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**COUNCIL REGULATION (EC) No 768/2005**

**of 26 April 2005**

**establishing a ► M2 European Fisheries Control Agency ◀ and amending Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy**

(OJ L 128, 21.5.2005, p. 1)

Amended by:

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► <b><u>M1</u></b>	Council Regulation (EC) No 1224/2009 of 20 November 2009	L 343	1	22.12.2009
► <b><u>M2</u></b>	Regulation (EU) 2016/1626 of the European Parliament and of the Council of 14 September 2016	L 251	80	16.9.2016

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## CHAPTER I

**OBJECTIVE, SCOPE AND DEFINITIONS***Article 1***Objective**

This Regulation establishes a ►M2 European Fisheries Control Agency ◀ ('the Agency'), the objective of which is to organise operational coordination of fisheries control and inspection activities by the Member States and to assist them to cooperate so as to comply with the rules of the Common Fisheries Policy in order to ensure its effective and uniform application.

*Article 2***Definitions**

For the purpose of this Regulation the following definitions shall apply:

- (a) 'control and inspection' means any measures taken by Member States, in particular pursuant to Articles 23, 24 and 28 of Regulation (EC) No 2371/2002, to control and inspect fishing activities within the scope of the common fisheries policy including surveillance and monitoring activities such as satellite-based vessel monitoring systems and observer schemes;
- (b) 'means of control and inspection' means surveillance vessels, aircraft, vehicles and other material resources as well as inspectors, observers and other human resources used by Member States for control and inspection;
- (c) 'joint deployment plan' means a plan setting out operational arrangements for the deployment of available means of control and inspection;
- (d) 'international control and inspection programme' means a programme that sets objectives, common priorities and procedures for control and inspection activities to implement international obligations of the Community relating to control and inspection;
- (e) 'specific control and inspection programme' means a programme that sets objectives, common priorities and procedures for control and inspection activities established in accordance with Article 34 c of Regulation (EEC) No 2847/93;
- (f) 'fishery' means the fishing activities exploiting certain stocks as defined by the Council in particular pursuant to Articles 5 and 6 of Regulation (EC) No 2371/2002;

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- (g) ‘Community inspectors’ means the inspectors included on the list referred to in Article 28(4) of Regulation (EC) No 2371/2002.

## CHAPTER II

## MISSION AND TASKS OF THE AGENCY

*Article 3***Mission**

The mission of the Agency shall be:

- (a) to coordinate control and inspection by Member States relating to the control and inspection obligations of the Community;
- (b) to coordinate the deployment of the national means of control and inspection pooled by the Member States concerned in accordance with this Regulation;
- (c) to assist Member States in reporting information on fishing activities and control and inspection activities to the Commission and third parties;
- (d) in the field of its competences, to assist Member States to fulfil their tasks and obligations under the rules of the common fisheries policy;
- (e) to assist Member States and the Commission in harmonising the application of the common fisheries policy throughout the Community;
- (f) to contribute to the work of Member States and the Commission on research into and development of control and inspection techniques;
- (g) to contribute to the coordination of inspector training and the exchange of experience between Member States;
- (h) to coordinate the operations to combat illegal, unreported and unregulated fishing in conformity with Community rules;

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- (i) to assist in the uniform implementation of the control system of the common fisheries policy, including in particular:
  - organisation of operational coordination of control activities by Member States for the implementation of specific control and inspection programmes, control programmes related to illegal, unreported and unregulated (IUU) fishing and international control and inspection programmes,
  - inspections as necessary to fulfil the Agency's tasks in accordance with Article 17a;

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- (j) to cooperate with the European Border and Coast Guard Agency, established by Regulation (EU) 2016/1624 of the European Parliament and of the Council<sup>(1)</sup>, and the European Maritime Safety Agency, established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council<sup>(2)</sup>, each within its mandate, to support the national authorities carrying out coast guard functions as set out in Article 7a of this Regulation, by providing services, information, equipment and training as well as by coordinating multipurpose operations.

