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(Acts whose publication is obligatory)

**REGULATION (EC) No 724/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 31 March 2004
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 establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

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

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) Regulation (EC) No 1406/2002 ⁽³⁾ established a European Maritime Safety Agency ('the Agency') for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships.

(2) On 12 December 2002, the Diplomatic Conference of the International Maritime Organisation (IMO) adopted a number of amendments to the International Convention for the Safety of Life at Sea (SOLAS) and an International Ship and Port Facility Security Code (ISPS) that provide a set of measures regarding maritime security. It is therefore appropriate to specify the role of the Agency in the field of maritime security.

(3) It is important to take appropriate security measures to ensure the safety of Community shipping and Community ports as well as the safety of passengers, crews and port staff, against the threats of intentional unlawful acts.

(4) Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security ⁽⁴⁾ assigns to the Commission certain inspection tasks in relation to the checking of the implementation of these security measures by Member States, in the performance of which the Agency could provide useful technical assistance. These tasks shall cover inspections of ships and related companies, as well as Recognised Security Organisations authorised to undertake certain security-related activities in this context.

(5) Recent accidents in Community waters, particularly those of the oil tankers 'Erika' and 'Prestige', demonstrated the need for additional Community action not only in the field of pollution prevention, but also in the pollution response field.

(6) Decision No 2850/2000/EC of the European Parliament and of the Council of 20 December 2000 ⁽⁵⁾ set up a Community framework for cooperation in the field of accidental or deliberate marine pollution for the period from 1 January 2000 to 31 December 2006.

(7) Council Decision 2001/792/EC, Euratom of 23 October 2001 ⁽⁶⁾ established a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, including accidental marine pollution. This mechanism involves a Commission monitoring and information centre deployed in all cases of civil protection assistance interventions.

⁽¹⁾ OJ C 32, 5.2.2004, p. 21.

⁽²⁾ Opinion of the European Parliament of 12 February 2004. Decision of the Council of 25 March 2004.

⁽³⁾ OJ L 208, 5.8.2002, p. 1. Regulation as amended by Regulation (EC) No 1644/2003 (OJ L 245, 29.9.2003, p. 10).

⁽⁴⁾ See page 6 of this Official Journal.

⁽⁵⁾ OJ L 332, 28.12.2000, p. 1.

⁽⁶⁾ OJ L 297, 15.11.2001, p. 7.

- (8) The Agency should be provided with the appropriate means to support on request the pollution response mechanisms of the Member States. 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. In the event of a pollution incident, the Agency should assist the affected Member State under the authority of which the cleaning up operations will be conducted. The Agency should act in support of the Community mechanism in the field of civil protection.
- (9) Directive 2003/103/EC of the European Parliament and of the Council of 17 November 2003 amending Directive 2001/25/EC on the minimum level of training of seafarers⁽¹⁾ introduces new procedures with regard to the recognition of certificates of competency of seafarers issued by third countries. The Agency should assist the Commission in the evaluation of the compliance of those countries with the requirements of the 1978 International Convention on Standards of Training, Certification and Watchkeeping (STCW Convention).
- (10) The Administrative Board of the Agency should have the competence, in agreement with the Commission, to define a policy plan with regard to the Agency's pollution preparedness and response activities. In drawing up the plan, the Administrative Board should take into account the added value which the Agency's pollution response activities involve for the activities of the Member States, as well as the best possible combination of cost and efficiency.
- (11) Regard should be had to the existing agreements on accidental pollution, such as the Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances, 1983 (Bonn Cooperation Agreement), which facilitate mutual assistance and cooperation between Member States in this field, as well as to the relevant international conventions and agreements for the protection of European maritime areas from pollution incidents, such as the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (OPRC Convention) developed under the auspices of the IMO, the Convention for the Protection of the Marine Environment of the North-East Atlantic of 22 September 1992 (OSPAR Convention), the Barcelona Convention, the Helsinki Convention and the Lisbon Agreement.
- (12) For future appointments in the administrative structure of the Agency (Administrative Board, Executive Director), due account should be taken of the required

experience and expertise in the new fields of competence of the Agency: the response to pollution caused by ships, and maritime security.

