

Council Regulation (EC) No 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency and amending Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy (repealed)

COUNCIL REGULATION (EC) No 768/2005

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establishing a Community Fisheries Control Agency and amending Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy (repealed)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas:

- (1) Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy⁽²⁾ requires Member States to ensure effective control, inspection and enforcement of the rules of the common fisheries policy and to cooperate with each other and with third countries to this end.
- (2) To fulfil these obligations it is necessary for the Member States to coordinate their control and inspection activities within their land territory and in Community and international waters in accordance with international law and, in particular, the obligations of the Community in the framework of regional fisheries organisations and under agreements with third countries.
- (3) No inspection scheme can be cost effective without providing for inspections on land. It is for that reason that land territory should be covered by joint deployment plans.
- (4) Such cooperation, through the operational coordination of control and inspection activities, should contribute to the sustainable exploitation of living aquatic resources as well as ensuring a level playing field for the fishing industry involved in this exploitation thus reducing distortions in competition.
- (5) Effective fisheries control and inspection is considered as essential to combat illegal, unreported and unregulated fishing.
- (6) Without prejudice to the responsibilities of Member States that arise from Regulation (EC) No 2371/2002, there is need for a technical and administrative Community body to organise cooperation and coordination between Member States regarding fisheries control and inspection.

- (7) To this end, it is appropriate within the Community's existing institutional structure, and taking account of the repartition of competences between the Commission and the Member States, to establish a Community Fisheries Control Agency ('the Agency').
- (8) For the achievement of the purposes for which the Agency is established, its tasks need to be defined.
- (9) In particular, it is necessary for the Agency, at the request of the Commission, to be able to assist the Community and the Member States in their relations with third countries and/or regional fisheries organisations and to cooperate with their competent authorities within the framework of the international obligations of the Community.
- (10) Moreover, there is a need to work towards the effective application of Community inspection procedures. The Agency could over time become a reference source for scientific and technical assistance for fisheries control and inspection.
- (11) In order to meet the objectives of the common fisheries policy, which is to provide for a sustainable exploitation of living aquatic resources in the context of sustainable development, the Council adopts measures concerning conservation, management and exploitation of living aquatic resources.
- (12) To ensure the proper enforcement of these measures adequate control and enforcement means must be deployed by the Member States. In order to make such control and enforcement more effective and efficient it is appropriate for the Commission in accordance with the procedure laid down in Article 30(2) of Regulation (EC) No 2371/2002 and in concert with the Member States concerned to adopt specific control and inspection programmes. Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy⁽³⁾ should be amended accordingly.
- (13) Coordination by the Agency of operational cooperation between Member States should be undertaken on the basis of joint deployment plans, which organise the use of the available means of control and inspection of the Member States concerned so as to give effect to control and inspection programmes. Fisheries control and inspection activities undertaken by the Member States should be carried out in accordance with common criteria, priorities, benchmarks and procedures regarding control and inspection activities on the basis of such programmes.
- (14) The adoption of a control and inspection programme obliges Member States to effectively provide the resources necessary to carry out the programme. It is necessary for the Member States to promptly notify the Agency of the means of control and inspection with which they intend to execute any such programme. No additional obligations in terms of control, inspection and enforcement or in relation to making available the resources necessary in this context must be created by the joint deployment plans.
- (15) A joint deployment plan should only be prepared by the Agency if it is foreseen in the work programme.

- (16) The work programme should be adopted by the Administrative Board, which ensures that sufficient consensus is reached, including on the matching of tasks foreseen for the Agency in the work programme and resources available to the Agency, based on the information to be provided by Member States.
- (17) The key task of the Executive Director should be to ensure in his/her consultations with Members of the Board and Member States that the ambitions in the work programme for each year are matched by sufficient resources made available to the Agency by Member States to fulfil the work programme.
- (18) The Executive Director should in particular draft precise deployment plans using the resources notified by Member States for the fulfilment of each control and inspection programme and respecting the rules and aims set out in the specific control and inspection programme on which the joint deployment plan is based, as well as other relevant rules, such as those relating to Community Inspectors.
- (19) In this context it is necessary that the Executive Director manages the timing in such a manner as to give Member States sufficient time to provide their comments, building on their operational expertise, while staying within the work plan of the Agency and the time limits foreseen in this Regulation. It is necessary for the Executive Director to take account of the interest of the Member States concerned in the fisheries covered by each plan. In order to ensure efficient and timely coordination of the joint control and inspection activities, it is necessary to provide for a procedure to allow for decisions on the adoption of the plans when an agreement cannot be reached between the Member States concerned.
- (20) The procedure for the drafting and adopting of joint deployment plans outside Community waters must be similar to that concerning Community waters. The basis for such joint deployment plans must be an international control and inspection programme giving effect to international obligations relating to control and inspection binding upon the Community.
- (21) For the implementation of joint deployment plans, the Member States concerned should pool and deploy the means of control and inspection that they have committed to such plans. The Agency should assess whether the available means of control and inspection suffice and where appropriate inform the Member States concerned and the Commission that the means are not sufficient to perform the tasks required under the control and inspection programme.
- (22) While Member States should respect their obligations relating to inspection and control, in particular under the specific control and inspection programme adopted pursuant to Regulation (EC) No 2371/2002, the Agency should not have the power to impose additional obligations through joint deployment plans or to sanction Member States.
- (23) The Agency should review periodically the effectiveness of joint deployment plans.
- (24) It is appropriate to provide for the possibility to adopt specific implementing rules for the adoption and approval of joint deployment plans. It may be useful to use this

possibility once the Agency has started operating and the Executive Director considers that such rules must be laid down in Community law.

