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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE
EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**on the evaluation of the European Agency for Safety and Health at Work accompanied
by a**

Proposal for a

COUNCIL REGULATION

**amending Regulation (EC) No 2062/94 establishing a European Agency for Safety and
Health at Work**

(presented by the Commission)

CONTEXT

Following the Commission's presentation of its programme in the field of health and safety at work, the Council in its resolution of 21 December 1987¹ requested the Commission *"to examine how the exchange of information and experience in the field covered by this resolution can be improved, particularly as regards the gathering and dissemination of data and the advisability of setting up Community machinery to study the repercussions at national level of Community measures in this field"*.

Via its Regulation (EC) No 2062/94 of 18 July 1994² the Council established a European Agency for Safety and Health at Work (hereinafter "the Agency"). This Agency, which was amended by Council Regulation (EC) No 1643/95³ of 29 June 1995, contains a review clause in Article 23. This clause stipulates that *"[n]o later than five years after the entry into force of this Regulation, on the basis of a Commission report, accompanied as appropriate by a proposal, the Council, having consulted the European Parliament, shall review this Regulation and any new assignment for the Agency that proves necessary."*

Given that the Agency did not become fully operational until after September 1996, the date on which the director took up office, the Commission transmitted to the Council a progress report⁴ on the operation of the Agency on 23 March 2001. This first report provided a general overview of the progress, achieved in the operational set-up of the European Agency for Safety and Health at Work, rather than a detailed performance evaluation towards its objectives. It was said that the precise evaluation of its performance, and the impact of the Agency's information activities, would be submitted to Council once the results of the extended evaluation launched were available and had been analysed by the Commission. Besides, the Commission indicated that, at its request, an external evaluation had been decided upon by the Agency's Administrative Board. Complementary to this evaluation, a survey of more forward-looking elements would be organised as well allowing for a review of its communication strategy.

On 11 March 2002, the Commission presented a communication addressed to the interested parties on the guidelines of its new strategy regarding well-being at work⁵. In this document, the Commission described the elements to be put in place in order to consolidate a genuine global approach, based on a culture of risk prevention, on combining a variety of political instruments and on building partnerships between all the players. In this context it emphasised the key role which the Agency will have to play in promoting prevention and the collection and dissemination of information, notably by creating a "risk observatory". This "new strategy" was very well received by the Council⁶ and the Parliament⁷, which reiterated their support. The Economic and Social Committee also delivered a positive opinion.

¹ OJ C 28 of 3.2.1988, page 1.

² OJ L 216 of 20.8.1994, page 1.

³ OJ L 156 of 7.7.1995, page 1.

⁴ "Communication from the Commission to the Council regarding the Commission's report on the European Agency for Safety and Health at Work", COM(2001)163 of 23.03.2001.

⁵ "Adapting to change in work and society: a new Community strategy on health and safety at work 2002-2006", COM(2002) 118 final of 11.03.2002.

⁶ Council Resolution of 3.06.2002 (OJ 161 of 5.07.2002, page 1).

⁷ Parliament Resolution of 23.10.2002, doc PE 323.680, page 9.

EXTERNAL EVALUATION

Anticipating the conclusions of the Commission's Report of 23 March 2001, the Bilbao Agency had commissioned an external consultant to prepare an evaluation report on its activities.

This report was presented to the Commission and the Administrative Board during a seminar organised in Bilbao in March 2001. The chief conclusions of this report can be summarised as follows:

The Agency has succeeded in putting in place an infrastructure to provide information in the field of health and safety at work, both at the level of data dissemination techniques and at that of a network structure;

The Agency has partly succeeded in achieving its goal, i.e. in addressing clients' needs ;

The Agency has only made a small contribution to giving added value to the information received from the national networks ;

Generally speaking, the Agency has reasonably achieved the aims set out in Council Regulation (EC) No 2062/94, notably in the light of the time at its disposal and the complexity of the tasks.

The external consultant's report also contained the following recommendations:

Considerably improve communications with the different clients, notably the small and medium-sized enterprises (SMEs);

Develop innovative concepts in the field of health and safety at work, taking into account the changes in the world of work;

Further develop its network, paying closer attention to the different national networks and the clients' needs;

Develop the Agency's management structure as well as its strategy, notably by making better use of the tripartism of its Administrative Board ; more specifically, ensure the permanence of the resources available to the Agency.

Augment the Agency's internal capacities by improving internal communication via flexible procedures, guaranteeing a high level of personnel skills, and better management of human resources.

THE AGENCY'S RESPONSE

Reacting to all these comments, the Agency replied (May 2001) that in view of the limited time available and the complexity of the task, the contractor had accomplished his evaluation task in a satisfactory manner. The Agency noted that the evaluation had identified five key areas for improvement. It also concluded that the primary task was to eliminate the communications and networking deficiencies, before laying down operational priorities as a function of the available resources.

THE OPINION OF THE INTEREST GROUPS

Besides this external evaluation made in 2001, the interest groups (employers, workers and government representatives) have in the meantime expressed their views and have made their own observations and recommendations. A large number of these comments are akin to the contractor's, although the perception of certain problems seems to differ greatly from one group to another.

The government representatives responsible for health and safety at work have generally called for a thorough review of the Regulation, notably as regards its scope. They seek clarification of the Agency's assignments and responsibilities and more specific provisions governing the composition and election of the members of its Administrative Board, the Bureau, and the role of the Commission in laying down priorities; a restructuring of the Agency's management, its staff and its network and the inclusion of added value by amalgamating the information received and giving it a European dimension; at the level of national focal points, they want a tripartite structure similar to that of the Agency's Administrative Board to be established on a sound legal basis and they want sufficient resources to produce, assemble and disseminate the information at national level.

The employers' representatives generally consider that the Agency has not fully completed the tasks vested in it by Council Regulation No 2062/94. More specific comments include the proposal to improve communications with clients. Notably, this group suggests the introduction of added value by presenting the information in such a way as to immediately contribute to resolving the problems which have arisen, particularly for SMEs.

This group also supports the external contractor's second recommendation, viz. the development of innovative concepts in the field of health and safety at work, bearing in mind the changes in the world of work.

