



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL REGULATION (EC)
establishing a European Agency for Veterinary and Phytosanitary Inspection

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. Responsibilities involved

For the purposes of completion of the internal market all rules in the veterinary field (including animal husbandry and animal protection) and the plant-health field were harmonized at Community level.

The need was expressed at the same time for these provisions to be applied effectively and uniformly so that:

- protection of public, animal and plant health would in fact be harmonized;
- competition would not be distorted by trade restrictions; and
- the necessary climate of confidence would be fostered for liberalization of trade in animals and products of animal origin.

The Commission was accordingly given responsibility for monitoring uniform application of the Community rules by means of inspection on the spot:

- in Member States, in order to ensure that Community legislation was being correctly applied and veterinary/plant-health controls were properly carried out;
- in third countries wishing to export to the Community, to check that the requirements of Community veterinary and plant-health legislation were being met.

The work of the Commission's veterinary inspection service, set up in 1983, was therefore extended to the whole field of animals, products of animal origin, plants and products of plant origin and to preparation of decisions for adoption by the Commission in follow-up to its inspection work.

II. Establishment of the Office of Veterinary and Phytosanitary Inspection and Control (OVPIC)

The importance of the tasks entrusted to the Commission and the timetable set for establishment of the internal market led it to establish the OVPIC (decision of 19 December 1991). Its main fields of inspection so far are:

- live animals (cattle, pigs, sheep, goats and horses);
- fresh meat (red and poultry);
- hormone use;
- fishery products;
- animal transport (welfare);
- veterinary and plant-health controls on entry into Community territory;

- plant-health quarantining;
- organisms harmful to plants and plant products;
- surveillance of protected phytosanitary zones.

Further expansion is planned so that all areas falling within the scope of Community legislation are covered.

At the Brussels European Council on 29 October 1993 the representatives of the Member States' Governments decided that the OVPIC would be located in Ireland, in a town to be decided by the Irish Government. The site of Grange was announced in this context.

III. Purpose of setting up a European Agency for Veterinary and Phytosanitary Inspection

It is clear from what has already been achieved and given future expansion plans that the present structures must be reinforced if proper guarantees are to be given of protection of public, animal and plant health covering the full range of animals, plants and products of animal and plant origin.

Conversion of the OVPIC into a European Agency for Veterinary and Phytosanitary Inspection would:

- develop the principle of its inspectors' autonomy and thus enhance the credibility of their work. The specific tasks of an inspection service differentiate it from other Commission departments. Highly specialized personnel, with the autonomy and authority needed for tasks of this type, are an indispensable requirement of any inspection service and it is important to this end that they belong to a service with its own identity;
- allow for the deployment within a short space of time of the number of inspectors needed to cover all areas harmonized at Community level; this is not possible in the present situation;
- adjust the OVPIC's structure for its move to Ireland, a political decision of the Council. Administrative and financial autonomy would permit the Community inspectorate to preserve the effectiveness and rapidity of action required particularly in emergency situations possibly requiring adoption of protective measures by the Commission.

IV. Tasks and structures of Agency

- It is important to note that the Agency would be in charge of on-the-spot checks and assessment in Member States and third countries and reporting its findings to the Commission. This work would not be duplicated by that of Commission experts.

Its activities could extend to other work entrusted to it by the Commission.

- The Commission would therefore retain the competences in relation to legislation such as drafting and follow-up of decisions which it alone has the power to exercise.
- The Agency's mission as defined, if it is to be adequately achieved, presupposes a very substantial reinforcement of the number of personnel actually available; the activities of the Agency would in effect encompass sectors which the OVPIC covers only partially or not at all, owing to insufficient staff numbers.
- The Agency would be run by a Management Board consisting of representatives of the Member States, the Commission and scientific experts and by a Director responsible inter alia for ensuring proper implementation of the programmes set by the Management Board.
- The Agency's income would, without prejudice to other resources, be 1% of the fees that under Community rules should be charged by Member States for veterinary inspections, plus (if needed) a Community subsidy.
- It is estimated that for the first year of operation the Agency's costs (40 posts of which 30 inspectors) would be covered in full by a Community subsidy pending establishment of a fee transfer system.

The subsidy would be gradually reduced in future years as it was replaced by the Agency's own resources.

