

**Proposal for a Regulation of the European Parliament and of the Council establishing a European Railway Agency**

(2002/C 126 E/08)

(Text with EEA relevance)

COM(2002) 23 final — 2002/0024(COD)

*(Submitted by the Commission on 24 January 2002)*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF  
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

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

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

Whereas:

- (1) The progressive establishment of a European railway area without frontiers requires Community action in the field of the technical regulations applicable to railways with regard to both the technical aspects and the safety aspects, the two being inextricably linked.
- (2) Directive 91/440/EEC on the development of the Community's railways, as amended by Directive 2001/12/EC of the European Parliament and of the Council <sup>(1)</sup>, provides for opening up rights of access to the infrastructure to any licensed Community railway undertakings which wish to operate international goods services.
- (3) Council Directive 95/18/EC on the licensing of railway undertakings <sup>(2)</sup>, as amended by Directive 2001/13/EC of the European Parliament and of the Council <sup>(3)</sup>, stipulates that all railway undertakings must hold a licence and that a licence issued in a Member State shall be valid throughout the territory of the Community.
- (4) Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of

charges for the use of railway infrastructure and safety certification establishes a new framework with the aim of creating a European railway area without frontiers.

- (5) The technical and operational differences between the railway systems of the Member States have compartmentalised the national rail markets and prevented dynamic development of this sector on a European scale. Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system <sup>(4)</sup> and Directive 2001/16/EC on the interoperability of the trans-European conventional rail system <sup>(5)</sup> defined essential requirements and established a mechanism for defining mandatory technical specifications for interoperability.
- (6) Simultaneous pursuit of the goals of safety and interoperability requires substantial technical work which must be led by a specialised body. That is why it is necessary to create, within the existing institutional framework and with respect for the balance of power in the Community, a European Agency responsible for railway safety and interoperability. Creation of such an Agency provides a means of considering the safety and interoperability targets for the European rail network jointly and with a high level of expertise and in this way contributing to revitalising the railways and to the general objectives of the common transport policy.
- (7) Directive ... of the European Parliament and of the Council of ... [on railway safety] provides for the development of common safety indicators, common safety targets and common safety methods. Development of these tools requires independent technical expertise.
- (8) In order to facilitate the procedures for issuing safety certificates to railway undertakings, and with a view to mutual recognition of these certificates in the long term, it is essential to implement a progressive approach to mutual recognition of as many elements thereof as possible.
- (9) Directive ... of the European Parliament and of the Council of ... [on railway safety] provides for examination of national safety measures from the point of view of interoperability. To this end, an opinion based on independent and neutral expertise is essential.

<sup>(1)</sup> OJ L 75, 15.3.2001, p. 1.

<sup>(2)</sup> OJ L 143, 27.6.1995, p. 70.

<sup>(3)</sup> OJ L 75, 15.3.2001, p. 26.

<sup>(4)</sup> OJ L 235, 17.9.1996, p. 6.

<sup>(5)</sup> OJ L 110, 20.4.2001, p. 1.

