



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 6 April 2011

**Interinstitutional File:
2010/0303 (COD)**

8661/11

LIMITE

**DOCUMENT PARTIALLY
ACCESSIBLE TO THE PUBLIC**

**MAR 55
CODEC 585**

NOTE

from: General Secretariat of the Council

to: Delegations

No. Cion prop.: 15717/10 MAR 111 CODEC 1210

No. prev. doc.: 7644/11 MAR 36 CODEC 398

Subject: Proposal for a Regulation (EU) [.../....] of the European Parliament and of the Council amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency

In view of the Shipping Working Party on 13 April 2011, delegations will find attached a modified proposal on the above-mentioned subject.

In comparison to the previous document, changes are indicated in **bold** (new text) and in ~~strikethrough~~ (deleted text).

General and linguistic scrutiny reservation: all delegations.

DELETED has a substantial reservation on the whole proposal.

Parliamentary scrutiny reservations: DK, MT and UK.

Proposal for a
REGULATION (EU) [...] OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulation (EC) No 1406/2002 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 on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

Whereas:

- (1) Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002⁴ established a European Maritime Safety Agency (hereinafter the Agency) for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ L 208 of 5.8.2002, p.1.

- (2) In accordance with Article 22 of Regulation (EC) No 1406/2002, the Administrative Board of the Agency commissioned an independent external evaluation on the implementation of that Regulation in 2007. Based on this evaluation, it issued recommendations regarding changes to Regulation (EC) No 1406/2002, to the Agency and its working practices in June 2008.
- (3) Based on the findings of the external evaluation, the recommendations by the Administrative Board and the multi-annual strategy, some provisions of Regulation (EC) No 1406/2002 should be clarified and updated. Furthermore, the Agency should receive a number of additional tasks reflecting the development of the maritime safety policy at Union and international level. Considerable screening and redeployment efforts are necessary to guarantee cost and budget efficiency. **The delivery of the additional tasks by the Agency will be undertaken within the limits of the current Financial Perspective and the Agency's budget as thereby provided for and without prejudice to the negotiations and decisions on the future multiannual financial framework.** ~~This should allow one third of additional staffing needs for new tasks to be covered through internal redeployment by the Agency.~~
- (4) Some provisions regarding the specific governance of the Agency should be clarified. Taking into account the special responsibility of the Commission for the implementation of Union policies enshrined by the Treaty, the Commission should provide policy guidance to the Agency in the performance of its tasks while fully respecting the legal status of the Agency and the independence of its Executive Director as established by Regulation (EC) No 1406/2002.
- (4a) Any reference to relevant legal acts of the Union should be understood to refer to acts in the field of maritime safety, maritime security, prevention of, **and response to**, pollution caused by ships ~~and as well as response to marine oil pollution caused by ships as well as~~ by oil and gas installations.⁵

⁵ *The wording of the recital has been aligned with the current wording of Art. 1.*

- (5) The Agency should act in the interest of the Union. This should include the situation when the Agency is tasked to act outside the territory of the Member States in its fields of competence.
- (5a) The Agency should provide technical assistance to the Member States which should facilitate the establishment of the necessary national capacity to implement the Union *acquis*.
- (5b) The Agency should provide operational assistance to the Member States and the Commission. This should include services such as SafeSeaNet, CleanSeaNet, LRIT and Thetis.
- (6) The Agency should enhance its assistance to the Commission regarding research activities related to its field of competences. However, double work with the existing Union research framework should be avoided. In particular, the Agency should not be in charge of the management of research projects.
- (7) After the expiry of the Union framework for cooperation in the field of accidental or deliberate marine pollution set up by Decision 2850/2000/EC of the European Parliament and of the Council of 20 December 2000⁶, the Agency should continue some of the activities previously carried out under the expired framework by drawing in particular on the expertise within the Consultative Technical Group for marine pollution preparedness and response. The activities of the Agency in this field should not relieve coastal States of their responsibility to have appropriate pollution response mechanisms in place and should respect existing cooperation arrangements between Member States or groups of Member States in this field.
- (8) Recent events highlighted the risks of offshore oil and gas exploration and production activities to maritime transport and the marine environment. The use of the Agency's response capabilities should be explicitly extended to cover response to pollution originating from such activities.