- The Agency's status would guarantee the necessary independence of its staff.

Proposal for a
COUNCIL REGULATION (EC)
establishing a European Agency for Veterinary and Phytosanitary Inspection

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 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 live animals, animal products, plants and plant products are included in the list of products in Annex II to the Treaty; whereas production and trade in these sectors constitutes an important source of income for the farming population;

Whereas the Commission is required, in accordance with the Community veterinary and phytosanitary legislation, to ensure the uniform application of this legislation in order to avoid discrepancies between the controls carried out by competent national authorities, and to ensure a uniform regime as regards imports from third countries;

Whereas a uniform application of the legislation would lead to the protection of public health, animal health, and plant health and would prevent the distortion of competition;

Whereas, therefore, such uniform application is essential in order to maintain confidence among Member States in the framework of free circulation of the relevant goods within the internal market;

Whereas the best way to achieve this objective whilst observing the principle of independence and the specifics of the tasks is to create an Agency, the personnel of which will concentrate on monitoring the application of Community veterinary and phytosanitary legislation;

(1) OJ No

(2) OJ No

(3) OJ No

Whereas a Decision was 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⁽⁴⁾; whereas it was stipulated that the Office of Veterinary and Phytosanitary Inspection was to have its seat in Ireland, in a town to be determined by the Irish Government;

Whereas Grange, Co. Meath has been announced by the Irish authorities in this regard;

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 Community and international bodies;

Whereas the Agency should have legal personality while collaborating closely with existing Community bodies and programmes, in order to avoid any duplication;

Whereas with regard to its translations, the Agency will use the Translation Centre for bodies of the European Union, set up by Council Regulation (EC) No 2965/94⁽⁵⁾, once the Centre becomes operational;

Whereas among other revenues obtained from the collection of fees for veterinary controls, the general budget of the European Communities should contribute to the operation of the Agency; whereas the amount of this contribution deemed necessary is to be laid down under the annual budget procedure, in accordance with the financial estimates,

HAS ADOPTED THIS REGULATION:

Article 1

Establishment of the Agency

A European Agency for Veterinary and Phytosanitary Inspection, hereinafter referred to as "the Agency", is hereby established.

The Agency shall be established in premises designated by the Commission in consultation with the relevant Member State.

⁽⁴⁾ OJ No C 323, 30.11.1993, p. 1.

⁽⁵⁾ OJ No L 314, 7.12.1994, p. 1; Regulation as amended by Regulation (EC) No 2610/95 (OJ No L 268, 10.11.1995, p. 1).

Article 2

Objective

1. The Agency's role shall be to:
 - carry out inspections within the Community to ensure the uniform application of Community veterinary and phytosanitary legislation;
 - verify the veterinary and phytosanitary controls in third countries of live animals, products of animal origin, plants and plant products intended for export to the Community;
 - submit reports of the above activities; and
 - to carry out any other task which the Commission may confer on it.
2. In order to avoid duplication of work, the staff of the Agency shall carry out the inspections and controls referred to in paragraph 1 in place of the experts of the Commission.

Article 3

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; in particular it may purchase or dispose of movable and immovable property and may institute legal proceedings.

Article 4

Management Board

1. The Agency shall have a Management Board consisting of one representative from each Member State, two representatives from the Commission and two scientists specifically qualified in the field of veterinary and phytosanitary sciences, the latter being designated by the European Parliament on the basis of their particular qualification in that field.

Each member of the Management Board may be assisted or represented by an alternative member. In the absence of the full member, the alternative member may exercise his right to vote. The Management Board may call in non-voting observers.

2. The term of office of representatives shall be three years. It shall be renewable.

3. Each member of the Management Board shall have one vote.
4. The Management Board shall elect a Chairman and a Deputy Chairman from among its members. The Deputy Chairman shall automatically replace the Chairman in the event of his being prevented from attending to his duties.

The Chairman and the Deputy Chairman shall be elected by its members for a three year period. The terms of office shall be renewable once.