- (10) In the field of safety, it is important to ensure the greatest possible transparency and an effective flow of information. An analysis of performances, based on common indicators and linking all players in the sector, does not yet exist and such a tool should be introduced. In the case of the statistical aspects, close collaboration with Eurostat is necessary.
- (11) The national railway safety organisations, regulators and other national authorities must be able to request an independent technical opinion when they require information concerning several Member States.
- (12) Rolling stock maintenance is an important part of the safety system. There is no genuine European market for the maintenance of rail equipment due to the lack of a system for certification of maintenance workshops. This situation adds to the costs for the sector and results in journeys without loads. A European certification system for maintenance workshops should therefore gradually be developed.
- (13) Directive 2001/16/EC stipulates that a first group of technical specifications for interoperability must be drawn up not later than 20 April 2004. The Commission has given a mandate to carry out this work to the European Association for Railway Interoperability (AEIF), which brings together the manufacturers of railway equipment and the infrastructure managers and operators. Steps must be taken to preserve the experience built up by professionals from the industry in the context of the AEIF. The continuity of the work and the development of the TSIs over time require a permanent technical framework.
- (14) The interoperability of the trans-European network must be enhanced and the new investment projects chosen for support by the Community must be in line with the objective of interoperability set in Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network<sup>(1)</sup>.
- (15) The vocational qualifications required for train drivers are a major factor in both safety and interoperability in Europe. They are also a precondition for the free movement of workers in the railway industry. This question must be tackled with respect for the existing framework for social dialogue. The Agency must provide the technical support necessary in order to take account of this aspect at European level.
- (16) Registration is first and foremost an act of recognition of the capability of rolling stock to operate under specified conditions. The registration of equipment must be transparent and non-discriminatory and falls within the competence of the public authorities. The Agency must provide technical support in order to establish a system for registration of rolling stock.
- (17) In order to ensure the greatest possible transparency and equal access for all parties to relevant information, the documents envisaged for the interoperability process must be accessible to the public. The same applies to licences and safety certificates. The Agency must provide an efficient means of exchanging this information.
- (18) Promotion of innovation in the field of railway safety and interoperability, particularly use of new technologies, is an important task which the Agency must encourage.
- (19) In order to perform its tasks properly, the Agency must have legal personality and an autonomous budget funded mainly through a contribution by the Community. In order to ensure the Agency's independence in its daily management and in the opinions and recommendations which it issues, the Executive Director should have full responsibility and the Agency's personnel should be independent.
- (20) The membership of the Agency's administrative board must reflect the balance between the two branches of the Community's executive and safeguard the principle of the executive's responsibility before the European Parliament. Based on the principles proposed in the White Paper on European governance<sup>(2)</sup>, the Commission and the Member States must therefore be equally represented on an administrative board with the powers necessary to draw up the budget, verify its implementation, adopt appropriate financial rules, set up transparent working procedures for the Agency's decisions and appoint the Executive Director. In order to guarantee the transparency of the administrative board's decisions, representatives of the sectors concerned must participate in the deliberations, but without the right to vote, which is reserved for the representatives of public authorities who must answer to the democratic control authorities. These independent members must be designated by the Commission on the basis of their merit and experience in the railway industry and not as representatives of any particular trade associations.
- (21) The Agency's work must be transparent and its management must be subject to all the existing provisions concerning sound management and combating fraud. The effective control of the European Parliament must be ensured and, to this end, the European Parliament must have the possibility of a hearing with the Executive Director of the Agency.

<sup>(1)</sup> OJ L 228, 9.9.1996, p. 1. Decision amended by Decision No 1346/2001/EC (OJ L 185, 6.7.2001, p. 1).

<sup>(2)</sup> COM(2001) 428 final.

(22) Since the objectives of the action proposed, namely to establish a specialised body to formulate common solutions on matters concerning railway safety and interoperability, cannot be sufficiently achieved by the Member States and, by reason of the joint nature of the work to be done, can therefore be better achieved by the Community, the Community may take action, in accordance with the subsidiarity principle enshrined in Article 5 of the Treaty. In accordance with the proportionality principle enshrined in the same article, this regulation does not go beyond what is necessary to achieve these objectives,

2. To this end, following adoption of the annual work programme, the Agency shall agree on the composition of the working parties with the professional organisations from the sector, which shall put forward proposals to the Agency for that purpose. The Agency shall ensure that these working parties are representative and work transparently.

3. The working parties shall be chaired by a representative of the Agency.

HAVE ADOPTED THIS REGULATION:

*Article 4*

### **Consultation of the social partners**

Whenever the work provided for in Articles 6, 12 and 17 has a direct impact on the social environment or working conditions of workers in the industry the Agency shall consult the social partners within the framework of the social dialogue committee.

These consultations shall be held before the Agency submits its recommendations to the Commission. The opinions expressed by the social dialogue committee shall be forwarded by the Agency to the Commission and by the Commission to the committee referred to in Article 21 of Directive 2001/16/EC.

