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COUNCIL REGULATION (EC) No 2062/94
of 18 July 1994
establishing a European Agency for Safety and Health at Work

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COUNCIL REGULATION (EC) No 2062/94

of 18 July 1994

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 235 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas safety, hygiene and health at work are among the priorities of an effective social policy;

Whereas the Commission has described the measures which it intends to take in this area in its programme concerning safety, hygiene and health at work [4], and in its action programme concerning the implementation of the Community Charter of Fundamental Social Rights for Workers;

Whereas, in its Resolution of 21 December 1987 on safety, hygiene and health at work [5], the Council welcomed the Commission communication on its programme concerning safety, hygiene and health at work and, *inter alia*, called on the Commission to examine ways of improving the exchange of information and experience in the field covered by the Resolution, 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;

Whereas that Resolution also called for intensified cooperation with and between bodies active in this field;

Whereas the Council also stressed the fundamental importance of employers and workers being aware of the issues involved and having access to information if the measures advocated in the Commission's programme were to prove successful;

Whereas collection, treatment and analysis of detailed, reliable and objective scientific, technical and economic data are necessary in order to provide the Community bodies, the Member States and those involved in the field with the information to enable them to respond to all the requests addressed to them, to introduce essential measures for the protection of the health and safety of workers and to provide the persons concerned with adequate information;

Whereas there are already organizations in the Community and the Member States which provide this type of information and services;

Whereas, in order to obtain the maximum benefit at Community level from work already carried out by these organizations, it is appropriate to establish a network to form a European monitoring system for collecting information on health and safety at work, to be coordinated at Community level by a European Agency for Safety and Health at Work;

Whereas, in order to be able to respond more effectively to requests addressed to them, Community bodies, the Member States and those involved in the field should be able to have recourse to an Agency in order to obtain technical, scientific and economic data of use in the field of health and safety at work;

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[1] OJ No C 271, 16. 10. 1991, p. 3.
[2] OJ No C 128, 9. 5. 1994.
[3] OJ No C 169, 6. 7. 1992, p. 44.
[4] OJ No C 28, 3. 2. 1988, p. 3.
[5] OJ No C 28, 3. 2. 1988, p. 1.

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Whereas it is therefore appropriate to establish a European Agency for Safety and Health at Work responsible for assisting, *inter alia*, the Commission in carrying out tasks in the field of safety and health at work and, in that context, for contributing to the development of future Community action programmes relating to the protection of safety and health at work, without prejudice to the Commission's sphere of competence;

Whereas the Decision taken by common agreement between the Representatives of the Governments of the Member States, meeting at Head of State and Government level on 29 October 1993, on the location of the seats of certain bodies and departments of the European Communities and of Europol [1] stipulated that the Agency for Health and Safety at Work was to have its seat in Spain, in a town to be determined by the Spanish Government; whereas the Spanish Government has designated the city of Bilbao for that purpose;

Whereas the rules and structure of the Agency must be geared towards the objective nature of the results desired and should be such that it can carry out its work in cooperation with existing national Community and international bodies;

Whereas the Agency must be able to invite as observers representatives of third countries, of Community institutions and bodies and of international organizations which share the interests of the Community and the Member States in the aim of the Agency;

Whereas the Agency should have legal personality while maintaining close links with existing Community bodies and programmes, in particular with the European Foundation for the Improvement of Living and Working Conditions, in order to avoid any duplication;

Whereas it is important that the Agency have very close functional links with the Commission and the Advisory Committee on Safety, Hygiene and Health Protection at Work;

Whereas, with regard to its translations, the Agency will use the Translation Centre for the bodies of the European Union once the Centre becomes operational;

Whereas the general budget of the European Communities should contribute to the operation of the Agency; whereas the amounts deemed necessary are to be laid down under the annual budget procedure, in accordance with the financial estimates;

Whereas, for the adoption of this Regulation, the Treaty does not provide for powers other than those referred to in Article 235,

HAS ADOPTED THIS REGULATION:

Article 1

Establishment of the Agency

A European Agency for Safety and Health at Work, hereinafter referred to as the 'Agency', is hereby established.

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 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.

[1] OJ No C 323, 30. 11. 1993, p. 1.

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Article 3

Role

1. For the purpose of achieving the aim described in Article 2, the Agency's role shall be to:

(a) collect 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 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;

(c) promote and support cooperation and exchange of information and experience amongst the Member States in the field of safety and health at work, including information on training programmes;

(d) organize conferences and seminars and exchanges of experts from the Member States in the field of safety and health at work;

(e) supply the Community bodies and the Member States with the objective available technical, scientific and economic information they require to formulate and implement judicious and effective policies designed to protect the safety and health of workers; to that end, provide the Commission in particular with the technical, scientific and economic information it requires to fulfil its tasks of identifying, preparing and evaluating legislation and measures in the area of the protection of the safety and health of workers, notably as regards the impact of legislation on enterprises, with particular reference to small and medium-sized enterprises;

(f) establish, in cooperation with the Member States, and coordinate the network referred to in Article 4, taking into account the national, Community and international bodies and organizations which provide this type of information and services;

(g) collect and make available information on safety and health matters from and to third countries and international organizations (WHO, ILO, PAHO, IMO, etc.);

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

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

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.

