, recording and evaluation of technical data, 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 of information relating to ships pursuant to Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control ⁽¹⁾;
- (e) in gathering and analysing data on seafarers provided and used in accordance with Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers ⁽²⁾;
- (f) in improving the identification and pursuit of ships making unlawful discharges in accordance with Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements ⁽³⁾;
- (g) regarding marine oil pollution caused by oil and gas installations, by using the European Satellite Oil Monitoring Service (CleanSeaNet) to monitor the extent and environmental impact of such pollution;
- (h) in providing technical assistance necessary for the Member States and the Commission to contribute to the relevant work of the technical bodies of the IMO, the International Labour Organisation as far as shipping is concerned, and the Paris Memorandum of Understanding on Port State Control ('Paris MoU') and relevant regional organisations to which the Union has acceded, with regard to matters of Union competence;
- (i) with regard to the implementation of Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States ⁽⁴⁾, in particular by facilitating the electronic transmission of data through SafeSeaNet and by supporting the development of the single window.

5. The Agency may, upon the request of the Commission, provide technical assistance, including the organisation of relevant training activities, as regards relevant legal acts of the Union, to States applying for accession to the Union, and, where applicable, to European Neighbourhood partner countries and to countries taking part in the Paris MoU.

⁽¹⁾ OJ L 131, 28.5.2009, p. 57.

⁽²⁾ OJ L 323, 3.12.2008, p. 33.

⁽³⁾ OJ L 255, 30.9.2005, p. 11.

⁽⁴⁾ OJ L 283, 29.10.2010, p. 1.

▼ **M4**

The Agency may also provide assistance in case of pollution caused by ships as well as marine pollution caused by oil and gas installations affecting those third countries sharing a regional sea basin with the Union, in line with the EU Civil Protection Mechanism established by Decision 2007/779/EC, Euratom, and by analogy with the conditions applicable to Member States as referred to in paragraph (3)(d) of this Article. These tasks shall be coordinated with the existing regional cooperation arrangements related to marine pollution.

*Article 2a***Ancillary tasks of the Agency**

1. Without prejudice to the core tasks referred to in Article 2, the Agency shall assist the Commission and the Member States, as appropriate, in the development and implementation of the Union activities set out in paragraphs 2 and 3 of this Article related to the Agency's objectives, in so far as the Agency has established and recognised expertise and tools. The ancillary tasks set out in this Article shall:

- (a) create substantiated added value;
- (b) avoid duplication of efforts;
- (c) be in the interest of the Union maritime transport policy;
- (d) not be detrimental to the Agency's core tasks; and
- (e) not infringe upon Member States' rights and obligations, in particular as flag States, port States and coastal States.

2. The Agency shall assist the Commission:

- (a) in the context of the implementation of Directive 2008/56/EC of the European Parliament and of the Council (Marine Strategy Framework Directive)⁽¹⁾, by contributing to the objective of achieving good environmental status of marine waters with its shipping-related elements and in exploiting the results of existing tools such as SafeSeaNet and CleanSeaNet;
- (b) providing technical assistance in relation to greenhouse gas emissions from ships, in particular in following up ongoing international developments;
- (c) as concerns the Global Monitoring for Environment and Security programme (GMES), in promoting the use of GMES data and services for maritime purposes, within the GMES governance framework;
- (d) in the development of a Common Information Sharing Environment for the EU maritime domain;
- (e) with respect to mobile offshore oil and gas installations, in examining IMO requirements and in gathering basic information on potential threats to maritime transport and the marine environment;

⁽¹⁾ OJ L 164, 25.6.2008, p. 19.

▼ **M4**

- (f) by providing relevant information with regard to classification societies for inland waterway vessels in accordance with Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels⁽¹⁾. This information shall also be part of the reports referred to in Article 3(4) and (5) of this Regulation.
3. The Agency shall assist the Commission and the Member States:
- (a) in the examination of the feasibility and the implementation of policies and projects supporting the establishment of the European Maritime Transport Space without Barriers, such as the Blue Belt concept and e-Maritime, as well as Motorways of the Sea. This shall be done in particular by exploring additional functionalities to SafeSeaNet, without prejudice to the role of the High Level Steering Group established in accordance with Directive 2002/59/EC;
- (b) by exploring with competent authorities for the River Information Services System the possibility of sharing information between this system and maritime transport information systems on the basis of the report provided for in Article 15 of Directive 2010/65/EU;
- (c) by facilitating voluntary exchange of best practices in maritime training and education in the Union and by providing information on Union exchange programmes relevant to maritime training while fully respecting Article 166 of the Treaty on the Functioning of the European Union (TFEU).