As regards the Agency's role compared with that of the focal points in the Member States, the employers' group considers that it is not within the Agency's remit to impose tasks upon them – rather, the Agency's assignment is to process the information which it has received from them, so as to present it in such a way as to provide immediate benefits to all clients.

Finally, as regards improving the structure and management of the Agency, and in order to lower the level of client dissatisfaction -- which this group considers to be relatively high -- their representatives propose enhancing the role of the Administrative Board and giving the Bureau more executive powers.

The workers' representatives point out that the evaluation report does not give sufficiently detailed answers to ensure full compliance with all the provisions of the Regulation establishing the Agency: the report does not show to what extent the procedures, the structure of the network used, etc. are efficient. The report does not give a global answer as to how the different products really satisfy the users' different needs. Besides, this group also calls for the tripartite system of the Administrative Board to be introduced at the level of the national focal points, as do the government representatives.

The proposals made include the suggestion that the Agency's strategy be extended to include follow-up activities (monitoring) in high risk areas and one-off activities, such as safety campaigns.

The group is particularly interested in access to sources of information and the added value associated with the establishment of a research methodology and the processing and storing of information on a thematic basis. Naturally, this group insists that the Agency be granted sufficient resources to fulfil its mission.

THE OPINION OF THE ADVISORY COMMITTEE ON SAFETY, HYGIENE AND HEALTH PROTECTION AT WORK (CCSHS)⁸

The Advisory Committee on Safety, Hygiene and Health Protection at Work, in which the three abovementioned groups are formally represented, has also addressed the question. At its plenary meeting of 15 May 2003, the Committee delivered an opinion in which it:

☐ "reiterates the *need to amend the Council Regulation* (Articles 3 and 4) and not to stop at informal recommendations which have proved to have their limitations. The purpose of such amendment should be to clarify the objective and tasks of the Agency, the way information should be processed, the role of the actors, and the way in which the Agency operates and functions.

With this in mind, the Committee would like to draw the following matters to the Commission's attention and ask it to take account of them:

the need to situate the Agency's activities in the context of the "Community strategy on health and safety at work 2002-2006" and to ensure that the Agency not only collects, but also ensures the processing of certain information;

the benefits of redefining the Agency's tasks so there is no doubt that major operations such as the "SME programme" or the "European Health and Safety Week" fall within its legal and financial framework and so that "database" or "observatory" projects also have a place;

the need to specify the nature and role of the Focal Points: whether there is unanimous agreement that the Focal Points must function in a manner which respects the principle of tripartism, that the way they function is not in line with the agreement, and that the question remains open as to whether the Focal Points are Agency bodies (which have to operate using Agency resources) or national structures (in which case the Agency cannot give them unlimited orders);

the Committee's desire not to extend the Agency's responsibilities to include legislation

⁸ Tripartite Committee created by Council Decision of 27/6/1974 (74/325/CEE, JO L185 of 9.7.1974).

issues, which come under the jurisdiction of the Community institutions (Commission, Council, Parliament), the European social partners and the Luxembourg Committee.

Governance

The Committee feels it is essential and urgent to amend the Council Regulation with regard to all the points concerning governance made in the joint resolution of 20 December 2002 (joint opinion of the Bilbao, Dublin and Thessaloniki agencies⁹). The priority should be for this resolution to be applied in its entirety, and it should replace the recommendations on these points in the Advisory Committee's opinion of 29 November 2001.

Operating practices

The Committee reiterates the need for the information provided by the Agency to be accessible to as many final users as possible, in several countries at the same time. This is a key point in the evaluation.

In this connection it feels that the language issue must be resolved soon. The evaluation shows that users are able to exploit information only if it is available in their mother tongue. The Committee is aware that it is not possible for all information to be available in all languages and would like the Focal Points and national social partners to play an active role in selecting the information to be translated.

SUMMARY AND ANALYSIS IN THE LIGHT OF COUNCIL REGULATION 2062/94

A comparison of the remarks and comments with the text of the Regulation establishing the Agency leads to the following conclusions.

The Agency's objective as set out in Article 2 is not contested by the evaluators even if they differ as to the extent to which it has been achieved. Consequently, the Agency's objective remains a key issue, viz.:

“In order to encourage improvements, especially in the working environment, as regards the protection of the safety and health of workers as provided for in the Treaty and successive action programmes concerning health and safety at the workplace, the aim of the Agency shall be to provide the Community bodies, the Member States and those involved in the field with the technical, scientific and economic information of use in the field of safety and health at work.”

Nevertheless the Commission considers that the Agency's objective could be fleshed out by introducing an explicit reference to the Community strategies.

⁹ European Agency for Safety and Health at Work, European Foundation for the Improvement of Living and Working Conditions and European Centre for the Development of Vocational Training.

As regards the Agency's role (Article 3) and the achievement of its assignments, all the evaluators emphasise two elements which are not quite satisfactory: firstly, the question of the adding value in order to ensure that the "products" supplied are useful and directly benefit the interested parties, in particular the SMEs; secondly, improvement of the Agency's communications with its clients.

The Commission considers that these two grievances do not reflect deficiencies in the text of Article 3 of the Regulation but concern the implementation of the Agency's current assignments. The existing text makes it possible to accommodate the demands made by the Advisory Committee. Consequently, the Commission considers that Article 3 clearly defines the scope of activity which the Council envisaged for the Agency and permits the developments suggested by the evaluators – notably the activities of the Agency described in the context of the Community strategy for health and safety at work 2002-2006, including its role as "risk observatory"; however, the text could be more clearly formulated as regards the relationships between the Agency and its partners and the need to furnish products which clients can utilise straight away. Hence the Commission proposes that the amendments be confined to relatively minor modifications.

Article 4 of the Regulation prescribes the manner in which the Agency must set up its network.

Clearly, opinions differ as regards the scope of this Article and its implementation, notably as regards the role, positioning and structure of the national focal points. For example, the employers' representatives are opposed to being subordinated to the Agency. In the Commission's view, the text of Article 4 clearly stipulates that the national focal points are part of the national information networks; hence they can neither be subordinated to the Agency nor financed by the Agency outside the arrangements provided in Article 5. By establishing the Agency under Regulation No 2062/94, the Member States had clearly assumed responsibility for creating focal points which had the necessary resources to work together with the Agency and the topic centres. Hence the Commission considers that the problems of structure, functioning and funding of the national focal points is a matter for the Member States and that the text of the Regulation relating to these aspects will have to remain as it stands.