**▼B***Article 4***Tasks relating to the international obligations of the Community relating to control and inspection**

1. The Agency shall, at the request of the Commission:
  - (a) assist the Community and Member States in their relations with third countries and regional international fisheries organisations of which the Community is a member;
  - (b) cooperate with the competent authorities of regional international fisheries organisations regarding the control and inspection obligations of the Community in the framework of working arrangements concluded with such bodies.
2. The Agency may, at the request of the Commission, cooperate with the competent authorities of third countries in matters relating to control and inspection in the framework of agreements concluded between the Community and such countries.
3. The Agency may, within its field of competence, carry out on behalf of Member States tasks under international fisheries agreements to which the Community is a party.

*Article 5***Tasks relating to operational coordination****▼M1**

1. Operational coordination by the Agency shall cover control of all activities covered by the common fisheries policy.

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2. For the purpose of operational coordination, the Agency shall establish joint deployment plans and organise operational coordination of control and inspection by Member States in accordance with Chapter III.

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3. For the purpose of enhanced operational coordination between Member States, the Agency may establish operational plans with the Member States concerned and coordinate their implementation.

<sup>(1)</sup> Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).

<sup>(2)</sup> Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

**▼B***Article 6***Provision of contractual services to Member States**

The Agency may provide contractual services to Member States, at their request, relating to control and inspection in connection with their obligations concerning fisheries in Community and/or international waters, including the chartering, operating and staffing of control and inspection platforms and the provision of observers for joint operations by the Member States concerned.

**▼M1***Article 7***Assistance to the Commission and the Member States**

The Agency shall assist the Commission and the Member States for the purpose of ensuring a high, uniform and effective fulfilment of their obligations under the rules of the common fisheries policy including the fight against IUU fishing and in their relations with third countries. The Agency shall in particular:

- (a) establish and develop a core curriculum for the training of the instructors of the fisheries inspectorate of the Member States and provide additional training courses and seminars to those officials and other personnel involved in control and inspection activities;
- (b) establish and develop a core curriculum for the training of Community inspectors before their first deployment and provide updated additional training and seminars on a regular basis to those officials;
- (c) at the request of Member States, undertake the joint procurement of goods and services relating to control and inspection activities by Member States as well as preparation for and the coordination of the implementation by Member States of joint pilot projects;
- (d) draw up joint operational procedures in relation to joint control and inspection activities undertaken by two or more Member States;
- (e) elaborate criteria for the exchange of means of control and inspection between Member States and between Member States and third countries and for the provision of such means by the Member States;
- (f) conduct risk analysis on the basis of the fisheries data on catches, landings and fisheries effort, as well as risk analysis of unreported landings including, inter alia, a comparison of data on catches and imports with data on exports and on national consumption;
- (g) on request from the Commission or of Member States develop common inspection methodologies and procedures;
- (h) assist Member States, at their request, to comply with their Community and their international obligations including the fight against IUU fishing and those arising in the framework of regional fisheries management organisations;

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- (i) promote and coordinate the development of uniform risk management methodologies in the field of its competence;
- (j) coordinate and promote cooperation between Member States and common standards for the development of sampling plans defined in Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy <sup>(1)</sup>.

**▼ M2***Article 7a***European cooperation on coast guard functions**

1. The Agency shall, in cooperation with the European Border and Coast Guard Agency and the European Maritime Safety Agency, support national authorities carrying out coast guard functions at national and Union level and, where appropriate, at international level by:

- (a) sharing, fusing and analysing information available in ship reporting systems and other information systems hosted by or accessible to those agencies, in accordance with their respective legal bases and without prejudice to the ownership of data by Member States;
- (b) providing surveillance and communication services based on state-of-the-art technology, including space-based and ground infrastructure and sensors mounted on any kind of platform;
- (c) building capacity by drawing up guidelines and recommendations and by establishing best practices as well as by providing training and exchange of staff;
- (d) enhancing the exchange of information and cooperation on coast guard functions including by analysing operational challenges and emerging risks in the maritime domain;
- (e) sharing capacity by planning and implementing multipurpose operations and by sharing assets and other capabilities, to the extent that these activities are coordinated by those agencies and are agreed to by the competent authorities of the Member States concerned.