- (13) Third countries wishing to participate in the Agency should adopt and apply Community law in all fields of competence of the Agency, including the response to pollution caused by ships and maritime security.
- (14) Regulation (EC) No 1406/2002 should, therefore, be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1406/2002 is hereby amended as follows:

1. Article 1 shall be amended as follows:

(a) paragraphs 1 and 2 shall be replaced by the following:

'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 within the limits of the tasks defined in Article 2(b)(iv), prevention of pollution and response to pollution by ships within the Community.

2. The Agency shall provide the Member States and the Commission with the technical and scientific assistance needed and with a high level of expertise, in order to help them to apply the Community legislation properly in the field of maritime safety, maritime security within the limits of the tasks defined in Article 2(b)(iv), prevention of pollution caused by ships, to monitor its implementation and to evaluate the effectiveness of the measures in place.'

(b) the following paragraph shall be added:

'3. The Agency shall provide Member States and the Commission with technical and scientific assistance in the field of accidental or deliberate pollution by ships and support on request with additional means in a cost-efficient way the pollution response mechanisms of Member States, without prejudice to the responsibility of coastal States to have appropriate pollution response mechanisms in place and respecting existing cooperation between Member States in this field. It shall act in support of the Community framework for cooperation in the field of accidental or deliberate marine pollution established by Decision No 2850/2000/EC of the European Parliament and of the Council of 20 December

⁽¹⁾ OJ L 326, 13.12.2003, p. 28.

2000 setting up a Community framework for cooperation in the field of accidental or deliberate marine pollution (*) and of the Community mechanism in the field of civil protection assistance interventions established by Council Decision 2001/792/EC, Euratom of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (**).

(*) OJ L 332, 28.12.2000, p. 1.

(**) OJ L 297, 15.11.2001, p. 7.

2. Article 2 shall be replaced by the following:

'Article 2

In order to ensure that the objectives set out in Article 1 are met in the appropriate manner, the Agency shall perform the following tasks:

- (a) It shall assist the Commission, where appropriate, in the preparatory work for updating and developing Community legislation in the fields of maritime safety and maritime security, the prevention of pollution and response to pollution caused by ships, in particular in line with the development of international legislation in that field. That task shall include the analysis of research projects carried out in the field of maritime safety and maritime security, the prevention of pollution and response to pollution caused by ships.
- (b) It shall assist the Commission in the effective implementation of Community legislation on maritime safety and maritime security, prevention of pollution and response to pollution caused by ships throughout the Community. In particular, the Agency shall:
 - (i) monitor the overall functioning of the Community port State control regime, which may include visits to the Member States, and suggest to the Commission any possible improvements in that field;
 - (ii) provide the Commission with the technical assistance necessary to take part in the work of the technical bodies of the Paris Memorandum of Understanding on Port State Control;
 - (iii) assist the Commission in the performance of any task assigned to it by existing and future Community legislation on maritime safety, ship pollution prevention and ship pollution response, notably legislation applicable to classification societies, the safety of passenger ships, as well as that applicable to the safety, training, certification and watchkeeping of ships' crews, including the verification of compliance of third countries with the requirements of the 1978 International Convention on Standards of Training, Certification and Watch-keeping, and of the measures taken to prevent fraud involving certificates of competency.
- (c) It shall work with the Member States to:
 - (i) organise, where appropriate, relevant training activities in fields which are the responsibility of the port State and flag State;
 - (ii) develop technical solutions and provide technical assistance related to the implementation of Community legislation;
 - (iii) support with additional means in a cost efficient way, via the Community mechanism in the field of civil protection established by Decision 2001/792/EC, Euratom, their pollution response actions in case of accidental or deliberate pollution caused by ships, when such a request has been presented. In this respect, the Agency shall assist the affected Member State under which the cleaning operations are conducted;
- (d) it shall facilitate cooperation between the Member States and the Commission in the fields covered by Directive 2002/59/EC. In particular, the Agency shall:
 - (i) promote cooperation between riparian States in the shipping areas concerned in the fields covered by that Directive;
 - (ii) develop and operate any information system necessary for attaining the objectives of the Directive;
- (e) it shall facilitate cooperation between the Member States and the Commission in the development, with due regard to the different legal systems in the Member States, of a common methodology for investigating maritime accidents according to agreed international principles, in the provision of support to the Member States in activities concerning investigations related to serious maritime accidents, and in the carrying out of an analysis of existing accident investigation reports;