Another contention as regards Article 4 concerns the fact that the experts representing the workers and the government authorities consider that the national focal points should have a tripartite structure similar to that of the Agency's Administrative Board. The Commission considers that it would be a good thing to add a reference indicating the need to take account of these viewpoints in the framework of national legislation and practices.

Article 6 ("Access to documents") and 7 ("Legal personality") do not give rise to any comments and, besides, the evaluators made no observations concerning these articles.

To take into account the experience gained during the first years of the Agency's existence and the abovementioned comments made by the different parties involved, a major overhaul of Article 8 ("Administrative Board ") is necessary: the impact of enlargement, the tripartite situation in the Member States, interaction with the Advisory Committee, the existence of the Bureau will have to be enshrined in the text; likewise, the role of the Administrative Board and that of the Commission deserve clarification.

While Article 9 ("observers") can remain as it stands, this does not apply to Article 10 ("Annual work programme – Annual general report ") and Article 11 ("Director") which will have to reflect the amendments made at the level of Article 8.

The entry into force of the new Financial Regulation¹⁰ and the Framework Financial Regulation¹¹ for the bodies referred to in Article 185 of the Financial Regulation require the modification of Articles 12 to 15, which concern budgetary aspects and financial management. The review of these articles was part of the general procedure for amending the financial and budgetary rules of all Community agencies and was adopted by the Council on 18 June 2003¹².

CONCLUSIONS

In conclusion, the Commission,

- having analysed the external consultant's reports and the opinions of the government experts, the social partners and the Advisory Committee,
- having noted that the Agency's activity reports have been published very regularly between 1996 and 2002, the period covered by this evaluation, and have not been the subject of basic comments or criticisms on the part of the supervisory authorities;
- whereas a running-in period necessary involves shortcomings and deficiencies, in this case the quality of the information furnished to the clients, above all the SMEs, and the quality of communications with these clients,
- having re-examined the text establishing the Agency in the light of the criticisms made and the tasks incumbent on the Agency in the context of the "new community strategy on health and safety at work 2002-2006",
- having regard to the existence of a new Financial Regulation and new specific rules for the "European offices ",

¹⁰ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the financial regulation applicable to the general budget of the European Communities, OJ L 248 of 16.09.2002.

¹¹ 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 Council Regulation (EC, Euratom) No 1605/2002 on the financial regulation applicable to the general budget of the European Communities.

¹² As regards the European Agency for Safety and Health at Work, see Council Regulation (EC) No 1654/2003, OJ L 245 of 29.9.2003, p. 38.

considers that

- the Agency can and must press ahead with the current approach while making sure to rectify the abovementioned shortcomings, notably to improve the accessibility, the value added and the utilisation of the information supplied;
- all the Agency's current activities, including those provided for by the new Community strategy on health and safety at work 2002-2006, except for the task of analysing the information provided, come within the framework of Regulation No 2062/94,
- Regulation No 2062/94 clearly indicates that the status and the operation of the national focal points is the exclusive responsibility of the Member States and that there is no overriding reason to change this situation;
- specifications and modifications are nevertheless necessary in order to clarify certain aspects of the Regulation, notably Article 8, in order to take into account inter alia the impact of enlargement, the tripartite composition of the Administrative Board, the existence of the Bureau, and the proposals which have been made in this connection.

2004/0014 (CNS)

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 2062/94 establishing a European Agency for Safety and Health at Work

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The European Agency for Safety and Health at Work, hereinafter referred to as "the Agency", was established in 1994 by Council Regulation (EC) N° 2062/94¹³, in Bilbao, Spain, and became fully operational in 1996.

The main tasks of the Agency are to collect and disseminate technical, scientific and economic information in the Member States for the benefit of Community bodies, Member States and interested parties, to promote and support co-operation and exchange of information and experience among the Member States and in particular to provide the Commission with the necessary information it requires to fulfil its task of identifying, preparing and evaluating legislation and measures in this area, as regards the impact of legislation on enterprises with particular reference to SMEs.

As provided in the Regulation, the Agency has set up an information network, working closely with the Member States' competent national authorities and research centres designated to co-ordinate and transmit the information to and from the Agency. The network is also extended to the EFTA countries and the acceding and candidate countries.

2. CONTEXT

Article 23 of the existing Regulation instructs the Commission to submit a report, no later than five years after the entry into force of the Regulation, accompanied as appropriate by a proposal, on the basis of which, after consultation of the European Parliament, the Council will review the Regulation and any new assignment for the Agency if necessary. In 2001, the Commission submitted a progress report¹⁴ to the Council based on factual information available at that time. In the meantime, an external evaluation was carried out and all stakeholders were consulted. The Commission's Communication on the evaluation of the European Agency for Safety and Health at Work accompanying this proposal serves the purpose of the report required by Article 23 of the Regulation. The following proposal to amend Regulation N° 2062/94 responds to the Council's invitation to submit, as appropriate, such a proposal.

¹³ OJ L 216, 20.8.1994.

¹⁴ COM(2001) 163, Commission Communication to the Council concerning Commission Report on the European Agency for Safety and Health.

3. JUSTIFICATION OF THE COMMISSION'S PROPOSAL

The European Agency for Safety and Health at Work is an important instrument available to assist the EU institutions, the Member States and other interested parties in this policy area. Since its creation, it has provided the Commission with valuable data, in order to help it to carry out its obligations. In addition, since 1998, it has organised the annual European Week on health and safety at European and national levels, a major awareness-raising campaign which was previously under the responsibility of the Commission. Since 2000, the Agency has been in charge of a specific scheme to support SMEs, based on a European Parliament initiative. The Agency has developed since its creation and passed from 15 staff members in 1997 to 45 in 2003.

