

▼B**REGULATION (EEC) No 1365/75 OF THE COUNCIL****of 26 May 1975****on the creation of a European Foundation for the improvement of living and working conditions**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, in particular Article 235 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament ⁽¹⁾;Having regard to the Opinion of the Economic and Social Committee ⁽²⁾;

Whereas the problems presented by the improvement of living and working conditions in modern society are increasingly numerous and complex; whereas it is important that appropriate Community action should be built up on an inter-disciplinary scientific basis and at the same time that employers and workers should be associated in the action undertaken;

Whereas the Community is not yet in a position to undertake analyses, studies and research systematically and scientifically;

Whereas the programme of action of the European Communities on the environment ⁽³⁾ lays down that the Community institutions should set up a body capable of scanning those elements which, through their combined effects, affect living and working conditions, and of carrying out a long-term forward study of those factors which may endanger the conditions of existence and those which are capable of improving them;

Whereas the Council resolution of 21 January 1974 ⁽⁴⁾ concerning a social action programme, lays down *inter alia* an action programme for workers, aimed at humanizing living and working conditions;

Whereas the establishment of a Foundation is necessary if Community objectives for the improvement of living and working conditions are to be attained;

Whereas the powers required for the creation of such a Foundation are not provided for in the Treaty;

Whereas the Foundation will be set up within the framework of the European Communities and will function in accordance with Community law; whereas the conditions under which certain general provisions will apply should be defined,

HAS ADOPTED THIS REGULATION:

Article 1

A European Foundation for the improvement of living and working conditions, hereinafter called 'the Foundation', is hereby established.

Article 2

1. The aim of the Foundation shall be to contribute to the planning and establishment of better living and working conditions through action designed to increase and disseminate knowledge likely to assist this development.

⁽¹⁾ OJ No C 76, 3. 7. 1974, p. 33.

⁽²⁾ OJ No C 109, 19. 9. 1974, p. 37.

⁽³⁾ OJ No C 112, 20. 12. 1973, p. 3.

⁽⁴⁾ OJ No C 13, 12. 2. 1974, p. 1.

▼B

2. With this aim in view, the tasks of the Foundation shall be to develop and to pursue ideas on the medium- and long-term improvement of living and working conditions in the light of practical experience and to identify factors leading to change. The Foundation shall take the relevant Community policies into account when carrying out its tasks. It shall advise the Community institutions on foreseeable objectives and guidelines by forwarding in particular scientific information and technical data.

3. As regards the improvement of living and working conditions, it shall deal more specifically with the following issues, determining the priorities to be observed:

- man at work,
- organization of work and particularly job design,
- problems peculiar to certain categories of workers,
- long-term aspects of improvement of the environment,
- distribution of human activities in space and in time.

Article 3

1. In order to achieve its aim, the Foundation shall foster the exchange of information and experience in these fields and shall, where appropriate, set up a system of information and documentation. It may, for example:

- (a) facilitate contact between universities, study and research institutes, economic and social administrations and organizations and encourage concerted action;
- (b) set up working groups;
- (c) conclude study contracts, participate in studies, promote and provide assistance for pilot projects and, where required, itself carry out certain studies;
- (d) organize courses, conferences and seminars.

2. The Foundation shall cooperate as closely as possible with specialized institutes, foundations and bodies in the Member States or at international level.

Article 4

1. The Foundation shall be non-profit making. It shall enjoy in all the Member States the most extensive legal capacity accorded to legal persons.

2. The seat of the Foundation shall be in Ireland.

Article 5

The Foundation shall comprise:

- an Administrative Board,
- a director and deputy director,
- a Committee of Experts.

*Article 6***▼M1**

1. The Administrative Board shall consist of ► **A4** 78 ◀ members, of whom:

- (a) ► **A4** twenty-five ◀ members shall represent the Governments of the Member States;
- (b) ► **A4** twenty-five ◀ members shall represent the employer's organizations;
- (c) ► **A4** twenty-five ◀ members shall represent the employee's organizations;
- (d) three members shall represent the Commission.

▼B

2. The members referred to in (a), (b) and (c) shall be appointed by the Council on the basis of one member for each Member State and for each of the abovementioned categories. The Council shall at the same time appoint under the same conditions an alternate to attend meetings of the Administrative Board only in the absence of the member. The Commission shall appoint the members and alternates 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 the 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 deputy chairmen from among its members, to serve for a period of one year.
5. The Chairman shall convene the Administrative Board at least twice a year and at the request of at least one-third of its members.
6. Decisions by the Administrative Board shall be taken by an absolute majority of its members.

Article 7

1. The Administrative Board shall administer the Foundation whose guidelines it shall lay down after consultation with the Committee of Experts. On the basis of a draft submitted by the director, the Administrative Board shall, in agreement with the Commission, adopt the programme of work.
2. It shall adopt its rules of procedure which shall enter into force after being approved by the Council, following consultation with the Commission.
3. It shall decide whether to accept any legacy, donation or subsidy from sources other than the Community.

Article 8

1. The director and deputy director of the Foundation shall be appointed by the Commission from a list of candidates submitted by the Administrative Board.
2. The director and the deputy director shall be chosen on the grounds of their competence and their independence shall be beyond doubt.
3. The director and the deputy director shall be appointed for a maximum period of five years. Their term of office shall be renewable.

