



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.8.2003
COM(2003) 440 final

2003/0159 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety
Agency**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. BACKGROUND AND OBJECTIVES

Following the accident of the oil tanker "Erika", the Commission proposed in 2001 a Regulation setting up a European Maritime Safety Agency (the Agency), a technical body with the aim to ensure a high, uniform and effective level of maritime safety and prevention of pollution by ships in the Community. Regulation 1406/2002 setting up the Agency was adopted by the European Parliament and the Council on 27 June 2002 and entered into force following its publication in the Official Journal, in August of the same year. This new Community body has the responsibility to provide Member States and the Commission with technical and scientific assistance in order to help them to apply properly the Community legislation in the field of maritime safety and prevention of pollution by ships, to monitor the implementation of this legislation and to evaluate the effectiveness of the measures in place.

In the aftermath of a new ecological catastrophe in European waters, caused in November 2002 by the accident of the oil tanker "Prestige", it became obvious that additional measures had to be taken on a European level not only with regard to prevention of pollution by ships but also the response to such pollution. The envisaged measures had to supplement the actions undertaken by Member States and provide added value to the actions already undertaken at Community level in the fields of accidental or deliberate marine pollution and civil protection. The newly established European Maritime Safety Agency provided the appropriate framework for developing concrete pollution response actions at Community level. In order to give to the Agency the competence and the means to act, the Commission proposes to amend accordingly Regulation 1406/2002 which established the Agency.

At present, the role of the European Community in the field of response to marine pollution is based on two Community instruments: (a) Decision 2850/2000/EC¹ of the European Parliament and of the Council setting up a Community framework for co-operation in the field of accidental or deliberate marine pollution, (b) Council Decision 2001/792/EC² of 23 October 2001 establishing a Community mechanism to facilitate reinforced co-operation in civil protection assistance interventions. In line with the above instruments Community action aims to: support and supplement Member States' efforts; contribute to improving the capabilities of the Member States for response in case of incidents; strengthen the conditions for and facilitate efficient mutual assistance and co-operation; promote co-operation among Member States in order to provide for compensation for damage in accordance with the polluter-pays principle.

¹ OJ L 332 of 28.12.2000, p 1.

² OJ L 297 of 15.11.2001, p.7.

The Community mechanism facilitating co-operation in civil protection assistance interventions works in parallel with a number of regional agreements and Conventions on accidental marine pollution, such as the Bonn Co-operation Agreement³, which facilitate mutual assistance and co-operation between Member States at regional level.

The Agency will provide practical resources in support of the above Community framework and Community mechanism, including specialised pollution response ships and equipment for collecting oil and other noxious substances in the sea. It will thereby supplement the pollution response mechanisms of Member States. In case of a pollution incident, the Agency will assist the affected Member State under the authority of which the cleaning up operations will be conducted.

Furthermore, the Agency will provide Member States and the Commission with technical and scientific assistance in the field of accidental or deliberate pollution caused by ships.

The proposed revision of the Regulation setting up the Agency had also to take into account the development of Community competence in an area closely related to maritime safety: maritime security. Increased concerns over the threat of terrorism and other illicit actions targeting ships and port installations led to the adoption of specific international instruments. A diplomatic Conference held by the International Maritime Organisation (IMO) adopted on 12 December 2002 a series of amendments to the SOLAS⁴ Convention and a new International Code (International Ship and Port Facility Security Code), that provide a set of measures relating to maritime security. In view of the entry into force of these measures on July 2003, the Commission issued a proposal for a Regulation on the improvement of ships and ports security⁵, which implements in a harmonised way throughout the Community the international instruments mentioned above. The same proposal sets up a system of inspections regarding the effective application of the security measures by Member States, to be carried out by the Commission with the assistance of the Agency. Therefore, Regulation 1406/2002, setting up the Agency, had to be amended accordingly, to reflect the contribution of the Agency in this field.

A recent Commission proposal amending Directive 2001/25/EC on the minimum level of training of seafarers⁶ provides for an increased role of the Agency in the process of Community recognition of the training and qualifications of third country seafarers. While the tasks of the Agency already include the field of seafarers training, the present revision of the Regulation 1406/2002 provides the opportunity to focus more on this area and to take into account the increased requirements resulting from the proposed amendment to Directive 2001/25/EC.

³ Agreement for co-operation in dealing with pollution of the North Sea by oil and other harmful substances, 1983.

⁴ International Convention of Safety of Life at Sea, 1974.

⁵ Commission Communication on enhancing maritime transport security. Proposal for a European Parliament and Council Regulation on enhancing ship and port facility security, COM (2003) 229 final of 2 May 2003.

⁶ COM (2003) 1 final of 13.01.2003.

2. JUSTIFICATION OF THE PROPOSED MEASURE

The objective of the proposed measure is to amend Regulation 1406/2002 of the European Parliament and of the Council. There are two main reasons for this. First, the need to provide the Agency with the legal competence and the appropriate means to fight accidental and illicit pollution caused by ships and second the need to specify the role of the Agency in the fields of maritime security and the training of seafarers, in line with recent Commission initiatives in these fields.