In this context, the new Community Strategy on Health and Safety At Work¹⁵ (" the Community Strategy") entrusts the Agency an important role in matters concerning awareness-building and risk anticipation. As a result, the Agency was invited by the Commission and the European Parliament to adapt its annual and mid-term programme according to the priorities of the Community Strategy; the actual four year rolling programme is in line with the Community Strategy.

In accordance with the existing Regulation, the Agency has a tripartite Administrative Board composed of national representatives of governments', employers' organisations and employees' organisations (45 members) and the Commission (3 representatives). The national and tripartite composition of the Administrative Board of the Agency is a feature shared with two other decentralised Agencies, the European Foundation for the Improvement of Living and Working Conditions, in Dublin, Ireland, and the European Centre for the Development of Vocational Training (Cedefop), in Thessaloniki, Greece. The employers' and the employees' organisations at European level have an observer each in the Board. The Director is the legal representative of the Agency, responsible for the preparation and execution of decisions of the Board and for day-to-day management.

The Board meets twice a year to take decisions related to the work programme and the budget, while its Bureau, in accordance with the Rules of Procedure, takes urgent and necessary measures between the Board meetings and ensures the proper preparation of those meetings. However, the Board is still in charge of a number of cumbersome and time-consuming administrative issues, which do not leave enough room for more important strategic deliberations on the functioning and role of the Agency. Taking into account that due to enlargement the members of the Board will increase from 48 to 78 from May 2004, it is important to ensure that the Board maintains its capacity to provide a strategic contribution after the accession of the new Member States.

Therefore, the Commission considers that some amendments are necessary to ensure efficiency and increase the added-value of the work of the Agency.

¹⁵ COM(2002)118 final - Commission Communication Adapting to change in work and society: a new Community strategy on health and safety at work 2002-2006.

These amendments fall into the following main categories:

- those intended to clarify the objectives and tasks of the Agency (better link with the priorities of the Community Strategy; strengthen the Agency's capacity of data analysis ; focus more on the needs of SMEs; provide more accessible and comprehensible information to the final users, etc (Articles 2 and 3));
- those intended to improve the functioning of the Board and strengthen its strategic role and the executive role of the Bureau, while leaving the director accountable and responsible for every-day management (Article 8);
- those intended to reinforce the role of the social partners in the Agency's network with the Member States, (Article 4(2)).
- those intended to reinforce co-operation with other Community bodies in the social policy area (Article 3(2)).

The amendments proposed are based on the findings of the external evaluation of 2001, the consultation of the governments', employers' and employees' groups of the Board, the Advisory Committee on Health and Safety at Work, as well as the analysis of the Commission services, as presented in the Commission Communication accompanying this proposal.

The proposal also reflects the recommendations on the role of the Agency made by the Council¹⁶ and the European Parliament¹⁷ in their respective Resolutions as well as in the Opinion of the European Economic and Social Committee¹⁸ on the Commission Communication on the Community Strategy.

The Commission has carefully considered the invitation of the European Parliament to rationalise the functioning of these Bodies¹⁹. Since the full representation of all Member States and the involvement of social partners are essential for the development of Community social policy, the Commission considers that any reduction of the number of members of the Boards would be detrimental to the tripartite representation of all Member States and would not be advisable. On the other hand, the different nature of the responsibilities entrusted to the Agency, as compared to other Community agencies, precludes the Commission from considering the European Parliament' suggestion for joint administrative Boards for bodies with similar responsibilities. Therefore, while maintaining the national and tripartite character of the Boards, which is a key feature of the agencies, the Commission proposes to rationalise the Boards' working methods by reinforcing the strategic role of the Boards and reducing the frequency of meetings to once a year. This should ensure that enlargement will not have a negative financial impact.

¹⁶ OJ C 161, 5.7.2002.

¹⁷ EP Resolution adopted on 23.10.2002, A5-0310/2002 final.

¹⁸ ESC Opinion, SOC/102, 17.7.2002.

¹⁹ EP A5-0079/2003 § 28 [The European Parliament] "Considers it out of the question, on grounds of efficiency and cost, further to expand the administrative boards of the Community bodies during the forthcoming enlargement; takes the view that enlargement offers a good opportunity thoroughly to reconsider the composition and working methods of these administrative boards, which are already very ponderous as a rule; calls on the Commission to put forward appropriate proposals by 31 July 2003 to amend the founding regulations accordingly and, in so doing, to examine whether provision could be made for joint administrative boards for bodies with similar responsibilities".

Furthermore, the amendments take account of the Joint Opinion on the functioning and governance of their management structures of the three Community Bodies with tripartite composition of Boards, submitted to the Commission in January 2003. In this opinion, the Boards stress that their future rules of governance should be based on the following principles: the fundamental value of tripartite governance; the role of the social partners in these bodies that creates a specificity requiring them to function according to common rules and differently from the other Community agencies; and finally that the maintenance of the national tripartite representation from each country is essential for the involvement of all actors, taking account of the diversity of interests and approaches which characterise social issues.

In order to respect these principles, the Joint Opinion of the three Community Bodies suggests that the Boards should remain the decision-making structures, with responsibility for the major orientations of the agency (strategy, budget, work programme). In addition, they suggest that the Bureaux become executive structures, with well-defined tasks. Their size ought to remain limited to ensure efficient operations but should be sufficient to reflect the different views of the tripartite Boards. The Boards also consider that the co-ordination of each group (government, employee, employer) has proven to be an important factor to increase efficiency. Therefore, they propose to formalise the already existing function of co-ordinator.

Although the functioning of the network, as established in Article 4, was questioned in general and an amendment to the Regulation was requested by some stakeholders, the Commission believes that Article 4 (6), which provides for the possibility of a periodical re-examination of the main component elements of the network, sufficiently covers this aspect and that there is no need to amend the Regulation.

Finally, the proposal is in line with the role attributed to the Agency within the new Community Strategy on Health and Safety.

The changes proposed will have no impact on the overall budget of the Agency, though they may require a review of the allocation of financial and human resources between different activities, with a greater emphasis, for example, on data analysis activities and on co-operation with the Member States and the Community Institutions, in line with the new Community Strategy. This coincides entirely with the findings and recommendations of the external evaluators and the stakeholders consulted.