⁶ OJ L 332, 28.12.2000, p. 1.

- (8a) ⁷The Agency has established and recognised valuable expertise and tools in the fields of maritime safety, maritime security, prevention of and response to pollution caused by ships. This expertise and these tools can be relevant for other EU activities related to the waterborne transport domain. The Agency should therefore assist the Commission upon request in the development and implementation of such EU activities subject to the endorsement of the Agency's Administrative Board in the context of the Agency's annual work programme. These tasks should **add value to existing arrangements**, aim at avoiding duplication of efforts and be in the interest of the Union waterborne transport policy **as follows**.⁸
- (8b) **Thus, with** ~~With~~ regard to policies and projects such as Motorways of the Sea, the European maritime transport space without barriers, the Blue Belt concept and e-maritime, the Agency should assist the Commission in developing additional functionalities⁹ to SafeSeaNet and in defining and implementing the aforementioned initiatives and applications.
- (8c) **Also, with** ~~With~~ regard to inland waterways, the Agency should provide its expertise for the interface between maritime transport and inland waterways, in particular by providing relevant information with regard to classification societies for inland waterways 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 and repealing Council Directive 82/714/EEC¹⁰ and in cross-linking the Agency's maritime systems with the River Information Services system, in order to facilitate the interface between Short Sea Shipping and inland waterway transport.¹¹

⁷ **DELETED** suggests that the content of recitals (8a) to (8g) should be mentioned in the operative part of the Regulation. **DELETED** suggests deleting recitals (8a) to (8g) as well as Art. 2(2)(d).

⁸ Reservation: **DELETED**.

⁹ **DELETED** proposes adding, after additional functionalities, "as required by the relevant legal instruments".

¹⁰ OJ L 389, 30.12.2006, p. 1.

¹¹ Reservation: **DELETED**.

- (8d) **In the same way, in ~~the~~** the context of the implementation of the Marine Strategy Framework Directive¹², the Agency's systems, applications, expertise and data are also of relevance of contributing to the objective of achieving good environmental status of marine waters, especially with its shipping related elements such as ballast water, marine litter and underwater noise. Therefore the Agency should help to develop activities based on existing tools such as SafeSeaNet and CleanSeaNet in order to allow the Commission to measure progress in the implementation of the various areas covered by the Directive.¹³
- (8e) **Additionally, ~~With regard to climate change,~~** the Agency should provide technical assistance to the Commission in relation to ~~the calculation of greenhouse gases gas~~ **emissions from ships, including and in contributing** to the development of any ~~future system to monitor and enforce possible~~ new requirements on CO₂ emissions from ships¹⁴.
- (8f) **Also, as ~~As~~** concerns the "Global Monitoring for Environment and Security" (GMES), the Agency should play a coordinating role¹⁵ for the users of satellite data in the maritime domain. Furthermore, the Agency should assist the Commission in the development of a Common Information Sharing Environment for the EU maritime domain and contribute to a decentralised information exchanging system able to combine data from different sources.

¹² Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive), OJ L 164, 25.6.2008, p. 19.

¹³ **DELETED** proposes deleting the recital.

¹⁴ **DELETED**, supported by **DELETED**, suggest to delete the text from “and in contributing” onwards.

¹⁵ **DELETED** question the coordinating role of EMSA in GMES.