The Commission Communication of 5/3/2003, reporting to the European Council on action to deal with the effects of the Prestige disaster⁷, announced the Commission's intention to further define and expand the jurisdiction of the Agency, in order to enable it to lease vessels equipped with advanced technology or other anti-pollution equipment to serve the European Union.

2.1. The pollution response task

Co-ordination of the Community pollution response has been substantially improved following the establishment of the civil protection co-ordination mechanism (Decision 2001/792/EC), which is now referred to as the Civil Protection Response Centre. However, experience from recent accidents in European waters demonstrated that there is need for additional Community action in the pollution response field. The Commission sees a clear merit in providing the European Maritime Safety Agency with the competence and the means to supplement the pollution response plans of Member States.

In order to provide the Agency with the necessary means to fulfil its pollution response objective, it is considered necessary to grant it an additional budget whose revenue will initially come from the Community. However, the Commission will study appropriate ways of re-funding this task, taking into account the polluter pays principle, in order to submit proposals if appropriate to the European Parliament and the Council at a later stage.

In order to contribute actively to the Community civil protection co-ordination mechanism, the Agency should have appropriate means allowing it to intervene, under the authority of the Member State requesting assistance, in cases of accidental or deliberate marine pollution. To this end, the Agency must be able to charter specialised or multipurpose pollution response ships and associated technical equipment.

This proposal leaves it to the Administrative Board of the Agency, with the agreement of the Commission, to adopt a detailed pollution response plan, determining the best possible use of the financial means made available in the Community budget. In doing that, the Agency will have to take into account the added value of its activities towards those of Member States, as well as the best possible combination of cost and efficiency. This line of action takes into account the fact that the Agency needs flexibility both in the constant evaluation of the gaps in the Member States' pollution response schemes and in the setting up of its own pollution response scheme.

⁷ Communication from the Commission "Report to the European Council on action to deal with the effects of the Prestige disaster" of 5.3.2003, COM(2003) 105 final.

The detailed pollution response plan of the Agency will take into account the actions undertaken in the context of the Community mechanism facilitating a reinforced co-operation in civil protection assistance interventions.

The Commission and the Agency are currently studying the most efficient ways of exercising the pollution response activity of the Agency. This analysis, to be completed by the results of an independent study, will allow the Agency to set up its detailed pollution response plan to be adopted by the Administrative Board.

The number of ships to be chartered is another factor determining the effectiveness of the Agency's action. In most cases oil spills occur close to the coast and the time available to intervene before the pollution reaches the shore is very short. Therefore the proximity of the ships chartered, to the place of the incident is crucial for the intervention. Considering the length of the coasts of the Union, in particular after enlargement, a choice needs to be made on how many ships are economically justifiable to be chartered and under which conditions. Such choice will be part of the detailed pollution response plan to be adopted by the Administrative Board of the Agency, with the agreement of the Commission. It should be pointed out in this context that the Community's action supplements, but does not take the place of, action by the Member States.

The ships belonging to the pollution response plan of the Agency should carry all the necessary equipment to deal with a broad range of oil types and chemical substances, following a pollution incident.

The Agency will have to carry out detailed research and an analysis of where appropriate pollution response ships can be found. Since the current pollution response fleet in Europe is mainly owned or chartered by the Member States, the Agency will have to investigate existing capacity in the private sector. In such context, the technical expertise available from the shipbuilding sector in the EU and elsewhere in building pollution response ships of advanced technology will be explored. All contracts to be concluded by the Agency for chartering ships and equipment will have to be publicly tendered.

As clearly mentioned in the proposal, the Agency will supplement the pollution response mechanisms of Member States and not replace them. To achieve this result, the best solution would seem to be to create closer co-operation between Member States and the Agency within the existing civil protection co-operation mechanism.

In addition to the provision of the appropriate means in the fight against pollution caused by ships, the Agency will also provide technical and scientific support to the Member States and the Commission in this same area. It will therefore have to develop and maintain scientific knowledge in this field. It will also have to constantly evaluate the effectiveness of the actions carried out and propose adjustments/alternatives. The evaluation of the effectiveness will have to be carried out in close co-operation with the Member States.

2.2. **Maritime transport security and training of seafarers**

The Commission proposal for a Regulation on **enhancing ship and port facility security** sets out Member States' obligations as regards administration, monitoring and provision of resources necessary for achieving the objectives of the Regulation, and requires them to adopt a national plan for implementing its provisions.

The proposed Regulation introduces a process whereby inspections supervised by the Commission are put in place to check the effectiveness of procedures for monitoring the implementation of each national system. Under this process the Agency is requested to assist the Commission in the tasks assigned to it by this Regulation.

