Council of the European Union

Brussels, 30 November 2016
(OR. en)

15024/16
ADD 1

Interinstitutional File:
2016/0256 (COD)

SOC 756
EMPL 506
EDUC 410
CODEC 1771

NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. prev. doc.:	14559/16 SOC 721 EMPL 489 EDUC 385 CODEC 1684
No. Cion doc.:	11530/16 SOC 477 EMPL 311 CODEC 1111 - COM(2016) 531 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the European Foundation for the improvement of living and working conditions (Eurofound), and repealing Council Regulation (EEC) No 1365/75 - General approach

Delegations will find attached the Presidency draft compromise text on the Eurofound proposal as approved by Coreper at its meeting on 30 November, with a view to reaching a general approach at the Council (EPSCO) on 8 December 2016.

2016/0256 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the European Foundation for the improvement of living and working conditions (Eurofound), and repealing Council Regulation (EEC) No 1365/75

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(2)(a) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure[3],

1 OJ C , , p. .
2 OJ C , , p. .
3 Position of the European Parliament of … [(OJ …)/(not yet published in the Official Journal)] and decision of the Council of ….

Whereas:

(1) The European Foundation for the improvement of living and working conditions ("Eurofound" or "Agency") was established by Regulation (EEC) No 1365/75 of the Council[4] 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. In doing so, the Agency should take account of the medium- and long-term perspectives of these policies.

(2) Since it was established in 1975, Eurofound has played an important role in supporting the improvement of living and working conditions throughout the Union. At the same time the concepts and significance of living and working conditions have evolved under the influence of societal developments and fundamental changes in the labour markets. Consequently, the terminology used to describe the objectives and tasks of Eurofound in Regulation (EEC) No 1365/75 should be adapted.

(3) Regulation (EEC) No 1365/75 has been amended several times. Since further amendments are to be made, it should be replaced and repealed in the interest of clarity.

(4) The rules governing the Agency should, to the extent possible and taking into account its tripartite nature, be established in accordance with the principles of the Joint Statement of the European Parliament, the Council of the European Union and the European Commission on decentralised agencies of 19 July 2012.

(4a) This Regulation does not preclude any further amendments to the Founding Regulation of Eurofound which the Commission may wish to propose following further evaluation, as provided for in this act or on its own initiative. The Commission will evaluate the objectives, mandate, governance and tasks of all Union agencies acting in the field of labour market, working conditions, vocational education and training and skills.

---

[4] 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 (OJ L 139, 30.5.1975, p.1).

(5) As the three tripartite agencies, namely Eurofound, the European Agency for Safety and Health at Work (EU-OSHA) and the European Centre for the Development of Vocational Training (Cedefop), address issues related to the labour market and working environment, vocational education and training, and skills, close coordination among them is required and ways to enhance efficiency and synergies should be exploited. In addition, where relevant, the Agency should seek to engage in efficient cooperation with the in-house research capacities of Union institutions and external specialised bodies.

(5a) In order to streamline the decision-making process in the Agency and to contribute to enhancing efficiency and effectiveness, a two-level governance structure should be introduced. To that end, the Member States, the national employers and employees organisations and the Commission should be represented in a Management Board vested with the necessary powers, including the power to adopt the budget and approve the programming document. In the programming document, containing the Agency's multi-annual programming and its annual work program, the Management Board should lay down the strategic priorities of the Agency's activities.

(5b) In order for the Agency to function properly, the Member States, the European employers and employees organisations and the Commission should ensure that persons to be appointed to the Management Board have appropriate knowledge in the field of social and work-related policies with a view to making significant and strategic decisions, and to overseeing the Agency's activity.

(5c) The Executive Board should be set up with the task of preparing the meetings of the Management Board in an appropriate manner and supporting its decision-making and monitoring processes. In assisting the Management Board, the Executive Board should, where appropriate, take provisional decisions subject to final endorsement by the Management Board. The rules of procedure of the Executive Board should be adopted by the Management Board.

(5d) The Executive Director should be responsible for the overall management of the Agency according to the strategic direction set by the Management Board, including day-to-day administration, financial and human resources management. The Executive Director should exercise the powers entrusted to him/her. These powers may be suspended under exceptional circumstances, such as conflicts of interest or a serious failure to comply with obligations under the Staff Regulations.