2. The precise forms of cooperation on coast guard functions between the Agency, the European Border and Coast Guard Agency and the European Maritime Safety Agency shall be determined in a working arrangement, in accordance with their respective mandates and the financial rules applicable to those agencies. Such an arrangement shall be approved by the Administrative Board of the Agency, the Management Board of the European Border and Coast Guard Agency and the Administrative Board of the European Maritime Safety Agency.

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<sup>(1)</sup> OJ L 343, 22.12.2009, p. 1.

**▼ M2**

3. The Commission shall, in close cooperation with the Member States, the Agency, the European Border and Coast Guard Agency and the European Maritime Safety Agency, make available a practical handbook on European cooperation on coast guard functions. That handbook shall contain guidelines, recommendations and best practices for the exchange of information. The Commission shall adopt the handbook in the form of a recommendation.

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## CHAPTER III

## OPERATIONAL COORDINATION

**▼ M1***Article 8***Implementation of Community obligations relating to control and inspection**

1. The Agency shall, at the request of the Commission, coordinate control and inspection activities by Member States on the basis of international control and inspection programmes by establishing joint deployment plans.
2. The Agency may acquire, rent or charter the equipment that is necessary for the implementation of the joint deployment plans referred to in paragraph 1.

*Article 9***Implementation of specific control and inspection programmes**

1. The Agency shall coordinate the implementation of specific control and inspection programmes established in accordance with Article 95 of Regulation (EC) No 1224/2009 through joint deployment plans.
2. The Agency may acquire, rent or charter the equipment that is necessary for the implementation of the joint deployment plans referred to in paragraph 1.

**▼ B***Article 10***Content of joint deployment plans**

Each joint deployment plan shall:

- (a) fulfil the requirements of the relevant control and inspection programme;
- (b) give effect to the criteria, benchmarks, priorities and common inspection procedures determined by the Commission in control and inspection programmes;
- (c) seek to match the existing national means of control and inspection communicated pursuant to Article 11(2) with needs and organise their deployment;
- (d) organise the use of the human and material resources, with regard to the periods and zones in which these have to be deployed, including the operation of teams of Community inspectors from more than one Member State;
- (e) take account of the existing obligations of the Member States concerned in respect of other joint deployment plans, as well as any specific regional or local constraints;

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- (f) define the conditions under which the means of control and inspection of a Member State may enter the waters under the sovereignty and jurisdiction of another Member State.

*Article 11***Notification of means of control and inspection**

1. Member States shall each year before 15 October notify the Agency of the means of control and inspection that it has available for the purpose of control and inspection in the following year.

2. Each Member State shall notify the Agency of the means with which it intends to execute the international control and inspection programme or specific control and inspection programme by which it is concerned, no later than one month from the notification to the Member States of the Decision establishing any such programme.

*Article 12***Procedure for the adoption of joint deployment plans**

1. On the basis of the notifications provided for in Article 11(2) and within three months from the receipt of such notifications, the Executive Director of the Agency shall establish a draft joint deployment plan in consultation with the Member States concerned.

2. The draft joint deployment plan shall identify the means of control and inspection which could be pooled in order to implement the control and inspection programme to which the plan relates on the basis of the interest of the Member States concerned in the relevant fishery.

The interest in a fishery of a Member State shall be assessed by reference to the following criteria whose relative weighting shall depend on the specific features of each plan:

- (a) the relative extent of the waters subject to its sovereignty or jurisdiction, if any, that are covered by the joint deployment plan;
- (b) the quantity of fish landed on its territory in a given reference period as a proportion of the total landings from the fishery that is subject to the joint deployment plan;
- (c) the relative number of Community fishing vessels flying its flag (engine power and gross tonnage) that are involved in the fishery that is subject to the joint deployment plan in relation to the total number of vessels that are involved in that fishery;
- (d) the relative size of its quota allocation or, in the absence of a quota, its catch in a given reference period in respect of that fishery.