In the light of the above, Regulation 1406/2002 establishing the Agency has to be amended accordingly to mention clearly maritime security among the tasks of the Agency.

The Commission proposal for a Directive amending European Parliament and Council Directive 2001/25/EC on the **minimum level of training of seafarers** introduces new procedures with regard to the recognition of certificates of competency of seafarers issued by countries outside the EU. More specifically it introduces a centralised and harmonised procedure for a Community-wide recognition of third countries complying with the STCW Convention⁸.

Such centralised Community wide recognition becomes the responsibility of the Commission and requires additional resources at Community level, in order to perform a task which was previously under the responsibility of Member States. The proposal mentions clearly that the Agency will have to assist in this enlarged Community task.

While Regulation 1406/2002 establishing the Agency, already mentions in article 2 that the Agency must assist the Commission in the performance of any task assigned to it in the field of safety, training, certification and watchkeeping of ships' crews, it is necessary to align this provision with the enlarged task assigned to the Commission and to the Agency in this field.

3. **CONTENT OF THE PROPOSAL**

The proposal contains one article specifying the proposed modifications to the existing provisions of the Regulation and one article relating to the entry into force of the Regulation.

⁸ International Convention on Standards of Training, Certification and Watchkeeping, 1978.

4. SPECIFIC CONSIDERATIONS

4.1. Introduction of maritime security and pollution response among the Agency's objectives (Article 1.1)

Article 1 of Regulation (EC) 1406/2002 is amended in order to reflect the expansion of the Agency's jurisdiction in the fields of maritime security and pollution response. A new paragraph 3 is added to Article 1, providing for the Agency's technical and scientific assistance to Member States and the Commission in the pollution response field. The same paragraph provides that the Agency is to assist Member States with appropriate resources, by supplementing their action in cases of maritime pollution incidents. In such cases, the Agency will act in support of the Community mechanism in the field of civil protection, set up by Council Decision 2001/792/EC.

4.2. Introduction of maritime security and pollution response among the specific tasks of the Agency (Article 1.2)

Article 2 of Regulation (EC) 1406/2002, referring to the Agency tasks, is amended in order to introduce in all relevant places specific references to the new objectives of the Agency. These modifications concern:

- assistance to the Commission in updating, developing and verifying the implementation of Community legislation in the fields of maritime security and pollution response;
- backing up, with appropriate resources, Member States' pollution response actions;
- collection, recording and evaluation of information and data on maritime security (the same task with regard to information and data on pollution from ships was already included among the Agency tasks);
- possible technical assistance to accession countries on both maritime security and pollution response.

Under this same article, a specific reference is added to paragraph (b)(iii) to the enlarged Community competence on the training and qualifications of third country seafarers, involving the evaluation of compliance of third countries with the requirements of the STCW Convention.

4.3. Establishment of a policy plan by the Administrative Board with regard to the Agency's pollution response activities (Article 1.3).

A new paragraph is added to article 10 of Regulation (EC) 1406/2002, referring to the creation and powers of the Administrative Board, in order to include among its powers the adoption of a detailed plan with regard to the Agency's pollution response activities, which will be prepared by the Executive Director. The Board will have to take into account the value added by the Agency's activities to the activities of the Member States, as well as the best possible combination of cost and efficiency. Such plan needs to have the agreement of the Commission, in order to ensure its full compatibility with the Community mechanism in the field of civil protection and the Community framework of co-operation in the field of accidental or deliberate marine pollution.

4.4. Addition of the required expertise of both the Administrative Board Members and the Executive Director concerning the Agency's new tasks (Articles 1.4 and 1.5).

Articles 11 and 16 of Regulation (EC) 1406/2002, referring respectively to the composition of the Administrative Board and the appointment of the Executive Director, are amended in order to add the fields of maritime security and pollution response to the list of required expertise. This provision will take effect in the case of new appointments within the Agency's administrative structure.

4.5. Adjustment of the conditions applying to third countries wishing to participate in the Agency (Article 1.6).

Article 17 of Regulation (EC) 1406/2002, referring to the participation in the Agency of third countries, is amended in order to include among the conditions for such participation the adoption and application of the Community law on maritime security and pollution prevention. This provision cannot apply retrospectively to third countries already participating in the Agency prior to the entry into force of this Regulation. These countries are, however, expected to take all appropriate measures in order to align with the Community legislation in these two areas, as soon as possible.

Proposal for a

REGULATION 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 establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission⁹,

Having regard to the opinion of the European Economic and Social Committee¹⁰,

Having regard to the opinion of the Committee of the Regions¹¹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹²,

Whereas:

- (1) Regulation (EC) No 1406/2002 of the European Parliament and of the Council established a European Maritime Safety Agency¹³ (the Agency) for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships.
- (2) 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.
- (3) 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.

⁹ OJ C , , p. .

¹⁰ OJ C , , p. .

¹¹ OJ C , , p. .

¹² OJ C , , p. .