(5e) The Agency currently operates a liaison office in Brussels. The possibility of operating that office should be maintained.

(7) The provisions concerning Eurofound's staff set out in Regulation (EEC) No 1365/75 should be aligned with the Staff Regulations of Officials of the European Union ("Staff Regulations") and the Conditions of Employment of Other Servants of the European Union ("Conditions of Employment of Other Servants"), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68[5].

(8) The Agency should take the necessary measures to ensure the safe handling and processing of confidential information. Where required, Eurofound should adopt security rules as set out in Commission Decision (EU, Euratom) 2015/443[6] and Commission Decision (EU, Euratom) 2015/444[7].

---

5 Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

6 Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

7 Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

(6) The new financial provisions and provisions for programming and reporting governing the Agency replacing those found in Regulation (EEC) No 1365/75 should be aligned with Commission Delegated Regulation (EU) No 1271/2013[8].

(9) It is necessary to provide for transitional budgetary provisions and transitional provisions on the Management Board, Executive Director and staff to ensure continuation of activities of the Agency pending the entry into force of this Regulation,

HAVE ADOPTED THIS REGULATION:

CHAPTER I
OBJECTIVES AND TASKS OF THE AGENCY

Article 1 - Establishment and objectives of the Agency

1. The European Foundation for the improvement of living and working conditions ("the Agency" or "Eurofound"), is hereby established as a Union Agency.

2. The objectives of the Agency shall be to increase and disseminate knowledge to provide support to the Commission, other Union institutions and bodies, Member States and social partners in shaping and implementing policies aimed at the improvement of living and working conditions, in devising employment policies and in promoting the dialogue between management and labour.

[8] Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

Article 2 – Tasks

1. The Agency shall perform the following tasks with respect to the policy areas referred to in Article 1(2):

   (a) analyse developments and provide comparative analyses of policies, institutional frameworks and practices in Member States and, where relevant, other countries;

   (b) analyse trends in living and working conditions, employment and labour market developments;

   (c) analyse the developments in industrial relation systems and in particular social dialogue at Union level and in the Member States;

   (d) undertake or commission studies and carry out research on relevant socio-economic developments and related policy issues;

   (e) provide forums for exchange of experiences and information between stakeholders, including social partners, to support implementation of reforms and policies at national level through evidence-based information and analysis;

   (f) manage and make available tools and datasets to policymakers, social partners, academia and other stakeholders.

2. In carrying out its tasks, the Agency shall maintain a close dialogue particularly with specialised bodies, whether public or private, national or international, public authorities and workers' and employers' organisations. The Agency, without prejudice to its own objectives and purposes shall cooperate with other Union agencies, in particular with EU-OSHA and Cedefop, promoting synergies and complementarity in their activities, while avoiding duplication of efforts.

CHAPTER II
ORGANISATION OF THE AGENCY

Article 3 – Administrative and management structure

The Agency's administrative and management structure shall comprise:

(a) a Management Board, which shall exercise the functions set out in Article 5;

(b) an Executive Board, which shall exercise the functions set out in Article 10;

(d) an Executive Director, who shall exercise the responsibilities set out in Article 11.

SECTION 1: MANAGEMENT BOARD

Article 4 – Composition of the Management Board

1. The Management Board shall be composed 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.

   All members referred to in points (a)-(d) shall be entitled to vote.

The members referred to in points (a), (b) and (c) shall be appointed by the Council on the basis of the designated candidates submitted by the Member States, the European employers' and employees' organisations respectively. The Commission shall appoint the members who are to represent it.

2. Each member of the Management Board shall have an alternate. The alternate shall represent the member in his/her absence. The alternate shall be appointed following the procedure in paragraph 1.

3. Members of the Management Board and their alternates shall be designated and appointed in light of their knowledge in the field of social and work-related policies, taking into account their relevant skills in order to function effectively in an oversight role. All parties represented in the Management Board shall endeavour to limit turnover of their representatives, in order to ensure continuity of the board's work. All parties shall aim to achieve a balanced representation between men and women on the Management Board.

4. The term of office for members and their alternates shall be four years. That term 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.