- (8g) **Finally, with respect to mobile offshore gas and oil installations,** ~~The the~~ Agency should assist the Commission in ~~the analysis of the safety of mobile offshore gas and oil installations, in particular by~~ examining existing and future **IMO international** requirements ~~such as the SOLAS Convention and the IMO MODU Code~~ in view of potential development of EU legislation. This assistance should not include any inspection activities. In addition, the Agency's data monitoring and collection should also gather basic information on potential threats to maritime transport and the marine environment from offshore oil and gas exploration and production.
- (9) The Union has established a comprehensive maritime transport strategy up to 2018, ~~which includes the e-maritime concept~~. The Agency has maritime systems and applications available which are of interest for the realisation of these policies and the Agency should make the systems and the data available to interested partners.¹⁶
- (10) Through its activities, in particular regarding port state control, the monitoring of maritime traffic and shipping routes as well as assistance for tracking possible polluters, the Agency should contribute to reinforce synergies at Union level regarding certain coastguard operations.
- (10a) When publishing information on port State control in accordance with Directive 2009/16/EC, the Commission and the Agency should build upon the expertise and experience under the Paris Memorandum of Understanding to ensure consistency.**

¹⁶ Reservation: **DELETED**.

- (10b) The Union has acceded to the following regional organisations, whose activities are also covered by the Agency's objectives: the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention as revised in 1992) (Council Decision 94/157/EC of 21 February 1994¹⁷); the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention) (Council Decision 77/585/EEC of 25 July 1977¹⁸), and its 1995 revision (approved by Council Decision 1999/802/EC of 22 October 1999¹⁹) and to a number of protocols thereof; the Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances (Bonn Agreement), (Council Decision 84/358/EEC of 28 June 1984²⁰); the Convention for the protection of the marine environment of the North-East Atlantic (OSPAR Convention) (Council Decision 98/249/EC of 7 October 1997²¹); the Cooperation Agreement for the protection of the coasts and waters of the north-east Atlantic against pollution, signed on 17 October 1990 (Lisbon Agreement) (Council Decision 93/550/EEC of 20 October 1993²²), with its Additional Protocol, signed on 20 May 2008, which have not yet entered into force (Council Decision 2010/655/EU of 19 October 2010²³). The Union is also negotiating accession to the Convention on the Protection of the Black Sea Against Pollution, signed in April 1992 (Bucharest Convention). The Agency should therefore provide technical assistance to Member States and the Commission to take part in the relevant work of these bodies.**
- (10c) In addition to the aforementioned regional organisations, a number of other regional, sub-regional and bilateral coordination and cooperation arrangements exist with regard to pollution response. When providing operational assistance with regard to pollution response to third countries sharing a regional sea basin with the Union, the Agency should act taking into account these arrangements.**

¹⁷ OJ L 73, 16.3.1994, p. 19.

¹⁸ OJ L 240, 19.9.1977, p. 1.

¹⁹ OJ L 322, 14.12.1999, p. 32.

²⁰ OJ L 188, 16.7.1984, p. 7.

²¹ OJ L 104, 3.4.1998, p. 1.

²² OJ L 267, 28.10.1993, p. 20.

²³ OJ L 285, 30.10.2010, p. 1.

- (10d) **The Union shares the following regional sea basins with neighbouring countries: the Mediterranean Sea, the Black Sea and the Baltic Sea. The Agency should provide operational assistance with regard to pollution response to these countries upon request by the Commission.**
- (11) [...]
- (12) [...]
- (12a) In order to ensure that the legal acts of the Union in the fields of maritime safety as well as prevention of pollution caused by ships are correctly implemented in practice, the Agency should assist the Commission by carrying out visits to Member States. These visits to the national marine administrations should allow the Agency to gather all necessary information to present a comprehensive report to the Commission for its further assessment. **These visits should be conducted in the spirit of the principles referred to in Article 4(3) of the Treaty on European Union.**
- (12b) Furthermore, the Agency should assist the Commission by carrying out inspections of recognised organisations 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. These inspections may also take place in third countries. The Commission and the Agency should ensure that the concerned Member States are duly informed. In addition, the Agency should carry out the inspections tasks with regard to the training and certification of seafarers in third countries under Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers, which the Commission has delegated to the Agency. Details of the technical assistance provided by the Agency to the maritime security inspections carried out by the Commission in accordance with Commission Regulation (EC) No 324/2008 of 9 April 2008 laying down revised procedures for conducting Commission inspections in the field of maritime security²⁴ should not be covered by this Regulation.