- (25) The Agency should be entitled, where so requested, to provide contractual services relating to the means of control and inspection to be used for joint deployment by the Member States concerned.
- (26) For the purpose of fulfilling the Agency's tasks, the Commission, the Member States and the Agency should exchange relevant information on control and inspection through an information network.
- (27) The status and structure of the Agency should correspond to the objective character of the results it is intended to produce and allow it to carry out its functions in close cooperation with the Member States and with the Commission. Consequently, the Agency should be granted legal, financial and administrative autonomy while at the same time maintaining close links with the Community institutions and the Member States. To that end, it is necessary and appropriate that the Agency should be a Community body having legal personality and exercising the powers which are conferred on it by this Regulation.
- (28) For the contractual liability of the Agency, which is governed by the law applicable to the contracts concluded by the Agency, the Court of Justice should have jurisdiction pursuant to any arbitration clause contained in the contract. The Court of Justice should also have jurisdiction in disputes relating to compensation for any damage arising from the non-contractual liability of the Agency in accordance with the general principles common to the laws of the Member States.
- (29) The Commission and the Member States should be represented within an Administrative Board that would be entrusted with ensuring the correct and effective functioning of the Agency.
- (30) An Advisory Board should be created in order to advise the Executive Director and to ensure close cooperation with stakeholders.
- (31) Given that the Agency has to fulfil Community obligations and, at the request of the Commission, to cooperate with third countries and regional fisheries organisations within the framework of the international obligations of the Community, it is appropriate that the Chairman of the Administrative Board should be elected from among the Commission representatives.
- (32) Voting arrangements in the Administrative Board should take into account the interests of the Member States and the Commission in the effective operation of the Agency.
- (33) It is appropriate to provide for the participation in the deliberations of the Administrative Board of a representative of the Advisory Board with no voting rights.
- (34) It is necessary to provide for the appointment and dismissal of the Executive Director of the Agency as well as the rules governing the exercise of his/her functions.
- (35) In order to promote the transparent functioning of the Agency, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding

- public access to European Parliament, Council and Commission documents⁽⁴⁾ should apply without restriction to the Agency.
- (36) In the interest of the protection of the privacy of individuals, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽⁵⁾ should apply to this Regulation.
- (37) In order to guarantee the functional autonomy and independence of the Agency, it should be granted an autonomous budget whose revenue comes from a contribution from the Community as well as from payments for contractual services rendered by the Agency. The Community budgetary procedure should be applicable as far as the Community contribution and any other subsidies chargeable to the general budget of the European Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors.
- (38) In order to combat fraud, corruption, and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁽⁶⁾ should apply without restriction to the Agency, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)⁽⁷⁾.
- (39) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁸⁾,

HAS ADOPTED THIS REGULATION:

CHAPTER I

OBJECTIVE, SCOPE AND DEFINITIONS

Article 1

Objective

This Regulation establishes a Community 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;
- (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.

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

- 1 Operational coordination by the Agency shall cover inspection and control of fishing activities, including importation, transport and landing of fishery products, up to the point where such products are received by the first buyer after landing.
- 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.

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.

Article 7

Assistance to Member States

In order to assist Member States to better fulfil their obligations under the rules of the common fisheries policy, the Agency shall in particular:

- (a) establish and develop a core curriculum for the training of the instructors of the fisheries inspectors of the Member States and provide additional training courses and seminars to those inspectors and other personnel involved in monitoring, control and inspection activities;
- (b) 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 to prepare for and coordinate the implementation by Member States of joint pilot projects;
- (c) elaborate joint operational procedures in relation to joint control and inspection activities undertaken by two or more Member States;
- (d) 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.

CHAPTER III

OPERATIONAL COORDINATION

Article 8

Implementation of Community obligations relating to control and inspection

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.

Article 9

Implementation of specific control and inspection programmes

The Agency shall coordinate the implementation of the specific control and inspection programmes established in accordance with Article 34c of Regulation (EEC) No 2847/93 through joint deployment plans.

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;
- (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.

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.

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.

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.
- 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⁽⁹⁾ 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.

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⁽¹⁰⁾ 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.

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.

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;
 - 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.

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.

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.
- 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⁽¹¹⁾ (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.
- 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⁽¹²⁾ 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.

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 (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy⁽¹³⁾ 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⁽¹⁴⁾.

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.

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*.

Status: This is the original version (as it was originally adopted).

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

Done at Luxembourg, 26 April 2005.

For the Council

The President

F. BODEN

- (1) Opinion of 23 February 2005 (not yet published in the Official Journal).
- (2) OJ L 358, 31.12.2002, p. 59.
- (3) OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1954/2003 (OJ L 289, 7.11.2003, p. 1).
- (4) OJ L 145, 31.5.2001, p. 43.
- (5) OJ L 8, 12.1.2001, p. 1.
- (6) OJ L 136, 31.5.1999, p. 1.
- (7) OJ L 136, 31.5.1999, p. 15.
- (8) OJ L 184, 17.7.1999, p. 23.
- (9) 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).
- (10) OJ 17, 6.10.1958, p. 385/58.
- (11) OJ L 248, 16.9.2002, p. 1.
- (12) OJ L 357, 31.12.2002, p. 72.
- (13) OJ L 358, 21.12.2002, p. 59.
- (14) OJ L 128, 21.5.2005, p. 1.'