5. Within the Management Board, the representatives of governments, employers' organisations and employees' organisations shall each form a group. Each group shall designate a coordinator in order to enhance the efficiency of the deliberations within and between the groups. The coordinators of the employers' and employees' groups shall be representatives of their respective organisations at European level and may be designated from among the appointed Management Board members. Coordinators who are not appointed Management Board members within the meaning of paragraph 1 shall take part in the Management Board meetings without the right to vote.

Article 5 – Functions of the Management Board

1. The Management Board shall:

(a) give the strategic orientation for the Agency's activities;

(aa) adopt each year, by a majority of two-thirds of the members entitled to vote and in accordance with Article 6, the Agency's programming document, containing the Agency's multi-annual programming and its annual work programme for the following year;

(b) adopt, by a majority of two-thirds of the members entitled to vote, the annual budget of the Agency and exercise other functions in respect of the Agency's budget pursuant to Chapter III;

(c) adopt the consolidated annual activity report together with its assessment on the Agency's activities and send these before 1 July each year to the European Parliament, the Council, the Commission and the Court of Auditors. The consolidated annual activity report shall be made public;

(d) adopt the financial rules applicable to the Agency in accordance with Article 17;

(e) adopt an anti-fraud strategy, proportionate to fraud risks taking into account the costs and benefits of the measures to be implemented;

(f) adopt rules for the prevention and management of conflicts of interest in respect of its members and independent experts;

(g) adopt and regularly update the communication and dissemination plans based on an analysis of needs;

(h) adopt its rules of procedure;

(i) exercise, in accordance with paragraph 2, with respect to the staff of the Agency, the powers:
- of the Appointing Authority conferred by the Staff Regulations of Officials of the European Union, and
- of the Authority empowered to conclude a Contract of Employment conferred by the Conditions of Employment of Other Servants,

("the appointing authority powers");

(j) adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;

(k) appoint the Executive Director and where relevant extend the term of office or remove the Executive Director from office in accordance with Article 19;

(l) appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment of Other Servants, who shall be totally independent in the performance of his/her duties;

(la) lay down the rules of procedure of the Executive Board;

(lb) establish and dissolve Advisory Committees in accordance with Article 12, and adopt their Rules of Procedure;

(m) monitor adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office (OLAF);

(o) authorise the establishment of cooperation arrangements with the competent authorities of third countries and with international organisations in accordance with Article 30(1).

2. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Executive Director and setting out the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may suspend temporarily the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the Executive Director. In such cases, the Management Board shall delegate them, for a limited period, to one of its members representing the Commission or to a staff member other than the Executive Director.

Article 6 –Multi-annual programming and annual work programmes

1. Each year, the Executive Director shall, in accordance with Article 11(5)c, draw up a programming document containing multiannual and annual programming in accordance with Article 32 of the Delegated Regulation (EU) No 1271/2013.

2. The Executive Director shall put forward the draft programming document referred to in paragraph 1 to the Management Board. The draft programming document, following the approval by the Management Board, shall be sent to the Commission, the European Parliament and the Council no later than 31 January each year, as well as any later updated version of that document. The Management Board shall adopt the programming document referred to in paragraph 1, taking into account the opinion of the Commission.

The programming document referred to in paragraph 1 shall become definitive after final adoption of the general budget of the Union and if necessary shall be adjusted accordingly.

5. The multi-annual work programme shall set out overall strategic programming including objectives, expected results and performance indicators. The strategic programming shall be updated where appropriate, considering in particular the outcome of the evaluation referred to in Article 28.

The multi-annual work programme shall also set out resource programming including multi-annual budget and staff. It shall include a strategy for relations with third countries and international organisations referred to in Article 30, the actions linked to this strategy, and a specification of associated resources.

The resource programming shall be updated annually.

3. The annual work programme shall be coherent with the multi-annual work programme referred to in paragraph 5 and shall comprise:

(a) detailed objectives and expected results including performance indicators;

(b) a description of the actions to be financed;

(c) an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management.

It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year.

4**.** The Management Board shall amend the annual work programme when a new task is given to the Agency. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.

Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme.