3. If, in the course of preparing a draft joint deployment plan, it is apparent that there are insufficient means of control and inspection available to fulfil the requirements of the relevant control and inspection programme, the Executive Director shall promptly notify the Member States concerned and the Commission.



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4. The Executive Director shall notify the draft joint deployment plan to the Member States concerned and the Commission. If within fifteen working days of such notification the Member States concerned or the Commission have not raised an objection, the Executive Director shall adopt the plan.

5. If one or more of the Member States concerned or the Commission has raised an objection, the Executive Director shall refer the matter to the Commission. The Commission may make any necessary adjustments to the plan and adopt it in accordance with the procedure laid down in Article 30(2) of Regulation (EC) No 2371/2002.

6. Each joint deployment plan shall be subject to an annual review by the Agency in consultation with the Member States concerned to take account of any new control and inspection programmes to which the Member States concerned are subject and any priorities determined by the Commission in the control and inspection programmes.

*Article 13***Implementation of joint deployment plans**

1. Joint control and inspection activities shall be performed on the basis of the joint deployment plans.

2. The Member States concerned by a joint deployment plan shall:

- (a) make available those means of control and inspection that are committed for the joint deployment plan;
- (b) appoint a single national point of contact/coordinator, who shall be conferred with sufficient authority to be able to respond in a timely manner to requests from the Agency that relate to the implementation of the joint deployment plan, and notify this to the Agency;
- (c) deploy its pooled means of control and inspection in accordance with the joint deployment plan and the requirements mentioned in paragraph 4;
- (d) provide the Agency on-line access to information necessary for the implementation of the joint deployment plan;
- (e) cooperate with the Agency regarding the implementation of the joint deployment plan;
- (f) ensure that any means of control and inspection, assigned to a Community joint deployment plan carry out their activities in accordance with the rules of the common fisheries policy.

3. Without prejudice to Member States' obligations within the framework of a joint deployment plan established under Article 12, the command and control of the means of control and inspection that have been committed to a joint deployment plan shall be the responsibility of the competent national authorities in accordance with national law.

4. The Executive Director may define requirements for the implementation of a joint deployment plan adopted under Article 12. Such requirements shall remain within the limits of this plan.

**▼B***Article 14***Assessment of joint deployment plans**

The Agency shall undertake an annual assessment of the effectiveness of each joint deployment plan, as well as an analysis, on the basis of available evidence, of the existence of a risk that fishing activities are not compliant with applicable control measures. Such assessments shall be promptly communicated to the European Parliament, the Commission and the Member States.

*Article 15***Fisheries that are not subject to control and inspection programmes**

Two or more Member States may request the Agency to coordinate the deployment of their means of control and inspection in relation to a fishery or an area that is not subject to a control and inspection programme. Such coordination shall take place in accordance with control and inspection criteria and priorities agreed between the Member States concerned.

*Article 16***Information network**

1. The Commission, the Agency and the competent authorities of Member States shall exchange relevant information available to them regarding joint control and inspection activities within Community and international waters.

2. Each national competent authority shall take, in accordance with the relevant Community legislation, measures to ensure appropriate confidentiality of the information received by them under this Article in accordance with Article 37 of Regulation (EEC) No 2847/93.

*Article 17***Detailed rules**

Detailed rules for the implementation of this Chapter may be adopted in accordance with the procedure laid down in Article 30(2) of Regulation (EC) No 2371/2002.

These rules may cover in particular the procedures for the preparation and adoption of draft joint deployment plans.

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## CHAPTER IIIa

**COMPETENCES OF THE AGENCY***Article 17a***Assignment of Agency officials as Community inspectors**

Officials of the Agency may be assigned in international waters as Community inspectors in accordance with Article 79 of Regulation (EC) No 1224/2009.

**▼ M1***Article 17b***Agency measures**

The Agency shall, where appropriate:

- (a) issue manuals on harmonised standards of inspections;
- (b) develop guidance material reflecting the best practices in the field of control of the common fisheries policy, including on the training of control officials, and update this on a regular basis;
- (c) provide the Commission with the necessary technical and administrative support to carry out its tasks.