*Article 5*

### **Consultation of users**

Whenever the work provided for in Articles 6 and 12 has a direct impact on customers the Agency shall consult the organisations representing rail freight users and customers. The list of organisations to be consulted shall be drawn up by the committee referred to in Article 21 of Directive 2001/16/EC.

These consultations shall be held before the Agency submits its proposals to the Commission. The opinions expressed by the organisations concerned shall be forwarded by the Agency to the Commission and by the Commission to the committee referred to in Article 21 of Directive 2001/16/EC.

## CHAPTER 1

### PRINCIPLES

#### *Article 1*

### **Establishment and objectives of the Agency**

1. This Regulation establishes a European Railway Agency, hereinafter referred to as 'the Agency'.

2. The objective of the Agency shall be to contribute, on technical matters, to implementation of the Community legislation aiming at enhancing the level of interoperability of railway systems and at developing a common approach to safety on the European railway system, in order to contribute to creating a European railway area without frontiers and guaranteeing a high level of safety.

3. In pursuing these objectives, the Agency shall take full account of the process of enlargement of the European Union and of the specific constraints relating to rail links with third countries.

#### *Article 2*

### **Type of acts of the Agency**

The Agency may adopt:

- (a) recommendations addressed to the Commission concerning the application of Articles 6, 7, 12, 14, 16, 17 and 18;
- (b) opinions issued to the Commission or to the authorities concerned in the Member States pursuant to Articles 8, 10, 13 and 15.

#### *Article 3*

### **Participation of professionals from the sector**

1. For drawing up the recommendations provided for in Articles 6, 7, 12, 14, 16, 17 and 18, the Agency shall take as a basis the expertise built up by professionals from the sectors, in particular the experience gained by the European Association for Railway Interoperability (AEIF).

## CHAPTER 2

### SAFETY

#### *Article 6*

### **Technical support**

1. The Agency shall recommend to the Commission the common safety targets and the common safety methods provided for in Article 5 of Directive ... [on railway safety].

2. The Agency shall recommend, at the request of the Commission or of the committee referred to in Article 21 of Directive ... [on railway safety] or on its own initiative, other measures in the field of safety.

3. For the transition period preceding adoption of the common safety targets (CSTs), of the common safety methods (CSMs) and of the technical specifications for interoperability (TSIs), as well as for matters concerning equipment and infrastructure not covered by the TSIs, the Agency may make any appropriate recommendation to the Commission. The Agency shall ensure consistency between these recommendations and the TSIs already existing or being drawn up.

4. The Agency shall present a cost-benefit analysis in support of the recommendations which it submits pursuant to this Article.

5. The Agency shall organise and facilitate cooperation between the national safety authorities and the inspection bodies defined by Directive ... [on railway safety].

#### Article 7

##### Safety certificates

With a view to application of Article 14 of the Directive on railway safety concerning the harmonisation of safety certificates, the Agency shall draft and recommend a harmonised format for safety certificates, including an electronic version, and a harmonised format for applications for safety certificates, including the list of the essential details to be provided.

#### Article 8

##### National safety measures

1. At the request of the Commission, the Agency shall carry out a technical examination of the new national safety measures submitted to the Commission in accordance with Article 8 of Directive ... [on railway safety].

2. The Agency shall examine the compatibility of the above-mentioned measures with the common safety targets (CSTs) and common safety methods (CSMs) defined by Directive ... [on railway safety] and with the technical specifications for interoperability (TSIs) in force.

3. If, after having taken account of the reasons given by the Member State, the Agency considers that any of these measures is incompatible with the rules mentioned in paragraph 2, it shall submit an opinion to the Commission within two months of transmission of the rules to the Agency by the Commission.

#### Article 9

##### Monitoring of safety performance

1. The Agency shall establish a network with the national authorities responsible for safety and the national authorities

responsible for the inspections provided for by Directive ... [on railway safety] in order to define the content of the common indicators listed in Annex 1 to Directive ... of the European Parliament and of the Council of ... [on railway safety] and to collect all the data available on railway safety.

2. On the basis of the safety indicators, national reports on safety and accidents and its own information, every two years the Agency shall submit a report on safety performance, which shall be made public. The first such report shall be published during the Agency's third year in operation.