4. SUBSIDIARITY AND PROPORTIONALITY

The objective of the Agency is to support the Community and the Member States when they take measures or formulate courses of action within their respective spheres of competence. The role of the Agency is to collect and disseminate data and to present its findings in a way which is most helpful to the EU Institutions and to the Member States in achieving their objectives. It is independent in providing its advice, but it is not designed to act in the place of the responsible actors in the area of health and safety. By acting at European level, it is designed to provide information and analysis which enable an assessment of the effectiveness of policies within and between Member States and thus to add value in terms of the design and targeting of policies.

In this way, the Agency conforms to the principles of subsidiarity and proportionality. The proposals for modification to the Regulation reinforce these elements by highlighting the need to work closely with the Member States and the Commission and to take account of the priorities fixed at EU level in the definition of the Agency's work programmes.

5. LEGAL BASIS

Article 235 of the Treaty establishing the European Community (now Article 308) provided the legal base for the existing Regulation; therefore the Commission considers Article 308 to be the legal base for the amendments proposed to this Regulation.

6. EXPLANATION OF THE AMENDMENTS PROPOSED

The following commentary presents those Articles which the Commission proposes to amend. In addition, the recitals have been modified where necessary in accordance with the changes proposed.

Article 2

Since the adoption of the Commission Communication on a new Community Strategy on health and safety at work, the current Community framework in the area of health and safety at work, is a Community strategy (where all stakeholders are actively involved) and not a Commission action programme. The Community Strategy attributes a particular role to the Agency for the implementation of its objectives and considers the Agency as a driving force in matters concerning awareness-building and risk anticipation. This is reflected in the findings of the external evaluators, the opinion of the Advisory Committee on Safety and Health at Work and the Commission Communication accompanying this proposal. The article is therefore amended in order to highlight the role of the Agency in support of Community policies in the area of health and safety, with an explicit reference to Community strategies added.

Article 3

The amendment proposed aims to better specify the role of the Agency and is the result of the findings of the external evaluators, the opinion of the Advisory Committee on Safety and Health at Work; and the Commission Communication accompanying this proposal and takes account of the importance that the Community Strategy attributes to the Agency.

Article 3 (1) (a) and (b)

It is proposed to extend the tasks of the Agency to the analysis of the technical, scientific and economic information, in addition to the collection and dissemination of such information. The analysis of the data is not explicitly indicated in the existing Regulation, although it was the intention of the legislator, as it is included in Recital n° 6 of the Regulation.

In addition, analysis of risks and in particular of new or emerging ones is amongst the objectives of the Community Strategy and the Agency should contribute to this objective. The analytical contribution of the Agency would reinforce significantly the added-value at European level of the Agency's work. Therefore, this amendment intends to clarify the situation and responds to a strong request of all parties consulted.

Article 3 (1) (h)

Following the new Community Strategy, SMEs and very small businesses should be the subject of specific measures in terms of information, awareness and risk prevention programmes. The Commission, taking into account the Agency's experience in this field²⁰ and the increased need for support of SMEs in the acceding and candidate countries, considers that the Agency's tasks should include this kind of measure. Therefore, the amendment proposed allows the Agency to identify good practices and support preventive actions, in particular for SMEs.

Article 3 (1) (i)

This amendment is in line with the one on Article 2 and clarifies the role of the Agency in the support to the implementation of Community policy in the area of health and safety at work.

Article 3 (1) (j)

One of the key issues emphasised by all parties consulted was the need for the Agency to provide information to the final users (Member States' specialised services, employers' and employees' organisations and in particular companies) which is user friendly, exploitable and comprehensible in their language and not only in one language, mainly English. The Agency is invited, with this new provision, to implement this, notably by working closely with the Member States through the network of national focal points provided for under Article 4. In fact, it would not be possible for the Agency to provide the information in the current 11 languages, and from May 2004 onwards in 21 languages, without the support of the Member States. The Agency and its network should build upon existing and successful co-operation with a number of Member States.

Article 3 (2)

The proposed amendment includes an explicit reference to the need for the Agency to ensure appropriate co-operation with other agencies, especially with the European Foundation for the Improvement of Living and Working Conditions. Both bodies operate in the social policy area, although they each have distinctive tasks.

Strengthening the existing co-operation between the two bodies is already under way. The two agencies signed a Memorandum of Understanding, which sets out guidelines to ensure efficient co-operation following the recommendations of the external evaluation. More recently, in June 2003, they signed a co-operation agreement which identified concrete actions and activities. The Commission, taking account of the European Parliament and the European Economic and Social Committee comments on this issue, considers that it is important to have an explicit reference on this co-operation in the Regulation and proposes the same reference in the proposal amending the Regulation of the European Foundation for the Improvement of Living and Working Conditions.

²⁰ The Agency developed preparatory measures to support the SMEs on the basis of a specific request and budgetary support of the EP during the last three years (2001-2003).

Article 4 (2), second subparagraph

This amendment responds to the need to ensure the involvement of the social partners in the functioning of the established network with and within the Member States. It is proposed that the national focal points designated by the Member States to co-ordinate and transmit the information to the Agency take into account the point of view of the social partners at national level, according to national legislation or practices.

Article 7A – (new)

The new Article, in specifying the governing and management structures of the Agency, formally recognizes the Bureau.

Article 8

The amendments to this Article, relevant to the Board's composition and functioning, are the result of the findings of the external evaluator, the opinion of the Advisory Committee for Safety and Health at Work and the Joint Opinion submitted to the Commission by the management or administrative Boards of the European Agency for Safety and Health at Work, the European Foundation for the Improvement of Living and Working Conditions and the European Centre for the Development of Vocational Training, as reflected in the Commission's Communication accompanying this proposal.

Article 8 (1)

There is no modification to the content of this paragraph relating to the composition of the Board, but the proposed formulation is such that the Regulation will not need to be modified with every subsequent enlargement of the Union.

Article 8 (2), second subparagraph

The existing Regulation provides that the members of the Board representing the employers' and employees' organisations are to be appointed from the members and alternate members representing the respective organisations in the Advisory Committee on Safety and Health at Work, on a proposal from those members. Although the Regulation does not provide the same as regards the government representatives, in practice, they were also members and/or alternate members of the same Committee. The amendment introduced intends to formalise this practice.