*Article 17c***Cooperation**

1. The Member States and the Commission shall cooperate with, and afford the necessary assistance to, the Agency for the accomplishment of its mission.
2. With due regard to the different legal systems in the individual Member States, the Agency shall facilitate cooperation between Member States and between them and the Commission in the development of harmonised standards for control in accordance with Community legislation and taking into account best practices in Member States and agreed international standards.

*Article 17d***Emergency unit**

1. Where the Commission, of its own initiative or at the request of at least two Member States, identifies a situation involving a direct, indirect or potential serious risk to the common fisheries policy, and the risk cannot be prevented, eliminated or reduced by existing means or cannot adequately be managed, the Agency shall be immediately notified.
2. The Agency acting upon a notification by the Commission or of its own initiative shall immediately set up an emergency unit and inform the Commission thereof.

*Article 17e***Tasks of the emergency unit**

1. The emergency unit set up by the Agency shall be responsible for collecting and evaluating all relevant information and identifying the options available to prevent, eliminate or reduce the risk to the common fisheries policy as effectively and rapidly as possible.
2. The emergency unit may request the assistance of any public authority or private person whose expertise it deems necessary to respond to the emergency effectively.
3. The Agency shall make the necessary coordination for undertaking an adequate and timely response to the emergency.

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4. The emergency unit shall, where appropriate, keep the public informed of the risks involved and the measures taken.

*Article 17f***Multiannual work programme**

1. The multiannual work programme of the Agency shall establish its overall objectives, mandate, tasks, performance indicators and the priorities for each action of the Agency over a five-year period. It shall include a presentation of the staff policy plan and an estimation of budget appropriations to be made available for the achievement of the objectives for that five-year period.

2. The multiannual work programme shall be presented according to the activity-based management system and methodology developed by the Commission. It shall be adopted by the Administrative Board.

3. The work programme referred to in Article 23(2)(c) shall refer to the multiannual work programme. It shall clearly indicate the additions, changes or deletions in comparison with the previous year's work programme, and the progress made in the achievement of the overall objectives and priorities of the multiannual work programme.

*Article 17g***Cooperation in maritime affairs**

The Agency shall contribute to the implementation of the EU Integrated Maritime Policy, and in particular conclude administrative agreements with other bodies in matters covered by this Regulation after approval by the Administrative Board. The Executive Director shall inform the Commission and the Member States thereof at an early stage of such negotiations.

*Article 17h***Detailed rules**

Detailed rules for the implementation of this Chapter shall be adopted in accordance with the procedure referred to in Article 30(2) of Regulation (EC) No 2371/2002.

These rules may cover in particular the formulation of plans for response to an emergency, the establishment of the emergency unit and the practical procedures to be applied.

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## CHAPTER IV

**INTERNAL STRUCTURE AND FUNCTIONING***Article 18***Legal status and principal office**

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

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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 party to legal proceedings.
3. The Agency shall be represented by its Executive Director.
4. The seat of the Agency shall be at Vigo, Spain.

*Article 19***Staff**

1. The Staff Regulations of officials and the conditions of employment of other servants of the European Communities as laid down in Regulation (EEC, Euratom, ECSC) No 259/68 <sup>(1)</sup> 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 necessary detailed rules of application.
2. Without prejudice to Article 30, 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 on a temporary basis and of other servants recruited by the Agency as necessary to carry out its tasks.

The Agency may also employ officials seconded by Member States on a temporary basis.

*Article 20***Privileges and immunities**

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

*Article 21***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 it or its servants in the performance of their duties. The Court of Justice shall have jurisdiction in any dispute relating to compensation for such damage.

<sup>(1)</sup> OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 723/2004 (OJ L 124, 27.4.2004, p. 1).