3. The Agency shall draw on the data collected by Eurostat and shall cooperate with Eurostat to avoid any duplication of work and to ensure methodological consistency between the railway safety indicators and the indicators used in other modes of transport.

#### Article 10

##### Technical opinions

1. The national regulatory bodies referred to in Article 30 of Directive 2001/14/EC may request a technical opinion from the Agency concerning the safety-related aspects of matters drawn to their attention.

2. The committees provided for in Article 35 of Directive 2001/14/EC and Article 11a of Directive 91/440/EEC, as last amended, may request a technical opinion from the Agency concerning safety-related aspects within their respective areas of competence.

3. The Agency shall give its opinion within two months. This opinion shall be made public by the Agency in a version from which all data concerning any trade or industrial secret have been expurgated.

#### Article 11

##### Public register of documents

1. The Agency shall be responsible for keeping a public list of the following documents:

(a) the licences issued in accordance with Directive 95/18/EC;

(b) the safety certificates issued in accordance with Directive ... [on railway safety];

(c) the inspection reports forwarded to the Agency in accordance with Article 23 of Directive ... [on railway safety];

(d) the national provisions notified to the Commission in accordance with Article 8 of Directive ... [on railway safety].

2. The national authorities responsible for issuing the documents referred to in paragraph 1 shall notify the Agency within one month of each individual decision to issue, refuse or withdraw them. The Agency may ask to inspect the files justifying the issue, refusal or withdrawal of one of these documents. In this case, the authorities concerned shall send the file to the Agency within fifteen working days.

3. The Agency may add to this public database any document or link relevant to the objectives of this Regulation.

### CHAPTER 3

#### INTEROPERABILITY

##### Article 12

#### Technical support provided by the Agency

The Agency shall contribute to the development and implementation of rail interoperability in accordance with the principles and definitions laid down in Directives 96/48/EC and 2001/16/EC. To this end, the Agency shall:

- (a) carry out, on a mandate from the Commission, the work on drafting the TSIs and forward the draft TSIs to the Commission;
- (b) ensure that the TSIs are adapted to technical progress and market trends and to the social requirements and propose to the Commission the amendments to the TSIs which it considers necessary;
- (c) ensure coordination between the development and updating of the TSIs on the one hand and the development of the European standards which prove necessary for interoperability on the other and maintain the relevant contacts with the European standardisation bodies;
- (d) organise and facilitate the cooperation of notified bodies.

##### Article 13

#### Inspection and control of notified bodies

Without prejudice to the responsibility of Member States for the notified bodies which they designate, the Agency may, at the request of the Commission or on its own initiative, inspect the quality of the work of notified bodies. It shall submit an opinion to the Commission where appropriate.

##### Article 14

#### Monitoring the level of interoperability

1. The Agency shall recommend, at the request of the Commission, procedures for implementing interoperability by

facilitating coordination between operators and between infrastructure managers, in particular to organise systems migration.

2. The Agency shall monitor progress with the interoperability of the railway systems. Every two years it shall present and publish a report on progress with interoperability. The first such report shall be published during the Agency's second year in operation.

##### Article 15

#### Interoperability of the trans-European network

At the request of the Commission, the Agency shall examine, from the point of view of interoperability, any infrastructure project for which Community support is requested. The Agency shall give an opinion within one month.

##### Article 16

#### Certification of maintenance workshops

The Agency shall develop a European system for certification of maintenance workshops for rolling stock and shall make recommendations with a view to implementation of such a system.

##### Article 17

#### Vocational qualifications

1. The Agency shall set out the essential qualifications required in order to drive trains as well as the training systems. It shall distinguish between the general qualifications required for each major type of rolling stock and the qualifications specific to each line and each piece of equipment.

2. For the general qualifications, the Agency shall compile, by major type of equipment, the minimum qualifications and training required for drivers in order to ensure safe operation.

3. The Agency shall make recommendations with a view to putting in place a system for accreditation of training institutes and of the diplomas which they issue.