¹³ OJ L 208 of 5.8.2002, p.1.

- (4) The Commission Communication of 2 May 2003 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on enhancing maritime transport security¹⁴ includes a proposal for a European Parliament and Council Regulation which implements the above international instruments in the Community. The proposed Regulation on ship and port facility security assigns to the Agency an important task concerning the implementation of these security measures by Member States.
- (5) Recent accidents in European 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 2850/2000/EC¹⁵ of the European Parliament and of the Council set up a Community framework for co-operation 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/EC¹⁶ established a Community mechanism to facilitate reinforced co-operation 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.
- (8) The Agency should be provided with the appropriate structure to undertake pollution response actions which will supplement the pollution response mechanisms of the Member States. It should act in support of the Community mechanism in the field of civil protection.
- (9) The Commission proposal for a Directive amending European Parliament and Council Directive 2001/25/EC on the minimum level of training of seafarers¹⁷ introduces new procedures with regard to the recognition of certificates of competency of seafarers issued by countries outside the EU. 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 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) 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.

¹⁴ COM(2003) 229 final.

¹⁵ OJ L 332 of 28.12.2000, p 1.

¹⁶ OJ L 297 of 15.11.2001, p.7.

¹⁷ COM (2003) 1 final of 13.01.2003.

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

HAVE ADOPTED THIS REGULATION:

Article 1

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

1) Article 1 is amended as follows:

(a) paragraphs 1 and 2 are 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, 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, prevention of pollution caused by ships, to monitor its implementation and to evaluate the effectiveness of the measures in place.

(b) the following paragraph 3 is 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 supplement with appropriate means the pollution response mechanisms of Member States. It shall act in support of the Community framework for co-operation in the field of accidental or deliberate marine pollution established by Decision 2850/2000/EC of the European Parliament and of the Council and of the Community mechanism in the field of civil protection established by Council Decision 2001/792/EC."

2) Article 2 is replaced by the following:

"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 the Commission by existing and future Community legislation on maritime safety and maritime security, 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 evaluation of compliance of third countries with the requirements of the STCW Convention.
- (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) supplement with appropriate means, via the Community mechanism in the field of civil protection established by Council Decision 2001/792/EC, their pollution response actions in case of accidental or deliberate pollution caused by ships;
- (d) it shall facilitate co-operation between the Member States and the Commission in the field covered by Directive 2002/59/EC. In particular, the Agency shall:
 - (i) promote co-operation 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 co-operation 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 the Directive on 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 Council Decision 2001/792/EC. These tasks shall be co-ordinated with the existing regional co-operation programs and shall include, where appropriate, the organisation of relevant training activities."

3) In Article 10, paragraph 2, the following point (k) is added:

"(k) adopt, following a proposal by the Executive Director and in agreement with the Commission, a detailed plan for the Agency's pollution 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 is 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) In Article 16, the first subparagraph of paragraph 1 is 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."

6) In Article 17, paragraph 1 is 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."

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 Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Inland, air and maritime transport policy

Activit(y/ies): Implementation of the provisions on pollution response activities, maritime security and training of seafarers by the European Maritime Safety Agency.

TITLE OF ACTION: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) 1406/2002 ESTABLISHING A EUROPEAN MARITIME SAFETY AGENCY.

1. BUDGET LINE(S) + HEADING(S)

06020201 and 06020202: European Maritime Safety Agency (Subsidy for titles 1, 2 and 3),

06020203: European Maritime Safety Agency (Subsidy for anti-pollution measures)

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): See point 6.1

2.2. Period of application:

(Indefinite, starting in 2004)

2.3. Overall multiannual estimate of expenditure:

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) / Budget line 06020203(*see point 6.1.1*).

€ million (*to three decimal places*)

	Year 2004	2005	2006 (1)	2007 and subsequent years (2)	Total
Commitments	20	20	20	N.A.	60
Payments	10	25	25		60

(1) EUR 20 million have been programmed by the Commission for each year of the period 2004-2006, subject to revision in line with future decisions by the legislative authority.(SEC (2003) 492 point 1.1.1).

(2) To be decided in the light of the results of the evaluation provided for in paragraph 8.2.

- (b) Schedule of commitment appropriations/payment appropriations (financial intervention) / Budget line 06020202 (see point 6.1.2).

Commitments	0,130	0,130.	0,390	N.A.	0,650
Payments	0,130	0,130	0,390	N.A.	0,650

Provision for the 2004 expenditure has been made in the 2004 Preliminary Draft Budget.

Subtotal a+b					
Commitments	20,130	20,130	20,390	N.A.	60,650
Payments	10,130	25,130	25,390		60,650

- (c) Overall financial impact of human resources and other administrative and operational expenditure (Budget lines 06020201 and 06020202) (see points 7.2 and 7.3).

Commitments/ payments	3,240	3,240	3,240	N.A.	9,720
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Provision for the 2004 expenditure has been made in the 2004 Preliminary Draft Budget.