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4. 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 22***Languages**

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

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

*Article 23***Creation and powers of the Administrative Board**

1. The Agency shall have an Administrative Board.
2. The Administrative Board shall:
  - (a) appoint and dismiss the Executive Director pursuant to Article 30;
  - (b) adopt, by 30 April each year, the general report of the Agency for the previous year and forward it to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States. The report shall be made public;
  - (c) adopt by 31 October each year, and taking into account the opinion of the Commission and the Member States, the work programme of the Agency for the coming year and forward it to the European Parliament, the Council, the Commission and the Member States.

The work programme shall contain the priorities of the Agency. It shall give priority to the duties of the Agency relating to control and surveillance programmes. It shall be adopted without prejudice to the annual Community budgetary procedure. In case the Commission expresses, within 30 days from the date of adoption of the work programme, its disagreement with that programme, the Administrative Board shall re-examine the programme and adopt it, possibly amended, within a period of two months, in a second reading;

- (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) perform its duties in relation to the Agency's budget in accordance with Articles 35, 36 and 38;
- (f) exercise disciplinary authority over the Executive Director;
- (g) establish its rules of procedure which may provide for the establishment of sub-committees of the Administrative Board as necessary;
- (h) adopt procedures necessary for the performance by the Agency of its tasks.

<sup>(1)</sup> OJ 17, 6.10.1958, p. 385/58.

*Article 24***Composition of the Administrative Board**

1. The Administrative Board shall be composed of representatives of Member States and six representatives of the Commission. Each Member State shall be entitled to appoint one member. The Member States and the Commission shall appoint one alternate to each member who will represent the member in his/her absence.
2. Board members shall be appointed on the basis of their degree of relevant experience and expertise in the field of fisheries control and inspection.
3. The duration of office of each member shall be five years as from the date of appointment. The term of office may be renewed.

*Article 25***Chairing of the Administrative Board**

1. The Administrative Board shall elect a Chairperson from among the Commission representatives. The Administrative Board shall elect 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 26***Meetings**

1. The meetings of the Administrative Board shall be convened by its Chairperson. The agenda shall be determined by the Chairperson, taking into account the proposals of members of the Administrative Board and the Executive Director of the Agency.
2. The Executive Director and the representative appointed by the Advisory Board shall take part in the deliberations without the right to vote.
3. The Administrative Board shall hold an ordinary meeting at least once 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 represented on the Administrative Board.
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 representative appointed by the Advisory Board. Detailed rules for the application of this provision may be laid down in the rules of procedure.
5. The Administrative Board may invite any person whose opinion may 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.

**▼B***Article 27***Voting**

1. The Administrative Board shall take its decisions by an absolute majority of votes.
2. Each member shall have one 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 as well as any quorum requirements, where appropriate.

*Article 28***Declaration of Interests**

The members of the Administrative Board shall make a declaration of interests indicating either the absence of any interests which might be prejudicial to their independence or any direct or indirect interests which might be considered prejudicial to their independence. Those declarations shall be made annually in writing or whenever a conflict of interests may arise in relation to the items on the agenda. In the latter case the member concerned shall not be entitled to vote on any such items.

*Article 29***Duties and powers of the Executive Director**

1. The Agency shall be managed by its Executive Director. Without prejudice to the respective competencies of the Commission and the Administrative Board, the Executive Director shall neither seek nor take instructions from any government or any other body.
2. The Executive Director shall, in the performance of his/her tasks, give effect to the principles of the common fisheries policy.
3. The Executive Director shall have the following duties and powers:
  - (a) he/she shall prepare the draft work programme and submit it to the Administrative Board after consultation with the Commission and the Member States. He/she shall take the necessary steps for the implementation of the work programme within the limits specified by this Regulation, its implementing rules and any applicable law;
  - (b) he/she shall take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the organisation and functioning of the Agency in accordance with the provisions of this Regulation;
  - (c) he/she shall take all necessary steps including the adoption of decisions concerning the responsibilities of the Agency under Chapters II and III including chartering and operation of means of control and inspection and the operation of an information network;
  - (d) he/she shall respond to requests from the Commission and to requests for assistance from a Member State pursuant to Articles 6, 7 and 15;



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- (e) he/she shall organise an effective monitoring system in order to be able to compare the Agency's achievements with its operational objectives. On this basis the Executive Director shall prepare a draft general report each year and submit it to the Administrative Board. He/she shall establish regular evaluation procedures that meet recognised professional standards;
  - (f) he/she shall exercise in respect of the staff the powers laid down in Article 19(2);
  - (g) he/she shall draw up estimates of the Agency's revenue and expenditure in accordance with Article 35 and shall implement the budget in accordance with Article 36.
4. The Executive Director shall be responsible for his/her activities to the Administrative Board.

