

▼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.

⁽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*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.

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.

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2. The Foundation shall cooperate as closely as possible with specialised institutions, foundations and bodies in the Member States and at international level. In particular, the Foundation shall ensure appropriate cooperation with the European Agency for Safety and Health at Work, without prejudice to its own aims.

▼B*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.

▼ M3*Article 5*

The governing and management structure of the Foundation shall comprise:

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

Article 6

1. The Governing Board shall consist of:

- (a) one member representing the Government from each Member State;
- (b) one member representing the employers' organisations from each Member State;
- (c) one member representing the employees' organisations from each Member State;
- (d) three members representing the Commission.

2. The members referred to in paragraph 1(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 as for the members an alternate to attend meetings of the Governing Board only in the absence of the member.

The Commission shall appoint the members and alternates who are to represent it, taking into account a balanced representation of men and women.

When submitting the lists of candidates, the Member States, employers' organisations and employees' organisations shall endeavour to ensure a balanced representation of men and women in the composition of the Governing Board.

The list of members of the Governing Board shall be published by the Council in the *Official Journal of the European Union* and by the Foundation on its Internet site.

3. The term of office of members of the Governing 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 Governing Board shall elect its chair and three vice-chairs, one from each of the three groups referred to in paragraph 7 and one from among the Commission representatives, to serve for a period of one year, which may be renewed.

5. The chair shall convene the Governing Board at least once a year. The chair shall convene additional meetings at the request of at least one-third of the members of the Governing Board.

6. Decisions by the Governing Board shall be taken by an absolute majority of its members.

7. Within the Governing Board, the representatives of governments, employees' organisations and employers' organisations shall each form a group. Each group shall designate a coordinator who will take part in the meetings of the Governing Board. The coordinators of the employees' and employers' groups shall be representatives of their respective organisations at European level. Coordinators who are not appointed Board members within the meaning of paragraph 1 shall take part in meetings without the right to vote.

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8. The Governing Board shall establish a Bureau of 11 members. The Bureau shall be made up of the chair and the three vice-chairs of the Governing Board, one coordinator per group as referred to in paragraph 7, and one more representative of each group and of the Commission. Each group may designate up to three alternates to attend the meetings of the Bureau, in the absence of the full members.

9. The annual number of meetings of the Bureau shall be decided by the Governing Board. The chair of the Bureau shall convene additional meetings at the request of its members.

10. Decisions by the Bureau shall be taken by consensus. If no consensus can be reached, the Bureau shall refer the matter to the Governing Board for decision.

11. The Governing Board shall be fully and promptly informed on the activities of and the decisions taken by the Bureau.

▼B*Article 7***▼M3**

1. The Governing Board shall govern the Foundation whose guidelines it shall lay down. On the basis of a draft submitted by the director, the Governing Board shall, in agreement with the Commission, adopt the Foundation's annual and four-year rolling programmes.

2. The Governing Board, having received an opinion from the Commission, shall adopt its rules of procedure, which shall lay down the practical arrangements for its activities. The rules of procedure shall be transmitted for information to the European Parliament and the Council. However, within a period of three months of the rules of procedure being transmitted to it and acting by a simple majority, the Council may modify those rules.

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3. It shall decide whether to accept any legacy, donation or subsidy from sources other than the Community.

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4. Without prejudice to the responsibilities of the Director set out in Articles 8 and 9, the Bureau shall, as delegated by the Governing Board, monitor the implementation of the decisions of the Governing Board and take all necessary measures for the proper management of the Foundation between the Governing Board meetings. The Governing Board may not delegate to the Bureau the competences referred to in Articles 12 and 15.

▼B*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 ►**M3** Governing 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.

▼M3*Article 9*

1. The Director shall be responsible for the management of the Foundation as well as for the implementation of the decisions of and the

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programmes adopted by the Governing Board and the Bureau. The Director shall be the legal representative of the Foundation.

2. Without prejudice to Article 8(1), the Director shall exercise the powers referred to in Article 17(1).

3. The Director shall prepare the activities of the Governing Board and the Bureau. The director or the deputy director or both shall attend the meetings of the Board and Bureau.

4. The Director shall be accountable to the Governing Board for the running of the Foundation.

Article 10

On the basis of a proposal by the Director, the Governing Board may select independent experts and seek their opinions on specific issues in relation to the four-year rolling programme and the annual work programme.

▼B*Article 12***▼M3**

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

When drawing up the programmes, the director shall take account of the opinions of the Community institutions and the European Economic and Social Committee.

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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.

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2. The Director shall forward the programmes to the Governing Board for approval.

▼M2*Article 13*

1. The ►**M3** Governing 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 ► M3 Governing 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 ► M3 Governing 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 ► M3 Governing 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 ► M3 Governing 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 ► M3 Governing 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 ► M3 Governing 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 provi-

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

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sional 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.

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 ► M3 Governing Board ◀ for an opinion.

6. The ► M3 Governing 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 ► M3 Governing 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 ► M3 Governing 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.

▼ M3*Article 17*

1. The staff of the Foundation recruited after 4 August 2005 shall be subject to the Staff Regulations of officials of the European Communities or to the Conditions of Employment of other Servants of the Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁾ (CEOS). Section 2 of Annex XIII of the Staff Regulations shall apply.

2. All employment contracts concluded by the Foundation and its staff members under Regulation (ECSC, EEC, Euratom) No 1860/76 ⁽²⁾ before 4 August 2005 shall be considered to have been concluded under Article 2(a) CEOS. The provisions of Section 1, 3 and 4, with the exception of Article 22(2) of Annex XIII of the Staff Regulations, shall be applicable to these contracts from the same date.

Staff members shall have the right to terminate the contract at the same date without having to respect the notice period provided for in Article 45 of Regulation (ECSC, EEC, Euratom) No 1860/76. For the purposes of allowances on termination of a contract and for unemployment benefits, such termination of contract shall be deemed to be the result of an action of the Foundation.

3. The Foundation shall exercise, in respect of the staff, the powers conferred on the appointing authority or the authority authorised to conclude contracts as the case may be.

⁽¹⁾ OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 31/2005 (OJ L 8, 12.1.2005, p. 1).

⁽²⁾ Council Regulation (ECSC, EEC, Euratom) No 1860/76 of 29 June 1976, laying down the conditions of Staff of the European Foundation for the Improvement of Living and Working Conditions (OJ L 214, 6.8.1976, p. 24). Regulation as last amended by Regulation (Euratom, ECSC, EEC) No 680/87 (OJ L 72, 14.3.1987, p. 15).

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4. The Governing Board shall, in agreement with the Commission, adopt the appropriate implementing rules.

▼ B*Article 18*

Members of the ► M3 Governing 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 ► M3 Governing 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.

▼ 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.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

⁽²⁾ OJ L 245, 29.9.2003, p. 25.

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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 ►**M3** Governing 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.