TOTAL a+b+c					
Commitments	23,370	23,370	23,630	N.A.	70,370
Payments	13,370	28,370	28,630		70,370

2.4. Compatibility with financial programming and financial perspective

Proposal is compatible with existing financial programming for the period 2004-2006.

2.5. Financial impact on revenue:

Proposal has no financial implications (involves technical aspects regarding implementation of a measure).

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
NCE	DA	YES	YES	NO	No 3 Internal Policies

4. LEGAL BASIS

Article 80(2) of the EC Treaty, Regulation (EC) No 1406/2002 of the European Parliament and of the Council, of 27 June 2002, establishing a European Maritime Safety Agency.

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention

5.1.1. Objectives pursued

In the aftermath of a series of ecological catastrophes in European waters caused by oil tankers, it became obvious that the European Union had to take additional measures to respond to pollution caused by ships. The Community body which is best placed to initiate concrete actions against pollution caused by ships is the European Maritime Safety Agency, set up by Regulation 1406/2002. These actions shall supplement the efforts of Member States and provide added value to the Community framework for co-operation in the field of marine pollution and civil protection and the Community mechanism in the field of civil protection.

- In order to provide the Agency with the necessary means to fulfil its pollution response objective, it is considered necessary to grant it an additional budget whose revenue will initially come from the Community. An amount of € 20 million has been allocated in the 2004 Draft Community budget for this action.
- Increased concerns over the threat of terrorism and other illicit actions targeting ships and port facilities lead to the adoption of by the International Maritime Organisation of specific instruments to face such threat. In view of the entry into force of these instruments on July 2003, the Commission has issued a proposal for a Regulation on the improvement of ships and ports security (COM(2003) 229 final, which implements in a harmonised way throughout the Community the internationally agreed measures. The same proposal sets up a mechanism of inspections on the effective application of the security measures by Member States, to be effectuated by the Commission with the assistance of the Agency.
- A recent Commission proposal in the field of the training of seafarers provides for an increased role of the Agency in the process of Community recognition of the training and qualifications of third country seafarers. While the tasks of the Agency already include assistance in the field of seafarers training, the present revision of the Regulation 1406/2002 provides the opportunity to put additional accent in this field.

In line with the above considerations, Regulation 1406/2002 establishing the European Maritime Safety Agency has to be amended to:

- provide the Agency with the legal competence and the appropriate means to fight accidental and illicit pollution caused by ships. The actions undertaken by the Agency will supplement the efforts of Member States and provide added value to the Community framework for co-operation in the field of marine pollution and civil protection and the Community mechanism in the field of civil protection;
- enlarge the objectives of the Agency in order to cover the field of maritime security, allowing the Agency to supplement the Community policy in this field in line with the Commission Communication on enhancing maritime transport security;

- further define the Agency's competence in the field of the training of seafarers in order to reflect the enlarged role attributed to the Commission and to the Agency in line with the revision of Directive 2001/25/EC on the minimum level of training of seafarers.

5.1.2. Measures taken in connection with ex ante evaluation

Following the accident of the oil tanker *Prestige*, which caused a severe spill of heavy oil affecting the coastlines of Spain, Portugal and France, it became obvious that additional measures were necessary at Community level to face such a crisis. Additional capacity in anti-pollution resources (both ships and equipment) should be available in Europe in order to minimise the severe implications of pollution caused by ships.

Taking into account that at present pollution response actions are under the direct responsibility of Member States, the Commission assessed the situation by consulting a number of Member States' authorities. Furthermore, the Commission consulted organisations representing industry, which have experience in pollution response methods.

From these consultations, it became obvious that there are certain gaps in the Member States' pollution response plans, both in material and technology terms. In addition, different approaches are taken, with significant differences in command and control structures. It also appeared that different organisational models were used in pollution response, ranging from a high level of intervention by the State, which took charge of deploying its own resources, to a very low level of involvement where assistance and clean-up operations were outsourced to third parties.

The Agency's main role must be to facilitate the continuous evaluation of the action taken, as regards both management of the pollution response and of the available technical capacities. In order to have a better understanding of the situation, it is important to have a clear view of the effectiveness of the measures taken by the authorities, particularly in terms of their cost, and to evaluate the success rate of the pollution response and clean-up operations. The creation of a forum for the exchange of best practices and of innovative technologies would help achieve the objective of improving the pollution response. The Agency should play a central role in this, by placing at the disposal of the Member States the best available technical expertise, organising scenario planning exercises in order to further develop pollution response models, and examining issues of liability and international assistance.

Last but not least, strengthening the Agency's contribution to the Community pollution response system by making intervention resources available is wholly in line with the result of the above-mentioned consultations. This is particularly relevant in connection with closing the existing gaps in the Member States' operational systems, given that there is no other possibility of achieving this objective.