Article 7 – Chairperson of the Management Board

1. The Management Board shall elect a Chairperson and three Deputy Chairpersons as follows:

   (a) one from amongst the members representing Member States;

   (b) one from amongst the members representing employers' organisations;

   (c) one from amongst the members representing employees' organisations; and

   (d) one from amongst the members representing the Commission.

   The Chairperson and the Deputy Chairpersons shall be elected by a majority of two-thirds of members of the Management Board entitled to vote.

2. The term of office of the Chairperson and the Deputy Chairpersons shall be one year. Their term of office shall be renewable. If, however, their membership of the Management Board ends at any time during their term of office, their term of office shall automatically expire on that date.

Article 8 – Meetings of the Management Board

1. The Chairperson shall convene meetings of the Management Board.

2. The Executive Director of the Agency shall take part in the deliberations, without the right to vote.

3. The Management Board shall hold one ordinary meeting a year. In addition, it shall meet on the initiative of its Chairperson, at the request of the Commission or at the request of at least one-third of its members.

4. The Management Board may invite any person whose opinion may be of interest to attend its meetings as an observer.

5. The Agency shall provide the secretariat for the Management Board.

Article 9 – Voting rules of the Management Board

1. Without prejudice to Article 5(1)(aa) and (b), Article 7(1) and Article 19(7), the Management Board shall take decisions by majority of members entitled to vote.

2. Each member entitled to vote shall have one vote. In the absence of a member entitled to vote, his/her alternate shall be entitled to exercise his/her right to vote.

3. The Chairperson shall take part in the voting.

4. The Executive Director shall take part in the deliberations, without being entitled to vote.

5. The Management Board's rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member.

SECTION 2: EXECUTIVE BOARD

Article 10 – Executive Board

1. The Management Board shall be assisted by an Executive Board.

2. The Executive Board shall, in particular:

   (a) prepare decisions to be adopted by the Management Board;

(b) monitor, together with the Management Board, adequate follow-up to the findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of OLAF;

(c) without prejudice to the responsibilities of the Executive Director, as set out in Article 11, advise him / her, where necessary, in the implementation of the decisions of the Management Board, with a view to reinforcing supervision of administrative and budgetary management.

3. Where necessary, because of urgency, the Executive Board may take certain provisional decisions on behalf of the Management Board.

4. The Executive Board shall be composed of the Chairperson of the Management Board, the three Deputy Chairpersons, the coordinators of the three groups as referred to in Article 4(5) and one representative of the Commission. Each group referred to in Article 4(5) may designate up to two alternates to attend the meetings of the Executive Board, in the absence of the full members. The Chairperson of the Management Board shall also be the Chairperson of the Executive Board. The Executive Director shall take part in the meetings of the Executive Board, but shall not be entitled to vote.

5. The term of office of members of the Executive Board shall be two years. That term shall be renewable. The term of office of members of the Executive Board shall end when their membership of the Management Board ends.

6. The Executive Board shall meet three times a year. In addition, it shall meet on the initiative of the Chairperson or at the request of its members

SECTION 3: EXECUTIVE DIRECTOR

Article 11 – Responsibilities of the Executive Director

1. The Executive Director shall manage the Agency. The Executive Director shall be accountable to the Management Board.

2. Without prejudice to the powers of the Commission, the Management Board, and the Executive Board, the Executive Director shall be independent in the performance of the duties and shall neither seek nor take instructions from any government or any other body.

3. The Executive Director shall report to the European Parliament on the performance of his/her duties when invited to do so. The Council may invite the Executive Director to report on the performance of his/her duties.

4. The Executive Director shall be the legal representative of the Agency.

5. The Executive Director shall be responsible for the implementation of the tasks assigned to the Agency by this Regulation, in particular:

   (a) the day-to-day administration of the Agency, including exercising the powers entrusted to him/her in respect of staff matters, in accordance with Article 5(1)(i);

   (b) implementing decisions adopted by the Management Board;

   (c) preparing the programming document and submitting it to the Management Board after consulting the Commission;

   (d) implementing the programming document and reporting to the Management Board on its implementation;

(e) preparing the consolidated annual report on the Agency's activities and presenting it to the Management Board for assessment and adoption;

(i) preparing draft financial rules applicable to the Agency;

(j) implementing the Agency's budget and preparing its draft statement of estimates of revenue and expenditure;

(f) preparing an action plan following-up conclusions of internal or external audit reports and evaluations, as well as investigations by OLAF and reporting on progress twice a year to the Commission and regularly to the Management Board and the Executive Board;

(g) protecting the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative and financial penalties;

(h) preparing an anti-fraud strategy for the Agency and presenting it to the Management Board for approval.