*Article 30***Appointment and dismissal of the Executive Director**

1. The Executive Director shall be appointed by the Administrative Board, on the grounds of merit and documented relevant experience in the field of the common fisheries policy and fisheries control and inspection, from a list of at least two candidates proposed by the Commission after a selection procedure, following publication of the post in the *Official Journal of the European Union*, and elsewhere, of a call for expressions of interest.
2. Power to dismiss the Executive Director shall lie with the Administrative Board. The Board shall deliberate on this item at the request of the Commission or of one third of its members.
3. The Administrative Board shall take the decisions under paragraphs 1 and 2 by a two thirds majority of members.
4. The term of office of the Executive Director shall be five years. The term of office may be extended once for a further five years on a proposal of the Commission and be approved by a two thirds majority of members of the Administrative Board.

*Article 31***Advisory Board**

1. The Advisory Board shall be composed of representatives of the Regional Advisory Councils provided for by Article 31 of Regulation (EC) No 2371/2002, on the basis of one representative designated by each Regional Advisory Council. Representatives may be replaced by alternates, appointed at the same time.
2. Members of the Advisory Board may not be members of the Administrative Board.

The Advisory Board shall appoint one of its members to take part in the deliberations of the Administrative Board without the right to vote.

3. The Advisory Board shall at the request of the Executive Director advise him/her in the performance of his/her duties under this Regulation.

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4. The Advisory Board shall be chaired by the Executive Director. It shall meet at the invitation of the Chair not less than once per year.
5. The Agency shall provide the logistic support necessary for the Advisory Board and provide the Secretariat for its meetings.
6. The members of the Administrative Board may attend the meetings of the Advisory Board.

*Article 32***Transparency and communication**

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Agency.
2. The Administrative Board shall, within six months of the date of its first meeting, adopt the practical arrangements for implementing Regulation (EC) No 1049/2001.
3. 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.
4. The Administrative Board shall lay down the necessary internal rules for the application of paragraph 3.
5. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice, under Articles 195 and 230 of the Treaty.
6. The information collected in accordance with this Regulation by the Commission and the Agency shall be subject to Regulation (EC) No 45/2001.

*Article 33***Confidentiality**

1. Members of the Administrative Board, the Executive Director and members of the staff of the Agency, even after their duties have ceased, shall be subject to the requirements of confidentiality pursuant to Article 287 of the Treaty.
2. The Administrative Board shall lay down internal rules regarding the practical arrangements for implementing the confidentiality requirements referred to in paragraph 1.

*Article 34***Access to information**

1. The Commission shall have full access to all information collected by the Agency. The Agency shall furnish any information and an evaluation of that information to the Commission at its request and in the form specified by it.

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2. The Member States concerned by any particular operation of the Agency shall have access to the information collected by the Agency in relation to such operation subject to the conditions which may be established in accordance with the procedure laid down in Article 30(2) of Regulation (EC) No 2371/2002.

CHAPTER V  
FINANCIAL PROVISIONS

*Article 35*

**Budget**

1. The Agency's revenues shall consist of:
  - (a) a contribution from the Community entered in the general budget of the European Union (Commission section);
  - (b) charges for services provided by the Agency to Member States in accordance with Article 6;
  - (c) charges for publications, training and/or any other services provided by the Agency.
2. The Agency's expenditure shall cover staff and administrative, infrastructure and operational expenses.
3. The Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following financial year and shall forward it to the Administrative Board, together with a draft establishment plan.
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.
7. The statement of estimates shall be forwarded by the Commission to the European Parliament and the Council (the 'budgetary authority') together with the preliminary draft general budget of the European Union.
8. On the basis of the statement of estimates, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.
9. The budgetary authority shall authorise the appropriations for the subsidy to the Agency. The budgetary authority shall adopt the establishment plan for the Agency.
10. The budget shall be adopted by the Administrative Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

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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.