5.2. Action envisaged and budget intervention arrangements

The proposed Regulation will provide the newly established European Maritime Safety Agency with a new competence for becoming active in the pollution response field. Action by the Agency will involve the chartering of specialised anti-pollution ships and equipment. In that respect, a new budget line (06020203) has been proposed within the total subsidy to the Agency, to contain the funds dedicated to this new Agency task. While this new line will contain only the operational cost of the anti-pollution means, this new task will involve the gradual increase of the Agency staff, to be included in the Administrative expenditure of the

Agency. Furthermore, it will involve additional expenditure for associated activities including studies, meetings, and publications.

The second new task of the Agency provided for by the proposed Regulation relates to maritime security and will require an increase of staff in order to enable the Agency to perform control functions in Member States in line with the proposed Regulation on ship and port facility security. Furthermore this task will involve additional expenditure, for associated activities including studies, meetings, and publications.

The proposed Regulation also reflects the enhanced role of the Agency in the area of recognition of qualifications of third country seafarers. Additional staff will be required for providing assistance to the Commission in the performance of the enlarged Community competence in this field. Furthermore the enhanced role of the Agency in the control of third country Training Institutions for seafarers will involve additional expenditure for associated activities, particularly mission expenses and meetings.

The activation of the Agency in the above areas is consistent with the framework EU policies and will provide the Community with additional competence and appropriate means of implementation and control of Community legislation.

5.3. Methods of implementation

The objectives and mission of the European Maritime Safety Agency and its capacity to assemble quickly the necessary expertise in its new fields of competence, makes it the right Community body for performing the tasks resulting from the proposed Regulation.

The Agency will perform the direct management of the envisaged actions. The detailed activity in the three fields mentioned above will be set out in the Work Programme of the Agency to be established every year in close co-operation with the Commission.

The Agency, in line with its founding regulation, has to produce every year a general report on its activities for the previous year which will be forwarded to the Member States, the European Parliament, the Council and the Commission. This report will present all specific actions undertaken by the Agency and will provide data for the evaluation of the actions undertaken under the proposed revision of the Agency Regulation.

With regard to the implementation of the pollution response activity, the Commission and the Agency are currently studying the most efficient ways of exercising such activity. This involves (a) the evaluation of existing mechanisms by assessing their efficiency and cost (b) the identification of best practises and methods for promoting the construction of innovative types of anti-pollution ships. This analysis, to be completed with the results of an independent study, will allow to the Agency to set up its detailed pollution response plan to be adopted by the Administrative Board. From the initial assessment it appears that the Agency should in principle make use of two types of pollution response ships: (a) ships able to pump up oil or chemical and stabilise a ship in distress in order to limit the pollution threat and (b) ships capable to perform clean up operations at sea (skimming oil from the sea, use of dissolving chemicals or other methods) before the pollution reaches the shore. The Agency will establish contracts with private parties which will provide these specialised or multipurpose ships, including crew and deal with all other operational expenses.

The Agency will study at regular intervals the evolution in the pollution response mechanisms in order to adapt the Agency plan to the changes of the market (availability and technical characteristics of anti-pollution ships and equipment).

6. FINANCIAL IMPACT

6.1. Total financial impact on Part B - (over the entire programming period)

The cost of this intervention by the Agency is calculated by adding up the individual costs on an annual basis, starting in 2004, when the proposed amendment to Regulation 1406/2002/EC will enter into force.

Three type of activities are envisaged, equal to the number of the enlarged Agency tasks: Activity 1 (pollution response), Activity 2 (maritime security), Activity 3 (qualifications of seafarers).

6.1.1. Financial intervention

The table below presents exclusively the cost of Activity 1 (pollution response) and due to its importance will enter in the Community budget line specifically devoted to the anti-pollution ships used by the Agency. Within this Activity, a separation of commitments is made in two main categories of actions by the Agency in the pollution response field: (a) the operation of specialised pollution response ships of innovative type, capable to operate clean up operations in heavy seas (stabilise and pump up oil from a ship in distress) and (b) the operation of smaller multipurpose ships, with appropriate equipment, able to intervene quickly and limit the effect of pollution (skimming oil from the sea, use of dissolving chemicals or other methods), before the spill reaches the shore. The indicative cost provided below corresponds to the chartering of such ships by the Agency.

While the precise plan of the Agency pollution response must be adopted by the Agency's Board, with the agreement of the Commission, it seems appropriate to envisage an appropriate amount for the operation of the specialised ships capable of providing added value to the existing capacity of Member States. The amounts allocated for both actions are € 20 million in 2004, 2005 and 2006.

While the final number of ships and their capacities will depend on the best offers and market values, the chartering cost per ship under action (a) is estimated at € 10 million per year including crew and all operating expenses; while the chartering cost per ship under action (b) including crew and all operating expenses is estimated at an average € 3 million per year.

The amounts allocated to the pollution response activity for 2004 are in line with provision made in the Preliminary Draft Budget (line 06020203).