6. The Executive Director shall also be responsible for deciding whether it is necessary for the purpose of carrying out the Agency's tasks in an efficient and effective manner to establish a liaison office to further the Agency's cooperation with the relevant Union institutions. That decision requires the prior consent of the Commission, the Management Board and the Member State where the liaison office is to be located. That decision shall specify the scope of the activities to be carried out by that liaison office in a manner that avoids unnecessary costs and duplication of administrative functions of the Agency.

SECTION 4: ADVISORY COMMITTEES

Article 12 – Advisory Committees

1. Advisory Committees can be established by the Management Board in line with the policy priority areas outlined in the Agency's programming documents.

2. Advisory Committees are operational bodies aimed at ensuring the quality of the research produced by the Agency, as well as a wide ownership of the projects and of the results, by participating in the implementation of the Agency's programmes and providing advice and new inputs.

3. In liaison with the Management Board and the Executive Board Advisory Committees carry out the following main functions related to research projects:

   (a) give advice on their design and implementation;

   (b) monitor progress of implementation;

   (c) evaluate findings;

   (d) advise on the dissemination of results.

4. The coordinators of the groups referred to in Article 4(5) shall oversee the nomination and participation of the members of the Advisory Committees in accordance with the Rules of Procedure.

5. The Management Board decides on the dissolution of Advisory Committees, in accordance with the priorities outlined in the Agency's programming documents.

CHAPTER III
FINANCIAL PROVISIONS

Article 13 - Budget

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

2. The Agency's budget shall be balanced in terms of revenue and of expenditure.

3. Without prejudice to other resources, the Agency's revenue shall comprise:

   (a) a contribution from the Union entered in the general budget of the Union;

   (b) any voluntary financial contribution from the Member States;

   (c) charges for publications and any service provided by the Agency;

   (d) any contribution from third countries participating in the work of the Agency, as provided for by Article 30.

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

Article 14 – Establishment of the budget

1. Each year, the Executive Director shall draw up a provisional draft estimate of the Agency's revenue and expenditure for the following financial year, including the establishment plan, and send it to the Management Board.

2. The Management Board shall, on the basis of the provisional draft estimate, adopt a draft estimate of the Agency's revenue and expenditure for the following financial year, and shall sent it to the Commission by 31 January each year.

4. The Commission shall send the draft estimate to the European Parliament and the Council ("the budgetary authority"), together with the draft general budget of the Union.

5. On the basis of the draft estimate, the Commission shall enter in the draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 of the Treaty on the Functioning of the European Union (TFEU).

6. The budgetary authority shall authorise the appropriations for the contribution from the Union to the Agency.

7. The budgetary authority shall adopt the Agency's establishment plan.

8. The Agency's budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the Union. Where necessary, it shall be adjusted accordingly.

8a. Any modification to the budget, including the establishment plan, shall follow the same procedure.

9. For any building project likely to have significant implications for the budget of the Agency the Delegated Regulation (EU) No 1271/2013 shall apply.

Article 15 – Implementation of the budget

1. The Executive Director shall implement the Agency's budget.

2. Each year the Executive Director shall send to the budgetary authority all information relevant to the findings of **any** evaluation procedure.

Article 16 – Presentation of accounts and discharge

1. The Agency's accounting officer shall send the provisional accounts for the financial year (Year N) to the Commission's Accounting Officer and to the Court of Auditors by 1 March of the following financial year (year N + 1).

2. The Agency shall send a report on the budgetary and financial management for year N to the European Parliament, the Council, the Commission and the Court of Auditors by 31 March of year N + 1.

2a. The Commission's accounting officer shall send the Agency's provisional accounts for year N, consolidated with the Commission's accounts, to the Court of Auditors by 31 March of year N + 1.