²⁴ OJ L 98, 10.4.2008, p. 5.

(12c) While the Agency is mainly financed through a contribution from the EU, the Agency has also revenues resulting from fees and charges relating to its services. These fees and charges refer in particular to the operation of the EU LRIT Data Centre and are applied in accordance with the Council Conclusions adopted on 1 and 2 October 2007 and 9 December 2008 related to the establishment of the EU LRIT Data Centre and in particular to the paragraphs related to the financing of LRIT reports.

(13) [...]

(14) [...]

(15) Regulation (EC) No 1406/2002 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EC) No 1406/2002

Regulation (EC) 1406/2002 is hereby amended as follows:

- 1) Articles 1 to 3 are replaced by the following:

'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 oil pollution caused by oil and gas installations.
2. **To that end, the** 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 maritime safety, maritime security within the limits of the tasks defined in Article 2, ~~and prevention of pollution caused by ships~~, 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).**
3. ~~The Agency shall, upon request, cooperate with the Member States and the Commission, and provide them with technical, operational and scientific assistance in the fields of response to pollution caused by ships as well as response to marine oil pollution caused by oil and gas installations and support the marine pollution response mechanisms of Member States.~~

Article 2
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 tasks listed in this Article.

²⁵2. 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;²⁶

(b) in the effective implementation of relevant legal acts of the Union, in particular by carrying-out visits²⁷ and inspections²⁸ 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^{29 30}. In this regard, it may address suggestions to the Commission for any possible improvements of those legal acts;

(c) [...]

²⁵ **DELETED** consider the wording of the paragraph too general.

²⁶ **DELETED** suggests spelling out the fields concerned as in recital (4a): “maritime safety, maritime security, prevention of , and response to, pollution caused by ships as well as response to marine oil pollution caused by oil and gas installations”.

²⁷ **DELETED** asks for clarification of the concepts visits and inspections and the differences in legal terms between them. Furthermore, further administrative burdens should be avoided.

²⁸ **DELETED** questions the capacity, within the budget proposed, of EMSA to take on more inspection tasks. COM confirms that the number of inspections will not be increased and that further budgetary means will not be requested.

²⁹ OJ L 129, 29.4.2004, p. 6.

³⁰ **DELETED** suggests a reference to Art. 13(2) of Dir. 2005/65 (port security).

- ³¹(d) in the development and implementation of Union activities related to the Agency's objectives ~~where insofar as~~ the Agency has established and recognised expertise and tools. **These tasks shall add value to existing arrangements, aim at avoiding duplication of efforts and be in the interest of the Union waterborne transport policy;**
- (e) [...]
- ³²(f) in the analysis of ongoing and completed research projects relevant to the objectives of the Agency; this shall include the ~~identification~~ **substantiated suggestion** of possible regulatory follow-up measures resulting from specific research projects and ~~the identification~~ of key themes and priorities for further research at Union level;
- ³³(g) in the performance of any other task assigned to the Commission by existing and future legislative acts of the Union **relevant to the objectives of the Agency in the fields of maritime safety, prevention of, and response to, pollution caused by ships as well as response to marine oil pollution caused by oil and gas installations.**

³¹ **DELETED** have a reservation on this point, as they consider that this is too far away from the core business and role of the Agency. **DELETED** underlines its particular concern about the budgetary impact and considers unacceptable to take decisions that might have a budgetary impact beyond 2013 (the current financial perspectives).