Article 4

Network

1. The Agency shall set up a network comprising:

— the main component elements of the national information networks;

— the national focal points;

— any future topic centres.

2. To enable the network to be set up as rapidly and as efficiently as possible, the Member States shall, within six months of the entry into force ►**M1** of Regulation (EC) No 1643/95 ◄, inform the Agency of the main component elements of their national health and safety at work information networks, including any institution which in their judgment could contribute to the work of the Agency, taking into

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account the need to ensure the fullest possible geographical coverage of their territory.

The competent national authorities or an institution designated by them shall coordinate and/or transmit the information to be supplied at national level to the Agency.

3. The national authorities shall inform the Agency of the names of institutions established in their national territory which are able to cooperate with it on certain topics of particular interest and thus to act as topic centres of the network. The Agency shall have the power to conclude agreements with such institutions.

4. Topic centres for special tasks may form part of the network.

They shall be designated by the Administrative Board referred to in Article 8 for a limited and agreed period of time.

5. Topics of particular interest identified as well as the specific tasks of the topic centres shall be listed in the Agency's annual work programme.

6. In the light of experience gained, the Agency shall periodically re-examine the main component elements of the network as referred to in paragraph 2 and shall make such changes as may be decided on by the Administrative Board, taking account of any new designations made by the Member States.

Article 5

Arrangements

1. In order to facilitate the operation of the network referred to in Article 4, the Agency may agree with the institutions designated by the Administrative Board pursuant to Article 4(4) upon the necessary arrangements, in particular contracts, for successfully carrying out the tasks which it may entrust to them.

2. Member States may provide, as regards the national institutions or organizations established in its territory, that such arrangements with the Agency shall be made in agreement with the national focal point.

Article 6

Information

The information and data supplied to or emanating from the Agency may be published and shall be made accessible to the public, in accordance with guidelines laid down by the Administrative Board, subject to compliance with the rules of the Community and the Member States on the dissemination of information, particularly as regards confidentiality.

Article 7

Legal personality

1. The Agency shall have legal personality.

2. It shall enjoy in all the Member States the most extensive legal capacity accorded to legal persons under their laws.

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Article 8

Administrative Board

1. The Agency shall have an Administrative Board consisting of 48 members, of whom:

(a) fifteen members shall represent the governments of the Member States;

(b) fifteen members shall represent the employers' organizations;

(c) fifteen members shall represent the employees' organizations;

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(d) three members shall represent the Commission.

2. The members referred to in paragraph 1 (a), (b) and (c) shall be appointed by the Council on the basis of one member of each Member State and for each of the abovementioned categories.

The members referred to in paragraph 1 (b) and (c) shall be appointed, on the basis of one for each Member State and for each of the categories concerned, from the members and alternate members representing the employers' and employees' organizations on the Advisory Committee on Safety, Hygiene and Health Protection at Work set up by Decision 74/325/EEC ([1]), on a proposal from the groups of those members and alternate members 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 Administrative Board only in the absence of the member or as laid down in the rules of procedure.

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

3. The term of office of members of the Administrative 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. The Administrative Board shall elect its chairman and three vice-chairman from among its members, to serve for a period of one year.

5. The chairman shall convene the Administrative Board twice a year and at the request of at least half of its members.

6. Decisions by the Administrative Board shall be taken by a majority of two thirds of the votes.

The members referred to in paragraph 1 (a) shall have two votes each.

The members referred to in paragraph 1 (b), (c) and (d) shall have one vote each.

Alternate members shall not have the right to vote unless the full member is absent.

7. The chairman of the Administrative Board and Director of the European Foundation for the Improvement of Living and Working Conditions shall have the option of attending meetings of the Administrative Board as observers.

8. The Administrative 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.

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Article 9

Observers

The Administrative Board may, after consulting the Commission, invite representatives of non-member countries, of Community institutions and bodies and of international organizations as observers.

Article 10

Annual work programme — Annual general report

1. The Administrative Board shall adopt the Agency's annual work programme on the basis of a draft drawn up by the Director referred to in Article 11, after consultation of the Commission and of the Advisory Committee on Safety, Hygiene and Health Protection at Work.

([1]) OJ No L 185, 9. 7. 1974, p. 15.

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The programme may be adapted during the year using the same procedure.

The programme shall be adopted in accordance with the foregoing procedure and shall form part of a four-year rolling programme.

The first annual work programme must be adopted within nine months of entry into force ►M1 of Regulation (EC) No 1643/95 ◄.

2. By 31 January each year at the latest, the Administrative Board shall adopt an annual general report on the Agency's activities, drawn up in all the official languages of the Community.

The annual general report shall in particular compare the results obtained with the objectives of the annual work programme.