12. 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 from the date of notification of the project.

*Article 36***Implementation and control of the budget**

1. The Executive Director shall implement the budget of the Agency.
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 Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup> (the 'Financial Regulation').
3. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that 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, pursuant to Article 129 of the Financial Regulation, the Executive Director shall draw up the Agency's final accounts under his/her own responsibility and forward them to the Administrative Board for an opinion.
5. The Administrative Board shall deliver an opinion on the Agency's final accounts.
6. By 1 July of the following year at the latest, the Executive Director shall send the final accounts, together with the opinion of the Administrative Board, to the European Parliament, the Council, the Commission and the Court of Auditors.
7. The final accounts shall be published.
8. The Agency shall establish an internal audit function which must be performed in compliance with the relevant international standards.
9. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He/she shall also send this reply to the Administrative Board.

<sup>(1)</sup> OJ L 248, 16.9.2002, p. 1.

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10. The Executive Director shall submit to the European Parliament, at the request of the latter, 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 Financial Regulation.

11. The European Parliament, upon a recommendation from the Council, shall, before 30 April of the second following year, give a discharge to the Executive Director of the Agency in respect of the implementation of the budget for the year in question.

*Article 37***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 to all of its staff.

3. The decisions concerning funding and the implementing agreements and instruments relating to 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 38***Financial provisions**

The Administrative Board, having received the agreement of the Commission and the opinion of the Court of Auditors, shall adopt the Agency's financial rules. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup> unless specifically required for the Agency's operation and with the Commission's prior consent.

## CHAPTER VI

**FINAL PROVISIONS***Article 39***Evaluation**

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

<sup>(1)</sup> OJ L 357, 31.12.2002, p. 72.

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2. Each evaluation shall assess the impact of this Regulation, the utility, relevance and effectiveness of the Agency and its working practices and the extent to which it contributes to the achievement of a high level of compliance with rules made under the common fisheries policy. 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 the Council and shall be made public.

*Article 40***Start of the Agency's activities**

The Agency shall commence its activities within twelve months of the date of entry into force of this Regulation.

*Article 41***Amendment**

Article 34c of Regulation (EEC) No 2847/93 shall be replaced by the following:

*'Article 34c*

1. The Commission, in accordance with the procedure laid down in Article 36 and in concert with the Member States concerned, shall determine which fisheries involving two or more Member States shall be subject to specific control and inspection programmes and the conditions governing such programmes.

The specific control and inspection programme shall determine the fisheries involving two or more Member States subject to the programme and the conditions governing such fisheries.

Each specific control and inspection programme shall state its objectives, common priorities and procedures as well as benchmarks for control and inspection activities, the expected results of the measures specified and the strategy required to ensure that control and inspection activities are as uniform, effective and economical as possible. Each programme shall identify the Member States concerned.

Specific control and inspection programmes may not last longer than three years or any period laid down for this purpose in a recovery plan adopted pursuant to Article 5 of Council Regulation

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(EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy (\*) or a management plan adopted pursuant to Article 6 of that Regulation.

Specific control and inspection programmes shall be implemented by the Member States concerned on the basis of joint deployment plans established under Council Regulation (EC) No 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency and amending Regulation (EC) No 2847/93 establishing a control system applicable to the common fisheries policy (\*\*).

2. The Commission shall control and evaluate the performance of each specific control and inspection programme and shall report to the European Parliament and the Council in accordance with Article 27(4) of Regulation (EC) No 2371/2002.

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(\*) OJ L 358, 21.12.2002, p. 59.

(\*\*) OJ L 128, 21.5.2005, p. 1.'

*Article 42***Entry into force**

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

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