Article 8 (2), fourth and fifth subparagraphs (new)

The fourth subparagraph aims on the one hand to raise the awareness of Member States as well as employers' and employees' organisations, on the need for the members of the Board to reflect fairly the various economic sectors concerned and on the other hand, introduces a gender dimension in the composition of the Board. These amendments are in line with those provided for in the Council Decision for the designation of the members of the Advisory Committee on Safety and Health at Work²¹.

²¹ See Article 3 of Council Decision 2003/C 218/01 of 22 July 2003.

The fifth subparagraph ensures that the list of the members of the Board will be accessible to the public and, in line with the Union's transparency policy for the citizens, requires it to be published in the Official Journal of the EU.

Article 8 (4)

This amendment intends to clarify the fact that one of the three vice-chairmen represents the Commission, as has always been the case in practice in all three tripartite agencies. As the Commission is not explicitly mentioned in the current formulation, the impression is given that the three vice-chairmen represent the three groups. This amendment also intends to avoid confusion as to the number of Commission members in the Bureau (see Article 8 new paragraph 8).

Additionally, it introduces the possibility for the renewal of the annual mandate of the chairman and the vice-chairmen of the Board, in order to ensure continuity, as the number of meetings per year is proposed to be reduced in principle to one per year.

A new subparagraph is introduced in paragraph 4. The aim is to formalise the existence of the three groups represented in the Board and the way they operate. In practice there are three separate groups: representatives of national governments, employees' organisations and employers' organisations. Before Board meetings, the three groups hold separate internal discussions, the results of which are reported in the Board meeting, without prejudice to each Board member's individual entitlement to be given the floor.

In this context it is important to note that representatives of the social partners' organisations at Community level who also attend the Board meetings without being entitled to vote, play an active role in the work of the Board, in particular by co-ordinating views within the respective groups. As requested in the Joint Opinion of the three Community bodies concerning the future governance of their Boards, it is proposed that the government group also designate a co-ordinator, for reasons of balance among the groups and of better efficiency of the Board's work.

The Commission believes that, as this organisational structure has proven its usefulness and is supported by stakeholders, it seems appropriate to formalise it in principle, leaving any operational details to a new set of rules of procedure.

Article 8 (5)

The amendment proposed in this paragraph reduces the number of Board meetings from two to one per year, given that it should concentrate on strategic issues only, formalises the existence and reinforces the role of the Bureau as described in new paragraphs 9 and 10 of this Article, and quantifies the impact of the enlargement on the functioning of the Board (from 48 to 78 members).

Besides, as regards the possibility for additional meetings, it is proposed to reduce the necessary quorum for requesting these meetings to one-third of the members, for more flexibility and in line with the rule for the two other Community Bodies.

Article 8 (6)

Two changes are proposed here.

The first suggests that decisions be taken by an absolute majority of members of the Board and not by a majority of two thirds of the votes, in order to facilitate the decision-making process and in line with the other two Community Bodies. The second amendment proposes to give all Board members (government', employers', employees', Commission representatives) one vote each, while currently the government representatives have two votes each. This amendment will align the Agency with the two other Community Bodies. The Commission proposes this change, in line with the guidelines for the development of future Community Bodies²² and in particular the need for representation of the relevant stakeholders in the Boards of these bodies and in line with the principle agreed by the Heads of State and Government for more active involvement of the social partners in the development of the Social Policy Agenda.²³

Article 8, new paragraphs 8, 9, 10 and 11

The existing Regulation does not make any reference to the Bureau and it currently functions on the basis of the Rules of Procedures of the Board, which define its responsibilities, its composition and operational rules²⁴.

In paragraph 8, it is proposed to formalise the role of the Bureau, as the Board will delegate to it more responsibilities to be carried out throughout the year. The Commission does not consider it necessary to increase the number of Bureau members, as requested in the Joint Opinion. The number of 8 members (the chairman and the three vice-chairmen of the Governing Board, the three co-ordinators of the groups and one more representative of the Commission) is sufficient to ensure that the different opinions of the Board members are taken into account in a co-ordinated way, while not exceeding a number that would have a negative impact on the efficiency of the proceedings. If necessary, the Board could increase the annual number of meetings of the Bureau (currently four, including the two preparatory of the two Board meetings). The current system has proven its efficiency, given also that the members of the Board are also members of the Advisory Committee on Safety and Health at Work.

Paragraph 9 clarifies the kind of responsibilities that the Board may delegate to the Bureau, by clearly excluding those referred to in the Regulation as tasks of the Board (mainly linked to the approval of the annual and rolling programme, of the budget and of the Agency financial rules). These responsibilities should not overlap with the tasks of the Director.

Paragraph 10 specifies that the Board will decide on the annual schedule of meetings of the Bureau, while additional meetings may be convened at the request of the Bureau members.

²² COM(2002)718 final.

²³ COM(2000) 379, 28.6.2000.

²⁴ Rules of Procedure, Articles 2 and 3.

Paragraph 11 formalises the current system of decision-making in the Bureau and proposes that decisions be taken by consensus. If no consensus can be reached, the Bureau can refer the matter to the Governing Board for decision. This will ensure the necessary transparency between the Board and the Bureau, and the compliance of the proceedings of the Bureau with the strategic orientations of the Board.

Article 9, new subparagraph

Former paragraph (7) of Article 8, entitling the Chairman and Director of the European Foundation for the Improvement of Living and Working Conditions to attend the meetings of the Governing Boards as observers, is moved to Article 9 "Observers" for legal consistency reasons.

Article 10 (1), first subparagraph

Two changes are envisaged.

The first amendment proposed formalises the approval by the Board not only of the annual but also of the four year rolling programme of the Agency.

The second concerns the Commission consultation procedure on the draft annual programme: the term "Commission" is replaced by "Commission services" which better reflects the current procedure.

The consultation of the Advisory Committee on Safety and Health at Work is maintained for legal consistency with Article 2 (2) g) of Council Decision of 22 July 2003 (2003/C 218/01).

Article 11, paragraph 2

The amendments are proposed to formalise the fact that the tasks of the Director in relation to the Board also include the Bureau, where appropriate.