The activities envisaged in this provision are explained in recitals (8a) to (8g).

³² **DELETED** question the role of EMSA in relation to research with particular reference to impact on budget/staff, priorities and policy-making. **DELETED** suggest deletion of the text after the semicolon.

³³ Reservation: **DELETED** on this point.

3. The Agency shall work with the Member States to³⁴:
- (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 assistance³⁵ related to the implementation of relevant legal acts of the Union,³⁶
 - (c) support with additional means in a cost efficient way, through the EU Civil Protection Mechanism established by Decision 2007/779/EC, Euratom, pollution response actions in case of pollution caused by ships as well as marine oil pollution caused by oil and gas installations, when such 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.

³⁴ **DELETED** suggest the replacement of the current proposed text by the following: "In accordance with a decision taken by the administrative board, the Agency shall work with the Member States to:" and the consequent deletion of "where appropriate" in point (a).

This point is dealt with in Article 10(2)(c) as part of the governance provisions.

³⁵ **DELETED** suggests new text after technical assistance: "in building up the necessary national capacity for..." or that the content of recital (5a) is reflected in the article itself.

³⁶ **DELETED** suggests a provision allowing EMSA to act only when the Commission has been given implementing powers according to Art. 291 TFEU.

4. ³⁷The Agency shall facilitate cooperation between the Member States and the Commission:
- (a) in the field of traffic monitoring covered by Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring system³⁸, the Agency shall in particular promote cooperation between riparian States in the shipping areas concerned, as well as develop and operate the information systems referred to in Articles 6b and 22a of that Directive;
 - (b) in the field of the investigation of maritime accidents 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 sector³⁹; 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 maritime accidents and it shall carry out analysis of accident investigation reports with a view to identify added value at Union level in terms of any relevant lessons to be drawn;
 - (c) ⁴⁰in 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 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 control⁴¹.

³⁷ Reservation: **DELETED** on the budgetary consequences of the proposal. *This issue is dealt with in recital (3).*

³⁸ OJ L 208 of 5.8.2002, p.10.

³⁹ OJ L131 of 28.5.2009, p.114.

⁴⁰ Reservation: **DELETED** on the deletion of the reference to marine pollution in the current Regulation.

⁴¹ OJ L 131 of 28.5.2009, p. 57.

- (ca) 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 infringements⁴²;
- (cb) in providing technical assistance necessary to take part in the relevant work of the technical bodies of IMO, ILO⁴³, the Paris Memorandum of Understanding on Port State Control and relevant regional organisations⁴⁴ to which the Union has acceded, **with regard to matters of Union competence or interest.**

5. ⁴⁵The Agency may, upon the request of the Commission, provide technical assistance, **including the organisation of relevant training activities**, as regards the implementation of relevant legal acts of the Union to States applying for accession to the Union, to all European Neighbourhood partner countries and to countries taking part in the Paris Memorandum of Understanding on Port State Control⁴⁶.

The Agency may⁴⁷ also provide **operational** assistance in case of pollution caused by ships as well as marine oil pollution caused by oil and gas installations affecting those third countries sharing a regional sea basin with the Union, ~~via~~ **in line with** the EU Civil Protection Mechanism established by Council Decision 2007/779/EC, Euratom, **and** in analogy with the conditions applicable to Member States as referred to in paragraph (3)(c) of this Article. These tasks shall be coordinated with the existing regional cooperation arrangements related to marine pollution ~~and shall include, where appropriate, the organisation of relevant training activities.~~⁴⁸

⁴² OJ L 255 of 30.9.2005, p.11.

⁴³ Reservation on the reference to IMO and ILO: **DELETED**.

⁴⁴ **DELETED** suggests deleting the reference to "relevant regional organisations".

⁴⁵ Reservation: **DELETED** as regards the budgetary consequences. *This issue is dealt with in recital (3).*

⁴⁶ **DELETED**, supported by **DELETED**, questions the reference to the Paris MoU, since this includes also Russia and Canada.