*Article 3***Visits to Member States and inspections**

1. In order to perform the tasks entrusted to it and to assist the Commission in fulfilling its duties under the TFEU, and in particular the assessment of the effective implementation of relevant Union law, the Agency shall carry out visits to Member States in accordance with the methodology established by the Administrative Board.
2. The Agency shall inform the Member State concerned in good time of the planned visit, the names of the authorised officials, and the date on which the visit starts and its expected duration. The Agency officials delegated to carry out such visits shall do so on presentation of a decision in writing from the Executive Director of the Agency specifying the purpose and the aims of their mission.
3. The Agency shall carry out inspections on behalf of the Commission as required by binding legal acts of the Union regarding organisations recognised by the Union in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations⁽²⁾, and regarding the training and certification of seafarers in third countries in accordance with Directive 2008/106/EC.

⁽¹⁾ OJ L 389, 30.12.2006, p. 1.

⁽²⁾ OJ L 131, 28.5.2009, p. 11.

▼ M4

4. At the end of each visit or inspection, the Agency shall draw up a report and send it to the Commission and to the Member State concerned.

5. Where appropriate, and in any case when a cycle of visits or inspections is concluded, the Agency shall analyse reports from that cycle with a view to identifying horizontal findings and general conclusions on the effectiveness and cost-efficiency of the measures in place. The Agency shall present this analysis to the Commission for further discussion with Member States in order to draw any relevant lessons and facilitate the dissemination of good working practices.

▼ B*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⁽¹⁾ shall apply to documents held by the Agency.

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

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3. The Administrative Board shall adopt the practical arrangements for the application of paragraphs 1 and 2, including, where appropriate, arrangements regarding consultation with Member States before the publication of information.

4. The information collected and processed 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⁽²⁾ and the Agency shall take the necessary measures to ensure the safe handling and processing of confidential information.

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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.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

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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.

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3. At the request of the Commission, the Administrative Board may decide, with the agreement of and in cooperation with the Member States concerned and with due regard to budgetary implications, including any contribution the Member States concerned may provide, to establish the regional centres necessary in order to carry out, in the most efficient and effective way, some of the Agency's tasks. When taking such a decision, the Administrative Board shall define the precise scope of activities of the regional centre while avoiding unnecessary financial costs and enhancing cooperation with existing regional and national networks.

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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.
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.

▼B*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 ⁽¹⁾ 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;

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

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

- (c) examine and approve, in the framework of the preparation of the work programme, requests for assistance to the Commission, as referred to in Article 2(2)(d), requests from Member States for technical assistance, as referred to in Article 2(3), and requests for technical assistance, as referred to in Article 2(5) as well as requests for assistance as referred to in Article 2a;

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

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- (ca) examine and adopt a multiannual strategy for the Agency for a period of five years taking the written opinion of the Commission into account;
- (cb) examine and adopt the multiannual staff policy plan of the Agency;
- (cc) consider draft administrative arrangements, as referred to in Article 15(2)(ba);

▼ 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;

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- (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;

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- (g) establish the methodology for the visits to be carried out pursuant to Article 3. In the event that the Commission expresses, within 15 days from the date of adoption of the methodology, its disagreement, the Administrative Board shall re-examine and adopt it, possibly amended, in second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States;
- (h) perform its duties in relation to the Agency's budget pursuant to Articles 18, 19 and 21 and monitor and ensure adequate follow-up to the findings and recommendations stemming from various audit reports and evaluations, whether internal or external;
- (i) exercise disciplinary authority over the Executive Director and the Heads of Department referred to in Article 16;

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- (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;

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- (l) review the financial execution of the detailed plan referred to in point (k) of this paragraph 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 multi-annual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships ⁽¹⁾;
- (m) appoint an observer from amongst its members to follow the selection procedure by the Commission for the appointment of the Executive Director.

▼ 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.

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Administrative Board members shall be appointed on the basis of their degree of relevant experience and expertise in the fields referred to in Article 1. The Member States and the Commission shall each strive for a balanced representation between men and women on the Administrative Board.

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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.

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3. The duration of the term of office shall be four years. The term of office may be renewed.

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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.

⁽¹⁾ OJ L 394, 30.12.2006, p. 1.

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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.

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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 concerned. Detailed rules for the application of this provision shall be laid down in the rules of procedure.

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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.