4. The Agency shall promote and support exchanges of drivers and trainers between railway companies from different Member States.

##### Article 18

#### Registration of rolling stock

The Agency shall draw up and recommend to the Commission a standard format for the registration of rolling stock in accordance with Article 14 of Directive 96/48/EC and Article 14 of Directive 2001/16/EC.

*Article 19***Register of documents on interoperability**

1. The Agency shall keep a public list of the following documents provided for by Directives 2001/16/EC and 96/48/EC:

- (a) the declarations of verification of subsystems;
- (b) the declarations of conformity of constituents;
- (c) the authorisations for putting into service, including the corresponding registration numbers;
- (d) the registers of infrastructure and rolling stock.

2. The bodies concerned shall submit these documents to the Agency, which shall determine the practical procedures for submitting them.

3. The Agency shall set up an electronic database for these documents. This database shall be accessible to the public through a website.

## CHAPTER 4

**STUDIES AND PROMOTION OF INNOVATION***Article 20***Studies**

Where required for implementation of the tasks set by this Regulation, the Agency shall order studies, financed from its own budget.

*Article 21***Promotion of innovation**

The Commission may entrust the Agency with the task of promoting innovations aimed at improving railway interoperability and safety, particularly the use of new information technologies and tracking and tracing systems.

## CHAPTER 5

**INTERNAL STRUCTURE AND OPERATION***Article 22***Legal status, location**

1. The Agency shall be a body of the Community. It shall have legal personality.

2. The location of the Agency shall be decided by the competent authorities, at the latest six months after the adoption of this Regulation, on a proposal from the Commission.

3. In each Member State, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their

national laws. In particular, the Agency shall have powers to acquire or to transfer movable and immovable property and to be a party to legal proceedings.

4. The Agency shall be represented by its Executive Director.

*Article 23***Privileges and immunities**

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

*Article 24***Staff**

1. The Agency's staff shall be subject to the rules and regulations applicable to the officials and other servants of the European Communities. The administrative board, in agreement with the Commission, shall adopt the necessary implementing procedures.

2. Without prejudice to Article 26, the powers conferred on the appointing authority and on the contracting authority by the Staff Regulations of Officials of the European Communities, as well as by the Conditions of Employment of Other Servants of the European Communities, shall be exercised by the Agency in respect of its own staff.

3. Without prejudice to Article 26(1), the Agency's staff shall consist of temporary employees recruited by the Agency for a maximum of five years. The temporary staff shall consist of:

- staff recruited from among professionals from the sector on the basis of their qualifications and experience in the field of railway safety and interoperability;
- officials assigned or seconded by the Commission to carry out management duties;
- other servants, as defined in the Conditions of Employment of Other Servants of the European Communities, to carry out implementing or secretarial tasks.

4. The experts who participate in the working parties organised by the Agency shall not belong to the Agency's staff. Their travel and subsistence expenses shall be met by the Agency, based on rules and scales adopted by the administrative board.

*Article 25***Functions and powers of the Executive Director**

1. The Agency shall be managed by its Executive Director, who shall be responsible for the day-to-day management of the Agency and shall act completely independently. The Executive Director shall neither request nor accept any instruction from any government or from any other body or company.

2. The Executive Director shall:
- (a) prepare the work programme and, after agreement by the Commission, submit it to the administrative board;
  - (b) make the necessary arrangements for implementation of the work programme and comply with all requests for assistance from the Commission;
  - (c) take the necessary steps, in particular the adoption of internal administrative instructions and the publication of orders, to ensure the operation of the Agency in accordance with this Regulation;
  - (d) establish an effective monitoring system in order to compare the Agency's results with its operational objectives and, on this basis, prepare each year a draft general report and submit it to the administrative board;
  - (e) establish a regular assessment system corresponding to recognised professional standards;
  - (f) exercise the powers laid down in Article 23(2) in respect of the staff;
  - (g) draw up estimates of the revenue and expenditure of the Agency pursuant to Article 38 and implement the budget pursuant to Article 39.
3. The Executive Director may be assisted by one or more heads of unit. The Executive Director may not delegate the powers conferred on him.