⁴⁷ **DELETED** suggests adding "upon the request of the Commission".

⁴⁸ *The third subparagraph has been merged with the second subparagraph.*

Article 3⁴⁹

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 Treaty in particular the assessment of the effective implementation of Union law⁵⁰, the Agency shall carry out visits to Member States in accordance with the policy defined by the Administrative Board.

The national authorities of the Member States shall facilitate the work of the Agency's staff.⁵¹

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 **as soon as this information is available**. 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. In addition, the Agency shall carry out inspections on behalf of the Commission as required by legal acts of the Union, in particular 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 organisations⁵² and the training and certification of seafarers in third countries 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 (recast)^{53 54}.

⁴⁹ COM reservation on the definition of the visits policy by the Administrative Board.

⁵⁰ **DELETED** suggests deleting the text from “and to assist the Commission” to “Union law”.

⁵¹ **DELETED** suggests replacing “Union law” by “Union legal acts”.

⁵¹ **DELETED**, supported by **DELETED**, suggests an alternative wording: “The national authorities of the Member States and the Agency’s staff shall cooperate to perform visits”. *See additional wording in recital (12a)*.

⁵² OJ L 131 of 28.5.2009, p. 11.

⁵³ OJ L 323 of 3.12.2008, p. 33.

⁵⁴ **DELETED** suggests to delete § 3 and delete any references to inspections in §§ 4 and 5.

4. At the end of each visit ~~and~~ **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 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 practices⁵⁵.'
- 1a) In Article 4, paragraphs 3 and 4 are replaced by the following:
- '3. The Administrative Board shall adopt the practical arrangements for the application of paragraphs 1 and 2, including arrangements regarding consultation with Member States, where appropriate, before the publication of information.
 4. The information collected in accordance with this Regulation by the Commission and the Agency shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁵⁶ and the Agency shall take the necessary measures to ensure the safe handling and processing of confidential information.'

⁵⁵ **DELETED** suggests adding, at the end: “and, when applicable, together with Member States the Commission shall carry out preparatory work for updating the relevant legal acts to address commonly identified implementation bottle necks.”

⁵⁶ OJ L 8, 12.1.2001, p. 1.

2) In Article 5:

(a) paragraph 1, the word “Community” is replaced by the word “Union”;

(b) paragraphs 3 and 4 are replaced by the following:

3. ⁵⁷At the request of the Commission, the Administrative Board may decide, with the agreement of the Member States concerned and with due regard to budgetary implications, 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.

4. The Agency shall be represented by its Executive Director. ~~On behalf of the Agency, the Executive Director may enter into administrative arrangements with other bodies working in the Agency's fields of activities after consultation of the Administrative Board and provided that the Board does not object.~~⁵⁸

⁵⁷ **DELETED** suggests adding the following text to the recitals: “Before any regional centres of the Agency are set up, general rules should be established to clarify what requirements need to be met and what contribution the Member State concerned must provide.”

⁵⁸ *The deleted sentence has been moved to Art. 15(2)(ba).*

3) In Article 10, paragraph 2 is amended as follows:

(a) point (c) is replaced by the following:

'(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);

(ca) examine and adopt a multi-annual strategy for the Agency covering a period of five years ahead taking into account the opinion of the Commission and the views of the representatives of the Member States in the Administrative Board;

(cb) examine and adopt the multi-annual staff policy plan of the Agency;

(cc) consider⁵⁹ draft administrative arrangements, as referred to in Article **15(2)(ba)** ~~5(4)~~;

(b) point (g) is replaced by the following:

'(g) define a policy for the visits to be carried out pursuant to Article 3. In **ease the event** the Commission expresses, within 15 days from the date of adoption of the policy, its disagreement, the Administrative Board shall re-examine the policy 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';

(c) point (i) is replaced by the following:

'(i) exercise disciplinary authority over the Executive Director and the Heads of Department referred to in Article 16;';

⁵⁹ **DELETED** suggest "examine and approve".