(f) it shall provide the Commission and the Member States with objective, reliable and comparable information and data on maritime safety, on maritime security and on pollution by ships to enable them to take the necessary steps to improve their actions in these fields and to evaluate the effectiveness of existing measures. Such tasks shall include the collection, recording and evaluation of technical data in the fields of maritime safety, maritime security and maritime traffic, as well as in the field of marine pollution, both accidental and deliberate, the systematic exploitation of existing databases, including their cross-fertilisation, and, where appropriate, the development of additional databases. On the basis of the data collected, the Agency shall assist the Commission in the publication, every six months, of information relating to ships that have been refused access to Community ports pursuant to Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (**). The Agency will also assist the Commission and the Member States in their activities to improve the identification and pursuit of ships making unlawful discharges.

(g) In the course of negotiations with States applying for accession the Agency may provide technical assistance as regards the implementation of Community legislation in the field of maritime safety, maritime security, and prevention of pollution by ships. The Agency may also provide assistance in case of accidental or deliberate marine pollution affecting these States, via the Community mechanism in the field of civil protection established by Decision 2001/792/EC Euratom. These tasks shall be coordinated with the existing regional cooperation programs and shall include, where appropriate, the organisation of relevant training activities.

(*) OJ L 129, 29.4.2004, p. 6.

(**) OJ L 157, 7.7.1995, p. 1. Directive as last amended by Directive 2002/84/EC of the European Parliament and of the Council (OJ L 324, 29.11.2002, p. 53).

3. Article 10(2) shall be amended as follows:

(a) Point (d) shall be replaced by the following:

'(d) adopt, by 30 November each year, and taking the opinion of the Commission into account, the work programme of the Agency for the coming year and forward it to the Member States, the European Parliament, the Council and the Commission; this work programme shall be adopted without prejudice to the annual Community budgetary procedure. In the event that the Commission expresses, within 15 days from the date of adoption of the work programme, its disagreement with the said programme, the Administrative Board shall re-examine the programme and adopt it, possibly amended, within a period of two months, in second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States.'

(b) the following point shall be added:

'(k) adopt, following the procedures set out in (d), a detailed plan for the Agency's pollution preparedness and response activities, aiming at the optimum use of the financial means available to the Agency.'

4. In Article 11, the second subparagraph of paragraph 1 shall be replaced by the following:

'Board members shall be appointed on the basis of their degree of relevant experience and expertise in the field of maritime safety, maritime security, prevention of pollution and response to pollution caused by ships.'

5. Article 15, paragraph 2, point (a) shall be replaced by the following:

'(a) he/she shall prepare the 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. He/she shall take the necessary steps for their implementation. He/she shall respond to any requests for assistance from the Commission or from a Member State in accordance with Article 10(2)(c). For information purposes, he/she shall transmit the plan to the Committee established by Article 4 of Decision No 2850/2000/EC as well as to the Committee referred to in Article 9 of Decision 2001/792/EC, Euratom.'

6. In Article 16, the first subparagraph of paragraph 1 shall be replaced by the following:

'1. The Executive Director of the Agency shall be appointed by the Administrative Board on grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant for maritime safety, maritime security, prevention of pollution and response to pollution caused by ships. The Administrative Board shall take its decision by a four-fifths majority of all members with the right to vote. The Commission may propose a candidate or candidates.'

7. in Article 17, paragraph 1 shall be replaced by the following:

'1. The Agency shall be open to the participation of third countries, which have entered into agreements with the European Community, whereby they have adopted and are applying the Community law in the field of maritime safety, maritime security, prevention of pollution and response to pollution caused by ships.'

8. Article 22, paragraph 2 is shall be replaced by the following:

'2. The evaluation shall assess the impact of this Regulation, the Agency and its working practices. The Administrative Board shall issue specific terms of reference in agreement with the Commission, following consultations with the parties involved.'

Article 2

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.

Done at Strasbourg, 31 March 2004.

For the European Parliament
The President
P. COX

For the Council
The President
D. ROCHE