Commitments (in € million to three decimal places)

Breakdown	2004	2005	2006	2007 and subsequent years	Total
Activity 1: Pollution response task	10	10	10	N.A. (2)	30
Action (a) Chartering/standing contract with specialised pollution response ships of innovative type (fully crewed, equipped and managed)					
Action (b): Chartering /standing contract with smaller, multipurpose ships (fully crewed, equipped and managed)	10	10	10	N.A. (2)	30
TOTAL	20	20	20 (1)		60

(1) Subject to revision in line with future decisions by the legislative authority (SEC(2003) 492 point 1.1.1).

(2) To be decided in the light of the results of the evaluation provided for in paragraph 8.2.

6.1.2. *Associated activities (commitment appropriations) Budget line 06020202*

This table includes support expenditure for all three activities resulting from the proposed Regulation (pollution response, maritime security and qualifications of third country seafarers). The cost presented below for each of the activities, concerns the following:

(a) Studies: Periodical evaluation studies are foreseen only for the pollution response activity at an amount of € 0.250 million;

(b) Meetings of experts: Meetings of experts from the sectors concerned with each of the new activities are foreseen, at the flat rate of € 0.025 million for the organisation of one-day meeting. Such meetings are necessary in order to analyse the impact, evaluate the practical implementation and programme further action in relation to each of the activities;

(c) Information and publication: Amounts for information, brochures and other publications by the Agency in the three new activities are also foreseen.

	2004	2005	2006	2007 and subsequent years	Total

Activity 1 (pollution response)					
a) Studies			0.250	N.A. (2)	0.250
b) Meetings of experts	0.050	0.050	0.050	N.A. (2)	0.150
c) Information and publications	0.010	0.010	0.020	N.A. (2)	0.040
Sub-total activity 1	0.060	0.060	0.320	N.A. (2)	0.440
Activity 2 (maritime security)					
a) Studies				N.A. (2)	
b) Meetings of experts	0.025	0.025	0.025	N.A. (2)	0.075
c) Information and publications	0.010	0.010	0.010	N.A. (2)	0.030
Sub-total activity 2	0.035	0.035	0.035	N.A. (2)	0.105
Activity 3 (seafarers qualifications)					
a) Studies				N.A. (2)	
b) Meetings of experts	0.025	0.025	0.025	N.A. (2)	0.075
c) Information and publications	0.010	0.010	0.010	N.A. (2)	0.030
Sub-total activity 3	0.035	0.035	0.035	N.A. (2)	0.105
TOTAL	0.130 (1)	0.130	0.390	N.A. (2)	0.650

1) Provision for the 2004 expenditure has been made in the 2004 Preliminary Draft Budget.

(2) To be decided in the light of the results of the evaluation provided for in paragraph 8.2.

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

7.1. Impact on human resources (2004-2006)

The impact of the three new tasks/activities on human resources for the Agency is presented below in separate columns for each of them. Taking into account that these tasks/activities are additions to the tasks already foreseen by Regulation (EC) 1406/2002, the following table presents the additional human resources required for the completion of the new Agency tasks for the period 2004-2006. These resources have already been provided for in the 2004 Preliminary Draft Budget (budget line 06020201).

Types of post		Staff to be assigned to management of the action using existing and/or additional resources						Total	Description of tasks deriving from the action
		Number of permanent posts			Number of temporary posts				
		Act. 1	Act. 2	Act. 3	Act. 1	Act. 2	Act. 3		
Officials or temporary staff	A	1	1	1	6	5	4/	Principal Administrator & Administrators Administrators' Assistants Secretaries .	
	/				/	/	/		
	B				2	1	1		
	C				1	1	1		
Total		1	1	1	9	7	6	25	

7.2. Overall financial impact of human resources (2004-2006)

Type of human resources	Amount (€)	Method of calculation *
Officials	324.000	Average cost of Community officials
Temporary staff	2.376.000	(€ 0.108 million/year /official)
Total	2.700.000	

The amounts are total expenditure for twelve months for the first three years (2004-2006). Provision for the 2004 expenditure has been made in the 2004 Preliminary Draft Budget.

7.3. Other administrative and operational expenditure deriving from the action

Budget line (number and heading)	Amount €	Method of calculation
Overall allocation	/	Average number of missions in Member States and third countries.
Budget line 06020202– Missions	/	
Activity 1 (pollution response)	45.000	Activity 1: 30 missions (of about 5 days each) in various Member States in the context of pollution response expertise and deployment of pollution response resources chartered by the Agency: 30 x €1.500. Activity 2: 3 inspection visits of about 5 days in each Member State (3 x 25 MS x €1.500). Activity 3: 10 inspection missions of about 7 days involving 3 inspectors in third countries in Asia, Far East, Latin America providing seafarers' (10 x 3 x € 8.000).
Activity 2 (maritime security)	112.500	
Activity 3 (qualifications of seafarers)	240.000	
/	/	
/	/	
/	/	
/	/	
Meetings	/	
Additional Administrative Board (Budget line 06020201) and expert group meetings (Budget line 06020202)	/	
	/	
Activity 1	67.500	
Activity 2	37.500	Pollution response: 1 extra meeting of the Administrative Board and 2 meetings of Member States' experts. Maritime security: 2 meetings of Member States' experts. Seafarers qualifications: 2 meetings of Member States' experts.
Activity 3	37.500	
/		
/		
/		
/		Reimbursement of travel expenses for the meetings with Member States' experts, estimated at 25 times an average of €750/expert per meeting.
/		
Total	540.000 (1)	

(1) Provision for the 2004 expenditure has been made in the 2004 Preliminary Draft Budget.