#### Article 26

#### Appointments within the Agency

1. The Executive Director of the Agency shall be appointed by the administrative board on a proposal by the Commission. The administrative board, acting on a proposal by the Commission, shall have the power to dismiss the Executive Director. The term of office of the Executive Director shall be five years. This term of office may be extended once for a maximum of a further two years.

2. The Executive Director of the Agency shall appoint the other members of the Agency's staff in accordance with the principles laid down in Article 23 of this Regulation.

#### Article 27

#### Hearing of the Executive Director before the European Parliament

Each year the Executive Director shall submit to the European Parliament the general report on the Agency's activities. The European Parliament may also ask at any time for a hearing with the Executive Director on any subject related to the Agency's activities.

#### Article 28

#### Establishment and powers of the administrative board

1. The Agency shall have an administrative board.

2. The administrative board shall:
- (a) appoint the Executive Director in accordance with Article 26;
  - (b) before 31 March each year, adopt the general report of the Agency for the previous year and submit it to the Commission, the Council and the European Parliament;
  - (c) before 30 October each year, adopt the Agency's work programme for the next year and submit it to the Commission, the Council and the European Parliament;
  - (d) adopt the Agency's final budget before the beginning of the financial year and adjust it, if necessary, to the Community contribution and the Agency's other revenue;
  - (e) exercise its functions in relation to the Agency's budget, pursuant to the provisions of Chapter 6;
  - (f) exercise disciplinary authority over the Executive Director and ensure that the Agency operates with the necessary transparency and neutrality.

#### Article 29

#### Composition of the administrative board

1. The administrative board shall be made up of:
- six representatives of the Council;
  - six representatives of the Commission; and
  - three independent members, with no vote, appointed by the Commission for their recognised expertise in the sector.
2. The Council and the Commission shall designate their representatives, plus one alternate for each of them, who may represent them and be entitled to vote in their absence. The term of office of the members of the administrative board shall be five years. This term of office may be renewed once.

#### Article 30

#### Chair of the administrative board

1. The administrative board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall *ex-officio* replace the Chairperson in the event of the Chairperson being unable to attend to his/her duties.

2. The terms of office of the Chairperson and Deputy Chairperson shall be three years and shall expire when their membership of the administrative board ends. This term of office may be renewed once.

#### Article 31

#### Meetings

1. Meetings of the administrative board shall be convened by its Chairperson. The Executive Director of the Agency shall participate in the deliberations.

2. The administrative board shall meet at least twice a year. It shall also meet at the instance of the Chairperson, at the request of the Commission or at the request of the majority of its members.

#### Article 32

##### **Voting**

The administrative board shall take its decisions by a two-thirds majority of its members entitled to vote. Each member shall have one vote, with the exception of the three independent members and of the Executive Director, who shall not be entitled to vote.

#### Article 33

##### **Inspections in the Member States**

1. In order to fulfil the tasks entrusted to it by Articles 8, 9, 10, 13 and 15, the Agency may, at the request of the Commission, conduct inspections in the Member States. The national authorities in the Member States shall facilitate the work of the Agency's staff to ensure that the inspections proceed smoothly. The Agency officials shall be empowered:

- (a) to examine files, data, reports and any other documents relevant to implementation of the Community legislation on railway interoperability and safety;
- (b) to take copies of all or extracts from such files, data, reports and other documents;
- (c) to ask for oral explanations on the spot;
- (d) to have access to any premises, site or means of transport.

2. The Agency shall inform the Member State concerned of the planned inspection, the names of the delegated officials and the date on which the inspection is due to start. The Agency officials delegated to carry out these inspections shall exercise their powers on presentation of a decision from the Executive Director of the Agency specifying the subject-matter and purpose of their mission.

3. At the end of each inspection, and after having listened to the entities inspected, the Agency shall draw up a report and send it to the Commission and to the Member State concerned.

#### Article 34

##### **Liability**

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.
3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the course of performance of their duties.