3. On receipt of the Court of Auditors' observations on the Agency's provisional accounts for year N, pursuant to Article 148 of the Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council[9], the accounting officer shall draw up the Agency's final accounts for that year under his/her own responsibility. The Executive Director shall submit them to the Management Board for an opinion.

[9] Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

4. The Management Board shall deliver an opinion on the Agency's final accounts for year N.

5. The Agency's accounting officer shall, by 1 July of year N + 1, send the final accounts for year N to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

6. The final accounts for year N shall be published in the *Official Journal of the European Union* by 15 November of year N + 1.

7. The Executive Director shall send to the Court of Auditors, by 30 September of year N + 1, a reply to the observations made in its annual report. The Executive Director shall also send the reply to the Management Board.

8. The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for year N, in accordance with Article 109(3) of Commission Delegated Regulation (EU) No 1271/2013.

9. On a recommendation from the Council acting by a qualified majority, the European Parliament shall, before 15 May of year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

Article 17 – Financial rules

The financial rules applicable to the Agency shall be adopted by the Management Board after consulting the Commission. They shall not depart from Delegated Regulation (EU) 1271/2013 unless such a departure is specifically required for the Agency's operation and the Commission has given its prior consent.

CHAPTER IV
STAFF

Article 18 – General provisions

1. The Staff Regulations and the Conditions of Employment of Other Servants and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of the Agency.

2. The Management Board shall adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations.

Article 19 – Executive Director

1. The Executive Director shall be a member of staff and shall be engaged as a temporary agent of the Agency under Article 2(a) of the Conditions of Employment of Other **S**ervants.

2. The Executive Director shall be appointed by the Management Board, from a list of candidates proposed by the Commission, following an open and transparent selection procedure.

   For the purpose of concluding the contract with the Executive Director, the Agency shall be represented by the Chairperson of the Management Board.

3. The term of office of the Executive Director shall be five years. Before the end of that period, the Management Board shall request the Commission to undertake an assessment that takes into account an evaluation of the Executive Director's performance and the Agency's future tasks and challenges.

4. The Management Board, taking into account the assessment referred to in paragraph 3, may extend the term of office of the Executive Director once and for no more than five years.

5. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.

6. The Executive Director may be removed from office only upon a decision of the Management Board. It shall, when taking such a decision, take into account an assessment carried out by the Commission on the request of the Management Board.

7. The Management Board shall reach decisions on appointment, extension of the term of office or removal from office of the Executive Director on the basis of a two-thirds majority of its members entitled to vote.

Article 20 – Seconded national experts and other staff

1. The Agency may make use of seconded national experts or other staff not employed by the Agency.

2. The Management Board shall adopt a decision laying down rules on the secondment of national experts to the Agency.

CHAPTER V
GENERAL PROVISIONS

Article 21 – Legal status

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

2. In each Member State the Agency shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may, in particular, acquire and dispose of movable and immovable property and be party to legal proceedings.

3. The seat of the Agency shall be Dublin, Ireland.

4. The Agency may establish a liaison office to further the Agency's cooperation with the relevant Union institutions, in accordance with Article 11(6).

Article 22 – Privileges and immunities

Protocol No 7 on the Privileges and Immunities of the European Union shall apply to the Agency and its staff.

Article 23 – Language arrangements

1. The provisions laid down in Regulation No 1[10] shall apply to the Agency.

3. The translation services required for the functioning of the Agency shall be provided by the Translation Centre of the bodies of the European Union.

Article 24 – Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council[11] shall apply to documents held by the Agency.

1a. The Management Board shall, within six months of the date of its first meeting, adopt the detailed rules for applying Regulation (EC) No 1049/2001.

[10] OJ 17, 6.10.1958, p. 385.

[11] 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 (OJ L 145, 31.5.2001, p. 43).

2. The processing of personal data by the Agency shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council[12]. The Management Board shall, within six months of the date of its first meeting, establish measures for the application of Regulation (EC) No 45/2001 by the Agency, including those concerning the appointment of a Data Protection Officer of the Agency. Those measures shall be established after consultation of the European Data Protection Supervisor.