5. The Management Board shall draw up its own rules of procedure.
6. The Management Board shall meet at least once a year.
7. The Management Board shall adopt a three-year work programme on the basis of a draft submitted by the Agency's Director, after seeking the opinion of the Commission. The first three-year programme shall be adopted within nine months of the entry into force of this Regulation.
8. Under the three-year work programme, the Management Board shall each year adopt the Agency's annual work programme on the basis of a draft submitted by the Director, after seeking the Commission's opinion. The programme may be adjusted in the course of the year in accordance with the same procedure.
9. By 31 January each year at the latest, the Management Board shall adopt an annual general report on the activities of the Agency on the basis of a draft submitted by the Director. The Director shall forward this report to the European Parliament, the Council, the Commission and the Member States.
10. The Management Board shall take its Decisions by an absolute majority of its members. However, a majority of two thirds of its members shall be required for the decisions which the Management Board is empowered to take under paragraph 4 or under Articles 5(1), 7, 8(4) or 9.

Article 5

The Director

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

The Director shall be assisted by a Deputy Director appointed by the same procedure as the Director. If the Director is absent or indisposed, the Deputy Director shall replace him.

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

3. The Director shall be responsible for:
 - the proper preparation and execution of the decisions and programmes adopted by the Management Board;
 - the day-to-day administration of the Agency;
 - the preparation of the report referred to in Article 4(9);
 - the performance of the tasks set out in Article 2;
 - all staff matters;
 - the preparation of Management Board meetings.
4. The Director shall be accountable to the Management Board for his activities.

Article 6

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 revenues of the Agency shall without prejudice to other resources consist of:
 - 1% of the fees to be collected by Member States for carrying out veterinary controls;
 - whenever expenditure shown in the budget exceeds 1% of the fees mentioned above and to the extent necessary, a subsidy from the Community entered in the general budget of the European Communities.

Detailed rules for the application of this paragraph shall be adopted in accordance with the procedure laid down in Article 38 of Council Regulation No 136/66/EEC⁽⁶⁾.

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 programmes.

⁽⁶⁾ OJ No 172, 30.9.1966, p. 3025/66.

Article 7

Draft estimate - Adoption of the budget

1. By 15 January each year at the latest, the Director shall draw up a preliminary draft budget preceded by an explanatory memorandum for the following financial year and shall forward it, together with a structural plan and a schedule of employees, to the Management Board.
2. The Management Board shall prepare the draft budget together with the structural plan and the schedule of employees, and forward them no later than 1 February to the Commission. On that 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 Management Board shall adopt the Agency's budget, together with the structural plan, before the beginning of the financial year, adjusting it where necessary to the Community subsidy and to the Agency's other resources.

Article 8

Implementation of the budget

1. The Director shall implement the budget of the Agency.
2. The 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 Management 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 those accounts in accordance with Article 188c of the Treaty.

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

Article 9

Internal financial provisions

After the Court of Auditors has delivered its opinion, the Management Board shall, in agreement with the Commission, adopt the internal financial provisions, specifying in particular the procedure for establishing and implementing the Agency's budget.

Article 10

Professional Secrecy

Members of the Management 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 11

Language arrangements

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

Article 12

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 set up by Regulation (EC) No 2965/94 once that centre becomes operational.

Article 13

Privileges and immunities

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

Article 14

Staff

1. The staff of the Agency shall be subject to the Regulations and Rules applicable to officials and other servants of the European Communities.
2. The Agency shall exercise in respect of its staff the powers devolved upon the Appointing Authority.
3. The Management Board shall, in agreement with the Commission, adopt the appropriate implementing rules.

Article 15

Liability

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

The Court of First Instance 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 First Instance 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 16

Examination of legality

Member States, members of the Management 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 one month of the day on which the party concerned first became aware of the act in question.

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

Article 17

Review clause

No later than five years after the entry into force of this Regulation, acting on the basis of a Commission report, accompanied where appropriate by a proposal, the Council, having consulted the European Parliament, may review this Regulation and any new assignment for the Agency that proves necessary.

Article 18

Entry into force

This Regulation shall enter into force on the 90th 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.

Done at Brussels,

For the Council
The President

FINANCIAL STATEMENT

1. TITLE OF OPERATION

Draft Council Regulation establishing a European Agency for Veterinary and Phytosanitary Inspection

2. BUDGET HEADING INVOLVED

B2 -5104

3. LEGAL BASIS

4. DESCRIPTION OF OPERATION

4.1 General objective

To ensure the uniform application of Community legislation in the veterinary and plant-health field with a view to preventing disparities in controls by the Member States and to providing for uniform arrangements covering imports from non-member countries.