4. The Court of Justice of the European Communities shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.

5. The personal liability of its staff towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

#### Article 35

##### **Languages**

1. The in-house working languages of the Agency shall be English, French and German. The Member States may address the Agency in the Community language of their choice.

2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the Bodies of the Union.

#### Article 36

##### **Participation by third countries**

1. The Agency shall be open to participation by European countries which have concluded agreements with the European Community whereby the countries concerned have adopted and are applying the Community legislation in the field covered by this Regulation.

2. In accordance with the relevant provisions of the above-mentioned agreements, arrangements shall be made which shall specify the detailed rules for participation by these countries in the work of the Agency, in particular the nature and extent of such participation. These arrangements shall include, inter alia, provisions on financial contributions and staff. They may provide for representation, without vote, on the administrative board.

#### Article 37

##### **Transparency**

Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents shall apply to the documents held by the Agency.

The administrative board shall adopt the practical measures for implementation of Regulation (EC) No 1049/2001.

#### CHAPTER 6

##### **FINANCIAL PROVISIONS**

#### Article 38

##### **Budget**

1. The revenue of the Agency shall consist of:
  - a contribution from the Community;
  - any contribution from third countries participating in the work of the Agency, as provided for by Article 36;



— charges for publications, training and any other services provided by the Agency.

2. The expenditure of the Agency shall include staff, administrative, infrastructure and operational expenses.

3. The Executive Director shall draw up an estimate of the revenue and expenditure of the Agency for the following financial year and shall submit it to the administrative board together with an establishment plan.

4. Revenue and expenditure shall be in balance.

5. The administrative board shall adopt, by 31 March at the latest, the draft budget for the following financial year and submit it to the Commission, which, on this basis, shall enter the corresponding estimates in the preliminary draft general budget of the European Communities, which it shall submit to the Council in accordance with Article 272 of the Treaty.

6. The administrative board shall adopt, by 15 January at the latest, the Agency's budget, adjusting it, where necessary, to the Community contribution decided by the budgetary authority.

#### Article 39

##### Implementation and control of the budget

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

2. Control of commitment and payment of all expenditure and control of the existence and receipt of all revenue of the Agency shall be carried out by the Financial Controller of the Commission.

3. By 31 March of each year at the latest, the Executive Director shall submit to the Commission, the administrative board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous financial year.

The Court of Auditors shall examine these accounts in accordance with Article 248 of the Treaty. It shall publish a report on the Agency's activities every year.

4. The European Parliament, acting on a recommendation from the administrative board, shall give a discharge to the Executive Director of the Agency in respect of the implementation of the budget.

#### Article 40

##### Financial Regulation

The administrative board, after receiving the agreement of the Commission and the endorsement of the Court of Auditors, shall adopt the Agency's Financial Regulation, which shall, in particular, specify the procedure to be used for drawing up and implementing the Agency's budget, in accordance with Article 142 of the Financial Regulation applicable to the general budget of the European Union.

#### Article 41

##### Combating fraud

1. For the purposes of combating fraud, corruption and other unlawful acts, the provisions of Regulation (EC) No 1073/1999<sup>(1)</sup> of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) shall apply in full.

2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-Fraud Office (OLAF)<sup>(1)</sup> and shall immediately adopt the necessary provisions applicable to all employees of the Agency.

3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if necessary, carry out on-the-spot checks on the recipients of the Agency's funding.

#### CHAPTER 7

##### GENERAL AND FINAL PROVISIONS

#### Article 42

##### Start of the Agency's activities

The Agency shall be operational within 24 months of the entry into force of this Regulation.

#### Article 43

##### Evaluation

Within five years of the Agency taking up its duties, the Commission shall carry out an evaluation of implementation of this Regulation, the results obtained by the Agency and its working methods. This evaluation shall take account of the views of the representatives of the profession, of the social partners and of customers' organisations. The findings of the evaluation shall be made public. The Commission shall propose, if necessary, an amendment to this Regulation.

#### Article 44

This Regulation shall enter into force on the day following 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.

<sup>(1)</sup> OJ L 136, 31.5.1999.