The amounts are total expenditure for twelve months.

¹ Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	€3.240.000
II.	Duration of action	Indefinite
III.	Total cost of action (I x II)	

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

The Commission and the Agency will organise follow up arrangements involving evaluation of the actions undertaken by the Agency in all fields of the Agency enlarged competence (see also point 8.2).

8.2. Arrangements and schedule for the planned evaluation

The Agency should commission a study on the third year after the start up of its pollution response operations and repeat this every three years. The actions in the pollution response field will be evaluated as well in the context of the Community co-operation framework of pollution response to which the Agency will participate from the start.

The actions undertaken by the Agency in all three fields of enlarged competence will be reported every year in the general report of the Agency for the previous year.

9. ANTI-FRAUD MEASURES

The activities of the Agency in the field of pollution response will be subject to the normal audit procedures foreseen by the Agency's Financial Regulation and the control of the Court of Auditors.

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES(SMEs)

TITLE OF PROPOSAL

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002, establishing a European Maritime Safety Agency

DOCUMENT REFERENCE NUMBER

COM(2003)XXX

THE PROPOSAL

1. *Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?*

The main aim of the proposal is to amend Regulation 1406/2002 of the European Parliament and of the Council in order to enlarge the competence of the European Maritime Safety Agency in the field of response to pollution caused by ships. Furthermore the proposal specifies the role of the Agency in the fields of maritime security and the training of seafarers, in line with recent Commission initiatives in these fields.

The action of the Agency in the field of pollution response has an obvious aspect of subsidiarity, since the Community action will provide added value and supplement the efforts of Member States in this field. The means provided by the Agency (specialised ships and equipment) will offer additional capacity to the means available to Member States when dealing with pollution incidents (accidental or deliberate) caused by ships. The objective of this action, which is to minimise the results of pollution incidents at sea, will have a clear positive impact for the European citizen and the environment.

THE IMPACT ON BUSINESS

2. *Who will be affected by the proposal?*
 - *which sectors of business*

Taking into account that the Agency will have to build up a pollution response capacity made up of specialised ships and equipment, this proposal will have indirect positive implications in the market of such ships and equipment. Since most of the existing capacity of such specialised means in Europe is mainly owned or chartered by the Member States, the Agency will have to investigate existing capacity in the private sector or stimulate the building of new ships.

- *which sizes of business (what is the concentration of small and medium-sized firms)*

The positive implications of the Agency demand of pollution response means will be spread both towards big companies (shipbuilding and ship-chartering companies) and smaller firms, producers of specialised equipment used for the collection of oil and other noxious substances from the sea.

- *are there particular geographical areas of the Community where these businesses are found*

The firms specialised in the above type of activities can be found all around Europe, with certain concentration in the northern Member States.

3. *What will business have to do to comply with the proposal?*

There is no direct effect to business. As mentioned before, the implications from the pollution response activity of the Agency will be indirect. In line with established Community policy on public markets, all contracts to be concluded by the Agency for chartering ships and equipment shall be publicly tendered.

4. *What economic effects is the proposal likely to have?*

- *on employment*
- *on investment and the creation of new businesses*
- *on the competitiveness of businesses*

The additional demand of the Agency in the specialised market of pollution response ships and equipment is expected to have positive implications both on investment and employment. Extra capacity will have to be created by the specialised firms in order to reply to such demand. The competitiveness of the specialised business is also expected to raise.

5. *Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?*

No. Such measures are not necessary.

CONSULTATION

6. *List the organisations which have been consulted about the proposal and outline their main views.*

Taking into account that presently pollution response actions are under the direct responsibility of Member States, the Commission assessed the situation by consulting a number of Member States authorities that have important pollution response capacity and experience in this field. The Commission also presented its ideas about the pollution response activity of the Agency to the Administrative Board of the Agency, where all Member States maritime authorities are represented.

Furthermore, the Commission consulted a number of industry related bodies having experience in the pollution response methods and mechanisms, including the International Tanker Owners Pollution Federation (ITOPF).

From these consultations, it became obvious that certain gaps exist in the Member States pollution response plans, both in material and technology terms. Additional effort was also necessary in the field of co-ordination for resembling the appropriate anti-pollution means, in case of serious pollution incidents.