4.2 Period covered and arrangements for renewal or extension

Open-ended.

5. CLASSIFICATION OF EXPENDITURE OR REVENUE

5.1 Non-compulsory expenditure

5.2 Differentiated appropriations

5.3 Type of revenue involved:

The measure is not liable to generate revenue for the Community budget.

6. TYPE OF EXPENDITURE OR REVENUE

- 100% subsidy for launching of measure. Balancing subsidy thereafter (where required).
- Subsidy for joint financing with other sources in the public and/or private sector.

- Interest subsidy
Not applicable.
- Other
Not applicable.
- Should the operation prove an economic success, is there provision for all or part of the Community contribution to be reimbursed?

If the Agency's budget has the resources as from the first year, all or part of the Community contribution could be reimbursed.

- Will the proposed operation cause any change in the level of revenue? If so, what sort of change and what type of revenue is involved?

Not applicable.

7. FINANCIAL IMPACT

7.1 Method of calculating total cost of operation for 1997 (definition of unit costs)

7.2 Itemized breakdown of cost

(ECU million - CA)

Breakdown	Budget year (1997)	n + 1 (1998)	n + 2	n + 3	n + 4	n + 5 and subs. yrs	% change
Community subsidy	2	4,7	1	1	1	1	pm
Total							

However, as a guideline, the 40 posts concerned could probably be structured as follows:

- Category A: 1 A2, 4 A4, 10 A5 and 15 A7
- Category B: 1 B1, 1 B3 and 2 B5
- Category C: 1 C1, 1 C3 and 3 C5.

1998: ESTIMATED COST OF SECOND YEAR OF OPERATION WITH 40 POSTS⁽¹⁾ INCLUDING 30 INSPECTORS

Category/ Grade	Titles A1 and A4 ⁽²⁾	Titles A2 and A5 ⁽³⁾	Subtotal (gross)	Number of staff	Total cost (gross)
A2	178 881	16 869	195 750	1	195 750
A4	130 975	16 869	147 844	4	591 376
A5	105 081	16 869	121 950	10	1 219 500
A7	74 747	16 869	91 616	15	1 374 240
B1	97 225	16 869	114 094	1	114 094
B3	64 824	16 869	81 693	1	81 693
B5	48 883	16 869	65 752	2	131 504
C1	63 646	16 869	80 515	1	80 515
C3	49 450	16 869	66 319	2	132 638
C5	39 172	16 869	56 041	3	168 123
TOTAL				40	4 089 433

That total should be supplemented⁽⁴⁾ by the additional cost of missions:

- of inspectors (30 × ECU 15 000) ECU 450 000
- of experts from the Member States ECU 150 000

GRAND TOTAL ECU 4 689 433

8. FRAUD PREVENTION MEASURES

Specific controls contemplated: the Court of Auditors is responsible for examining the Agency's accounts in accordance with Article 188c of the Treaty. The Agency is to establish a financial regulation.

⁽²⁾ Salaries, miscellaneous benefits and allowances, missions, social and medical services and facilities.

⁽³⁾ Operating expenditure covering buildings, furniture and data-processing equipment.

⁽⁴⁾ The average annual cost of missions per inspector is around ECU 15 000.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1 Specific and quantified objectives; target population

9.1.1 Specific objectives

To provide back-up and support for measures under Community regulations in the veterinary and plant-health field.

9.1.2 Target population

Community and national inspectors.

9.2 Grounds for the operation

9.2.1 Need for Community financial aid, in accordance with the principle of subsidiarity.

The Community's financial aid is vital to launch the measure. As the Agency's budget will subsequently come in principle from own resources, the aid will fall to a negligible amount or zero.

9.2.2 Choice of ways and means

- no alternative
- in line with other agencies.

9.3 Monitoring and evaluation of the operation

- The Agency's work will be covered by reports to the Commission.
- The Agency's activities will be subject to supervision by its Management Board.

10. ADMINISTRATIVE EXPENDITURE (PART A OF SECTION II OF THE BUDGET)

Not applicable.

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