Article 9

1. The director shall direct the Foundation and shall implement the decisions of the Administrative Board. He shall be the legal representative of the Foundation.
2. Under the provisions relating to staff, the director shall have authority over the staff of the Foundation. He shall be responsible for their recruitment and dismissal and for stipulating the qualifications required of them.
3. The director shall prepare the activities of the Administrative Board. The director, or the deputy director, or both shall attend the meetings of this board.
4. The director shall be accountable to the Administrative Board for the running of the Foundation.

Article 10

1. The Committee of Experts shall consist of ► **A4** 25 ◀ members appointed by the Council on a proposal from the Commission and

▼B

selected from among scientific and other circles concerned in the Foundation's activity.

2. The Commission will take into account when drawing up its proposal:

- the need to maintain a balance between the two complementary aspects of the Foundation — i.e. living conditions and working conditions;
- the need for the best possible scientific and technical advice;
- the need for at least one national from each Member State to be appointed.

3. The term of office of the members of the Committee of Experts shall be three years and shall be renewable.

Article 11

1. The task of the Committee of Experts shall be to deliver opinions to the other organs of the Foundation in all fields falling within the latter's competence, either at the request of the director or on its own initiative. All its opinions, including that given to the director for drawing up the programme of work (referred to in Article 12), shall be communicated simultaneously to the director and the Administrative Board.

2. The Committee shall select a chairman from among its members and draw up its rules of procedure.

3. The committee shall be convened by its chairman, by agreement with the director. Meetings shall be held at least twice a year and when requested by at least seven of its members.

Article 12

1. The director shall draw up an annual programme of work before 1 July each year on the basis of the guidelines referred to in Article 7. The annual programme shall be part of a four-year rolling programme. The projects in the annual programme shall be accompanied by an estimate of the necessary expenditure.

When drawing up the programme, the director shall take account of the opinions of the Committee of Experts, as well as of those of the Community institutions and the Economic and Social Committee.

To this end, and in order to avoid any duplication of work, the Community institutions and the Economic and Social Committee shall inform the Foundation of their requirements and as far as possible of any relevant work and studies which they are carrying out themselves.

2. The director shall forward the programme of work to the Administrative Board for approval.

▼M2*Article 13*

1. The Administrative Board shall adopt the annual report on the Foundation's activities and prospects, and forward it by 15 June at the latest to the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors.

2. The Foundation shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures.

Article 14

1. Estimates of all the revenue and expenditure of the Foundation shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the budget of the Foundation, which shall include an establishment plan.

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

▼M2

Article 15

1. Each year the Administrative Board, on the basis of a draft drawn up by the Director, shall produce an estimate of revenue and expenditure for the Foundation for the following financial year. This estimate, which shall include a draft establishment plan, shall be forwarded by the Administrative Board to the Commission by 31 March at the latest.
2. The estimate shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft general budget of the European Union.
3. On the basis of the estimate the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.
4. The budgetary authority shall authorise the appropriations for the subsidy to the Foundation.

The budgetary authority shall adopt the establishment plan for the Foundation.

5. The budget of the Foundation shall be adopted by the Administrative Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.
6. The Administrative Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Administrative Board within a period of six weeks from the date of notification of the project.

Article 16

1. The financial rules applicable to the Foundation shall be adopted by the Administrative Board after the Commission has been consulted. They may not depart from Commission framework Financial Regulation (EC, Euratom) No 2343/2002 of 19 November 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 ⁽¹⁾ unless specifically required for the Foundation's operation and with the Commission's prior consent.
2. The Director shall implement the budget of the Foundation.
3. By 1 March at the latest following each financial year, the Foundation's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the general Financial Regulation.
4. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward the Foundation's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be forwarded to the European Parliament and the Council.

⁽¹⁾ OJ L 357, 31.12.2002, p. 72 with Corrigendum in OJ L 2, 7.1.2003.

▼ M2

5. On receipt of the Court of Auditors' observations on the Foundation's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Foundation's final accounts under his own responsibility and submit them to the Administrative Board for an opinion.
6. The Administrative Board shall deliver an opinion on the Foundation's final accounts.
7. The Director shall, by 1 July at the latest following each financial year, forward these final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Administrative Board's opinion.
8. The final accounts shall be published.
9. The Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Administrative Board.
10. The Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the general Financial Regulation.
11. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Director of the Foundation in respect of the implementation of the budget for year N.

▼ M1*Article 17*

The provisions governing the staff of the Foundation shall be adopted by the Council, acting on a proposal from the Commission and after consulting the European Parliament.

▼ B*Article 18*

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

▼ M2*Article 18a*

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁽¹⁾ shall apply to documents held by the Foundation.
2. The Administrative Board shall adopt practical arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of Council Regulation (EC) No 1649/2003 of 18 June 2003 amending Regulation (EEC) No 1365/75 on the creation of a European Foundation for the improvement of living and working conditions and repealing Regulation (EEC) No 1417/76⁽²⁾.
3. Decisions taken by the Foundation under Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Communities, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

⁽²⁾ OJ L 245, 29.9.2003, p. 25.

▼B*Article 19*

The rules governing the languages of the European Communities shall apply to the Foundation.

Article 20

The Protocol on the privileges and immunities of the European Communities shall apply to the Foundation.

Article 21

1. The contractual liability of the Foundation 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 any arbitration clause contained in a contract concluded by the Foundation.

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

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

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

Article 22

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

Referral shall be made to the Commission within 15 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

This Regulation shall enter into force on the third 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.