General:

It is proposed that all references to the "Administrative Board" be replaced by the term "Governing Board", which more accurately reflects the strategic role of the Board.

7. BUDGET CHARACTERISTICS

The changes proposed will have no impact on the overall budget of the Agency, in the sense that no new activities are launched. As a consequence the proposal is presented without a Financial Statement.

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 2062/94 establishing a European Agency for Safety and Health at Work

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission²⁵, presented after consultation of the Advisory Committee for Safety and Health at Work,

Having regard to the opinion of the European Parliament²⁶,

Having regard to the opinion of the European Economic and Social Committee²⁷,

Having regard to the opinion of the Committee of the Regions²⁸,

Whereas:

- (1) Council Regulation (EC) No 2062/94 of 18 July 1994 establishing a European Agency for Safety and Health at Work²⁹ includes provisions concerning the aims, tasks and organisation of the Agency and in particular of its Administrative Board. Those provisions have been amended following the accession of Austria, Finland and Sweden, when new members had to be added to the Administrative Board.
- (2) Health and safety at work, a key element in promoting quality in employment, represents one of the European Union's most important social policy areas. The Commission Communication on Adapting to change in work and society: a new Community Strategy on Health and Safety at Work (2002-2006)³⁰ of 11 March 2002 highlights the important role to be played by the European Agency for Safety and Health at Work, hereinafter "the Agency", in the promotion, awareness-raising and anticipation activities needed to achieve the objectives set out therein.

²⁵ OJ C [...], [...], p. [...].

²⁶ OJ C [...], [...], p. [...].

²⁷ OJ C [...], [...], p. [...].

²⁸ OJ C [...], [...], p. [...].

²⁹ OJ L 216, 20.8.1994, p. 1. Regulation as last amended by Regulation (EC) No 1654/2003 (OJ L 245, 29.9.2003, p. 38).

³⁰ COM(2002)118 final.

- (3) The Council Resolution of 3 June 2002 on Commission Communication: Adapting to change in work and society: a new Community strategy on health and safety at work (2002-2006)³¹ requires the Agency to play a leading role in collection and dissemination of information on good practice, awareness raising and risk anticipation. The Council calls on the Commission to promote co-operation between the Member States and the social partners at European level with a view to the future enlargement through the Agency and welcomes the Commission's intention to submit a proposal for improving the Agency's operation and tasks in the light of the external evaluation report and the Advisory Committee's opinion on that report.
- (4) The European Parliament Resolution of 23 October 2002 on the Commission Communication: Adapting to change in work and society: a new Community strategy on health and safety at work (2002-2006)³² also supports the leading role given to the Agency as the key player in non-legislative health and safety activities at Community level and hopes that the European Foundation for the Improvement of Living and Working Conditions and the Agency will continue to improve their co-operation in line with their respective roles in this policy area.
- (5) The European Economic and Social Committee Opinion of 17 June 2002 on the Commission Communication on a new Community strategy on health and safety at work (2002-2006)³³ highlights the role of the Agency for the evaluation of risks and the need for regular contacts of the Agency with the European Foundation for the Improvement of Living and Working Conditions to avoid duplications and to stimulate a joint reflection.
- (6) The Commission Communication³⁴ on the Evaluation of the Agency, prepared in accordance with Article 23 of Regulation (EC) No 2062/94 and based on an external evaluation carried out in 2001, as well as on the contributions of the Administrative Board and of the Commission Advisory Committee for Safety, and Health at Work, underlines the need to amend Regulation (EC) No 2062/94, in order to maintain the efficiency and effectiveness of the Agency and its management structures.
- (7) The European Parliament has called upon the Commission to review the composition and working methods of agencies' boards and to put forward appropriate proposals³⁵.
- (8) A Joint Opinion concerning the future governance and functioning of the Boards of the Agency, the European Centre for the Development of Vocational Training and the European Foundation for the Improvement of Living and Working Conditions has been submitted to the Commission by their respective management or administrative Boards.
- (9) The tripartite governance of the Agency, the European Centre for the Development of Vocational Training and the European Foundation for the Improvement of Living and Working Conditions by representatives of governments, employers' organisations and employees' organisations is fundamental to the success of those bodies.

³¹ OJ C161, 5.7.2002, p. 1.

³² EP Resolution adopted on 23 October 2002, A5-0310/2002 final.

³³ ESC Opinion, SOC/102, 17.7.2002.

³⁴ COM(2004)50 final.

³⁵ EP A5-0079/2003§28.

- (10) The participation of the social partners in the governance of those three Community bodies creates a specificity, which requires them to function according to common rules.
- (11) The existence, within the tripartite Board, of the three groups, drawn from government, employers and employees and the designation of a co-ordinator for the groups of employers and employees have proved to be essential. That arrangement should therefore be formalised and also extended to the government group. In line with the guidelines for the development of future Community Bodies³⁶ and in particular the need for representation of the relevant stakeholders in the boards of these bodies and in line with the principle agreed by the Heads of State and Government for more active involvement of the social partners in the development of the Social Policy Agenda, all Board members (Government' employers', employees', Commission representatives) should have uniformly one vote each.
- (12) The maintenance of the tripartite representation from each Member State ensures that all major stakeholders are involved and that account is taken of the diversity of interests and approaches which characterise social issues.
- (13) It is necessary to anticipate the practical consequences for the Agency of the forthcoming enlargement of the Union. The composition and functioning of its Board should be adjusted to take account of the accession of new Member States.
- (14) The Bureau, provided for in the Rules of Procedure of the Board, needs to be strengthened in order to ensure continuity in the functioning of the Agency and efficiency in its decision-making. The composition of the Bureau should continue to reflect the tripartite structure of the Board.
- (15) According to Article 3 of the Treaty, the Community shall aim to eliminate inequalities and promote equality between men and women in all its activities. Therefore, it is appropriate to make provision for encouraging a balanced representation of men and women in the composition of the Board.
- (16) Regulation (EC) No 2062/94 should therefore be amended accordingly.
- (17) The Treaty does not provide, for the adoption of this Regulation, for powers other than those under Article 308,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2062/94 is amended as follows:

- (1) Article 2 is replaced by the following:

³⁶ COM(2002)718 final.