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:

▼ M4

- (a) he/she shall prepare the multiannual strategy of the Agency and submit it to the Administrative Board after consultation of the Commission at least eight weeks before the relevant Administrative Board meeting, taking into account views and suggestions made by members of the Administrative Board;

▼ M4

- (aa) he/she shall prepare the multiannual staff policy plan of the Agency and submit it to the Administrative Board after consultation of the Commission at least four weeks before the relevant Administrative Board meeting;
- (ab) he/she shall prepare the annual work programme, with an indication of the expected human and financial resources allocated to each activity, 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 at least eight weeks before the relevant Board meeting, taking into account views and suggestions made by members of the Administrative Board. He/she shall take the necessary steps for their implementation. He/she shall respond to any requests for assistance from a Member State in accordance with Article 10(2)(c);
- (b) he/she shall decide to carry out the visits and inspections provided for in Article 3, after consultation of the Commission and following the methodology for visits established by the Administrative Board in accordance with Article 10(2)(g);
- (ba) he/she may enter into administrative arrangements with other bodies working in the Agency's fields of activities provided that the draft arrangement has been submitted for consultation to the Administrative Board and provided that the Administrative Board does not object within four weeks;

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- (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;

▼ M4

- (d) he/she shall organise an effective monitoring system in order to be able to compare the Agency's achievements with its objectives and tasks as laid down in this Regulation. To this end, he/she shall establish, in agreement with the Commission and the Administrative Board, tailored performance indicators allowing for an effective assessment of the results achieved. He/she shall ensure that the Agency's organisational structure will be regularly adapted to the evolving needs within the available financial and human resources. On this basis the Executive Director shall prepare a draft general report each year and submit it for consideration by the Administrative Board. The report shall include a dedicated section 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. He/she shall establish regular evaluation procedures that meet recognised professional standards;

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- (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.

▼M4

3. The Executive Director shall, as appropriate, report to the European Parliament and the Council on the carrying out of his/her tasks.

In particular, he/she shall present the state of play with regard to the preparation of the multiannual strategy and the annual work programme.

*Article 16***Appointment and dismissal of the Executive Director and the Heads of Department**

1. The Executive Director shall be appointed and dismissed by the Administrative Board. The appointment shall be made for a period of five years on grounds of merit and documented administrative and managerial competence, as well as documented experience in the fields referred to in Article 1 after hearing the opinion of the observer as referred to in Article 10. The Executive Director shall be appointed from a list of at least three candidates proposed by the Commission after an open competition, following publication of the post in the *Official Journal of the European Union*, and elsewhere, of a call for expression of interest. The candidate selected by the Administrative Board may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members. The Administrative Board shall deliberate on dismissal at the request of the Commission or of one third of its members. The Administrative Board shall take its decisions on appointment or dismissal by a four-fifths majority of all members with the right to vote.

2. The Administrative Board, acting on a proposal from the Commission, taking into account the evaluation report may extend once the term of office of the Executive Director for not more than four years. The Administrative Board shall take its decision by a four-fifths majority of all members with the right to vote. The Administrative Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within a month before the extension of his/her term of office, the Executive Director may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members. If the term of office is not extended, the Executive Director shall remain in office until the appointment of his/her successor.

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

4. The Heads of Department shall be appointed on grounds of merit and documented administrative and managerial skills, as well as professional competence and experience in the fields referred to in Article 1. The Heads of Department shall be appointed or dismissed by the Executive Director after having received a positive opinion of the Administrative Board.

▼ B*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;

▼ M4

- (c) fees and charges for publications, training and/or any other services provided by the Agency.

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

▼ M4

3. The Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following year, on the basis of activity-based budgeting, 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.

▼ M4

7. The statement of estimates shall be forwarded by the Commission to the European Parliament and the Council (the 'budgetary authority') together with the draft general budget of the European Union.

8. On the basis of the statement of estimates, the Commission shall enter in the 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 314 TFEU, together with a description of and justification for any difference between the Agency's statement of estimates and the subsidy to be charged to the general budget.

▼ M1

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.

▼ M4

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, together with the annual work programme.

▼ M1

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.

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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.
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 ⁽¹⁾ unless such a departure is specifically required for the Agency's operation and the Commission has given its prior consent.

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CHAPTER IV

FINAL PROVISIONS▼ **M4***Article 22***Evaluation**

1. At regular intervals and at least every five years, 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.

2. The evaluation shall assess the impact of this Regulation as well as the utility, relevance, achieved added value and effectiveness of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level. It shall, in particular, address the possible need to modify the Agency's tasks. The Administrative Board shall issue specific terms of reference in agreement with the Commission, following consultations with the parties involved.

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 to the Council and shall be made public. An action plan with a timetable shall be included, if appropriate.

*Article 22a***Progress report**

By 2 March 2018, and taking into account the evaluation report referred to in Article 22, the Commission shall submit a report to the European Parliament and the Council setting out how the Agency has undertaken the additional responsibilities assigned by this Regulation with a view to identifying further efficiency gains and, if necessary, the case for modifying its objectives and tasks.

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

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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.