The Director shall forward the annual general report to the European Parliament, the Council, the Commission, the Court of Auditors, the Economic and Social Committee, the Member States and the Advisory Committee on Safety, Hygiene and Health Protection at Work.

Article 11

The Director

1. The Agency shall be headed by a Director appointed by the Administrative Board on a proposal from the Commission for a period of five years, which shall be renewable.

2. The Director shall be the official representative of the Agency.

He shall be responsible for:

— the proper preparation and execution of the decisions and programmes adopted by the Administrative Board,

— the day-to-day administration of the Agency,

— the preparation and publication of the report referred to in Article 10(2),

— the performance of the tasks prescribed,

— all staff matters,

— the preparation of Administrative Board meetings.

3. The Director shall be accountable to the Administrative Board for his activities.

Article 12

Budget

1. Estimates shall be drawn up of all the Agency's revenue and expenditure for each financial year, which shall correspond to the calendar year, and shall be entered in the Agency's budget.

2. The revenue and expenditure shown in the budget shall be in balance.

3. The revenue of the Agency shall, without prejudice to other resources obtained from payments for services rendered by the Agency, consist of a subsidy from the Community entered in the general budget of the European Communities.

4. The expenditure of the Agency shall include, *inter alia*, staff remuneration, administrative and infrastructure expenses, operating costs and expenditure relating to contracts concluded with institutions or bodies in implementation of the work programme.

Article 13

Draft estimate — Adoption of the budget

1. By 15 February each year at the latest, the Director shall draw up a preliminary draft budget for the Agency for the following financial year and shall forward it, together with an establishment plan, to the Administrative Board.

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2. The Administrative Board shall prepare the draft budget together with the establishment plan and forward them no later than 31 March to the Commission. On this basis the Commission shall determine the corresponding subsidy estimates to be entered in the preliminary draft general budget of the European Communities which it places before the Council pursuant to Article 203 of the Treaty.

3. The Administrative Board shall adopt the Agency's budget, together with the establishment plan, before the beginning of the financial year, adjusting it where necessary to the Community subsidy and the Agency's other resources.

Article 14

Implementation of the budget

1. The Director shall implement the budget of the Agency.

2. Monitoring of the commitment and payment of all the Agency's expenditure and of the establishment and recovery of all the Agency's revenue shall be carried out by the Commission's financial controller.

3. By 31 March each year at the latest the Director shall send the Commission, the Administrative Board and the Court of Auditors the accounts for all the Agency's revenue and expenditure in respect of the preceding financial year.

The Court of Auditors shall examine these accounts in accordance with Article 188c of the Treaty.

4. The Administrative Board shall give a discharge to the Director in respect of the implementation of the budget.

Article 15

Internal financial provisions

After the Commission and the Court of Auditors have delivered their opinions, the Administrative Board shall adopt the internal financial provisions, specifying in particular the procedure for establishing and implementing the Agency's budget.

Article 16

Professional Secrecy

Members of the Administrative Board, the Director, the staff and all other persons participating in the activities of the Agency shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

Article 17

Language arrangements

The language arrangements of the institutions of the Community shall apply to the Agency.

Article 18

Translation services

The translation services needed for the operation of the Agency shall be provided by the translation centre for the bodies of the Union once that centre becomes operational.

Article 19

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency.

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Article 20

Staff

1. The staff of the Agency shall be subject to the Rules and Regulations applicable to officials and other servants of the European Communities.

2. The Agency shall exercise in respect of its staff the powers devolved to the Appointing Authority.

3. The Administrative Board shall, in agreement with the Commission, adopt the appropriate implementing rules.

Article 21

Liability

1. The Agency's contractual liability shall be governed by the law applicable to the contract in question.

The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to an arbitration clause contained in a contract concluded by the Agency.

2. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by the Agency or its servants in the performance of their duties.

The Court of Justice shall have jurisdiction in disputes relating to compensation for any such damage.

3. The personal liability of servants towards the Agency shall be governed by the provisions applying to the staff of the Agency.

Article 22

Examination of legality

Member States, members of the Administrative Board and third parties directly and personally involved may refer to the Commission any act of the Agency, whether express or implied, for the Commission to examine the legality of that act.

Referral shall be made to the Commission within fifteen days of the day on which the party concerned first became aware of the act in question.

The Commission shall take a decision within one month. If no decision has been taken within this period, the case shall be deemed to have been dismissed.

Article 23

Review clause

No 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.

Article 24

Entry into force of the Regulation

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

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

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Statement by Council and the Commission concerning the seat of the European Agency for Safety and Health at Work

On the occasion of the adoption of the Regulation establishing a European Agency for Safety and Health at Work, the Council and the Commission note that:

— the Representatives of the Member States, meeting at Head of State and Government level on 29 October 1993, decided that the European Agency for Safety and Health at Work was to have it seat in Spain, in a town to be determined by the Spanish Government;

— the Spanish Government has designated Bilbao as the seat of the Agency.