" Article 2

Objective

In order to encourage improvements, especially in the working environment, as regards the protection of the safety and health of workers as provided for in the Treaty and successive Community strategies and action programmes concerning health and safety at the workplace, the aim of the Agency shall be to provide the Community bodies, the Member States and those involved in the field with the technical, scientific and economic information of use in the field of safety and health at work."

(2) Article 3 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) Points (a) and (b) are replaced by the following:

"(a) collect, analyse and disseminate technical, scientific and economic information in the Member States in order to pass it on to the Community bodies, Member States and interested parties; this collection shall take place to identify existing national priorities and programmes and provide the necessary input to the priorities and programmes of the Community;

"(b) collect and analyse technical, scientific and economic information on research into safety and health at work and on other research activities which involve aspects connected with safety and health at work and disseminate the results of the research and research activities;"

(ii) Points (h) and (i) are replaced by the following:

"(h) provide technical, scientific and economic information on methods and tools for implementing preventive activities, identify good practices and promote preventive actions, paying particular attention to the specific problems of small and medium-sized enterprises;

(i) contribute to the development of Community strategies and action programmes relating to the protection of safety and health at work, without prejudice to the Commission's sphere of competence;" ;

(iii) The following point (j) is added:

"(j) The Agency shall ensure that the information disseminated is comprehensible to the final users and shall work closely with the national focal points referred to in Article 4 (1) to achieve this objective."

(b) Paragraph 2 is replaced by the following:

"2. The Agency shall work as closely as possible with the existing institutions, foundations, specialist bodies and programmes at Community level in order to avoid any duplication. In particular, the Agency shall ensure appropriate co-operation with the European Foundation for the Improvement of Living and Working Conditions, without prejudice to its own aims."

(3) In Article 4 (2), the second subparagraph is replaced by the following:

"The competent national authorities or an institution designated by them shall co-ordinate and or/transmit the information to be supplied at national level to the Agency. The national authorities shall take into account the point of view of social partners at national level, according to national legislation and/or practices."

(4) The following Article 7 A (new) is added:

"Article 7 A (new)"

Governing and management structures

The Agency shall comprise:

- (a) a Governing Board;
- (b) a Bureau;
- (c) a Director."

(5) Article 8 is replaced by the following:

"Article 8

Governing Board

1. The Governing Board shall consist of :
 - (a) one member representing the Government from each Member State;
 - (b) one member representing the employers' organisations from each Member State;
 - (c) one member representing the employees' organisations from each Member State;
 - (d) three members representing the Commission."
2. The members referred to in points (a), (b) and (c) of paragraph 1 shall be appointed by the Council from the members and alternate members of the Advisory Committee on Safety and Health at Work, on a proposal from the interest groups representing the governments of the Member States, the employers and the employees' organisations on the Committee.

The Council shall at the same time appoint under the same conditions as for the member an alternate member to attend meetings of the Governing Board only in the absence of the member.

The Commission shall appoint the members and alternate members who are to represent it.

When submitting the lists of candidates, the Member States, employers' organisations and employees' organisations, shall endeavour to ensure that the composition of the Governing Board fairly reflects the various economic sectors concerned and to ensure a balanced representation of men and women.

The list of the members of the Governing Board shall be published by the Council in the *Official Journal of the European Union*.

3. The term of office of members of the Governing Board shall be three years. It shall be renewable.

Upon expiry of their term of office or in the event of their resignation, members shall remain in office until their appointments are renewed or until they are replaced.

4. Within the Governing Board, the representatives of governments, employees' organisations and employers' organisations shall each form a group. Each group shall designate a co-ordinator. The co-ordinators of the employees' and employers' groups shall be representatives of their respective organisations at European level and attend the Board meetings without the right to vote.

The Governing Board shall elect its chairman and three vice-chairmen, from among the three groups referred to above and the Commission, to serve for a period of one year which may be renewed.

5. The chairman shall convene the Governing Board once a year. The chairman shall convene additional meetings at the request of at least one-third of the members of the Governing Board.
6. Decisions by the Governing Board shall be taken by an absolute majority of its members. All members shall have one vote each.
7. The Governing Board shall adopt its rules of procedure, which shall enter into force after being approved by the Council, following an opinion given by the Commission.
8. The Governing Board shall establish a Bureau. The Bureau shall be made up of the chairman and the three vice-chairmen of the Governing Board, one co-ordinator per group referred to in the first subparagraph of paragraph 4 and one more representative of the Commission.
9. Without prejudice to the responsibilities of the Director, as set out in Article 11, the Bureau shall, as delegated by the Governing Board, take all necessary measures for the proper governing of the Agency between the Governing Board meetings, except those referred to in Articles 10, 13, 14 and 15.

10. The annual schedule of meetings of the Bureau shall be decided by the Governing Board. The chairman shall convene additional meetings of the Bureau at the request of its members.
 11. Decisions by the Bureau shall be taken by consensus. If no consensus can be reached, the Bureau shall refer the matter to the Governing Board for decision."
- (6) In Article 9, the following new subparagraph is added:
- "The chairman of the Governing Board and Director of the European Foundation for the Improvement of Living and Working Conditions shall have the option of attending meetings of the Governing Board as observers."
- (7) In Article 10 (1), the first subparagraph is replaced by the following:
- "The Governing Board shall adopt the Agency's annual and four-year rolling work programme on the basis of a draft drawn up by the Director referred to in Article 11, after consultation of the Commission services and the Advisory Committee on Safety and Health at Work"
- (8) In Article 11, paragraph 2 is replaced by the following:
- "2. The Director shall be the legal representative of the Agency.
- He shall be responsible for :
- (a) the proper preparation and implementation of the decisions and programmes adopted by the Governing Board and the Bureau,
 - (b) the management and the day-to-day administration of the Agency,
 - (c) the preparation and publication of the report referred to in Article 10(2),
 - (d) the performance of the tasks prescribed,
 - (e) all staff matters,
 - (f) the preparation of the Governing Board meetings and the Bureau meetings."

(9) Each time the term "Administrative Board" appears in the articles, it is replaced by "Governing Board".

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 Council
The President