(d) point (l) is replaced by the following:

'(l) review the financial execution of the detailed plan referred to in point (k) and the budgetary commitments provided for in Regulation (EC) No 2038/2006 of the European Parliament and of the Council⁶⁰.'

4) Article 15 is amended as follows:

(a) in paragraph 2, points (a) and (b) are replaced by the following:

⁶¹(a) he/she shall prepare the multi-annual strategy of the Agency and submit it to the Administrative Board after consultation of the Commission⁶² at least 8 weeks before the relevant Board meeting;

(aa) he/she shall prepare the multi-annual staff policy plan of the Agency and submit it to the Administrative Board after consultation of the Commission **at least 4 weeks before the relevant Board meeting**⁶³;

(ab) he/she shall prepare the annual work programme and the detailed plan for the Agency's pollution preparedness and response activities, and submit them to the Administrative Board after consultation of the Commission at least 8 weeks before the relevant Board meeting. 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);

⁶⁰ OJ L 394, 30.12.2006, p. 1.

⁶¹ **DELETED** reservation on points (a), (aa) and (ab), which need to be clarified.

⁶² **DELETED** suggests adding "and Member States" after "consultation of the Commission" in points (a), (aa) and (ab).

⁶³ **DELETED**, supported by **DELETED**, suggests adding the words "at least 8 weeks before the relevant Board meeting" to align it with other provisions.

The Agency's rules of procedure provide for 2 weeks.

(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 policy for visits established by the Administrative Board according to Article 10(2)(g);

(ba) he/she may enter into administrative arrangements with other bodies working in the Agency's fields of activities after consultation of the Administrative Board and provided that the Board does not object.⁶⁴

(b) in paragraph 2, point (d) is replaced by the following:

'(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. 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;'

(c) in paragraph 2, point (g) is deleted.

(d) paragraph 3 is replaced by the following:

'(3) The Executive Director shall, upon invitation by the European Parliament or the Council, report on the carrying out of his/her tasks.'

⁶⁴ *This text has been moved here from Article 5(4). **DELETED** suggests "after a positive opinion of the Administrative Board".*

- 5) Article 16 is replaced by the following:

'Article 16

Appointment and dismissal of the Executive Director and the Heads of Department

1. ⁶⁵The 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 skills, as well as competence and experience in the fields referred to in Article 1. [The Executive Director shall be appointed from a list of at least three⁶⁶ 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 expression of interest.] Before appointment, 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.⁶⁷ 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 three 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.

⁶⁵ Reservation: **DELETED**, regarding in particular the fact that the Commission proposes a list of candidates. These delegations prefer the current text of the Regulation.

⁶⁶ COM reservation on at least 3 candidates; should be at least 2.

⁶⁷ **DELETED**, supported by **DELETED**, is concerned over the legal consequences of the EP involvement.

The Presidency considers that this involvement has no legal consequences, but possibly only political consequences.

3. ⁶⁸The 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.'
- 6) In Article 18(1), point (c) is replaced by the following:

'(c) fees⁶⁹ and charges for publications, training and/or any other services provided by the Agency.'
- 7) In Article 22, paragraph 1 is replaced by the following:

'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.'

⁶⁸ **DELETED** reservation regarding the introduction of Heads of Department. **DELETED** suggests putting a cap on the number of HoDep to be appointed.

⁶⁹ Reservation on the use of the word "fees": DE and UK. *The concept of "fees" is explained in recital (12c).*

8) Article 23 is deleted.

[...] ⁷⁰

Article 2

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 Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States in accordance with the Treaties.

Done at Brussels, [...]

For the European Parliament

For the Council

The President

The President

[...]

[...]

⁷⁰ ~~OJ L 324 of 29.11.2002, p 1.~~