Article 25 – Combating fraud

1. In order to facilitate the fight against fraud, corruption and any other illegal activities under Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council[13], by … [six months from the date of application of this Regulation], the Agency shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by OLAF[14] and shall adopt appropriate provisions applicable to all employees of the Agency using the template set out in the Annex to that Agreement.

2. The Court of Auditors shall have the power of audit, on the basis of documents, and of on-the-spot inspections, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.

---

12 Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

13 Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

14 OJ L 136, 31.5.1999, p. 15.

3. OLAF may carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded by the Agency, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96[15].

4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

Article 26 – Security rules on the protection of classified and sensitive non-classified information

The Agency shall adopt its own security rules equivalent to the Commission's security rules for protecting EU Classified Information (EUCI) and sensitive non-classified information, as set out in the Decisions (EU, Euratom) 2015/443 and 2015/444, when required. The security rules of the Agency shall cover, inter alia and where appropriate, provisions for the exchange, processing and storage of such information.

Article 27 - Liability

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

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

[15] Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

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 performance of their duties.

4. The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damages 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 in the Conditions of Employment of Other Servants applicable to them.

Article 28 – Evaluation

1. By … [5 years after the entry into force of this Regulation], and every 5 years thereafter, the Commission shall ensure that an evaluation is carried out in compliance with the Commission guidelines to assess the Agency's performance in relation to its objectives, mandate and tasks. The evaluation shall, in particular, address the possible need to amend the mandate of the Agency, and the financial implications of any such amendments.

3. The Commission shall report to the European Parliament, the Council and the Management Board on the evaluation's findings. The findings of the evaluation shall be made public.

Article 29 – Administrative inquiries

The activities of the Agency shall be subject to inquiries by the European Ombudsman in accordance with Article 228 of the TFEU.

Article 30 – Cooperation with third countries and international organisations

1. In so far as is necessary in order to achieve the objectives set out in this Regulation, and without prejudice to the respective competences of the Member States and the institutions of the Union, the Agency may cooperate with the competent authorities of third countries and international organisations.

   To this end, the Agency may, subject to the authorisation of the Management Board after approval by the Commission, establish working arrangements with the authorities of third countries and international organisations. These arrangements shall not create legal obligations incumbent on the Union or its Member States.

2. The Agency shall be open to the participation of third countries that have entered into agreements with the Union to that effect.

   Under the relevant provisions of the agreements referred to in the first subparagraph, arrangements shall be developed specifying, in particular, the nature, extent and manner in which the third countries concerned will participate in the work of the Agency, including provisions relating to the participation in the initiatives undertaken by the Agency, financial contributions and staff. As regards staff matters, those arrangements shall, in any event, comply with the Staff Regulations.

3. The Management Board shall adopt a strategy for relations with third countries or international organisations concerning matters for which the Agency is competent.

Article 31 – Headquarters Agreement and operating conditions

1. The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State and the facilities to be made available by that Member State together with the specific rules applicable in the host Member State to the Executive Director, members of the Management Board, Agency staff and members of their families shall be laid down in a Headquarters Agreement between the Agency and Member State where the seat is located.

2. The Agency's host Member State shall provide the necessary conditions to ensure the functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

CHAPTER VI
TRANSITIONAL PROVISIONS

Article 32 – Transitional provisions concerning the Management Board

1. The term of office of the members of the Governing Board of the Agency as established on the basis of Article 6 of Regulation (EEC) No 1365/75 shall terminate on … [date of entry into force of this Regulation].

2. The Governing Board established on the basis of Article 6 of Regulation (EEC) No 1365/75 shall within the period between …[date of entry into force of this Regulation] and … [date of application of this Regulation] exercise the functions of the Management Board as referred to in Article 5 of this Regulation.

Article 33 - Transitional provisions concerning the staff

1. The Director of the Agency appointed on the basis of Article 8 of Regulation (EEC) No 1365/75 shall, for the remaining periods of his/her term of office be assigned to the responsibilities of the Executive Director as provided for in Article 11 of this Regulation. The other conditions of his/her contract shall remain unchanged.

2. The Deputy Director the Agency appointed on the basis of Article 8 of Regulation (EEC) No 1365/75 shall, for the remaining period of his/her term of office assist the Director or Executive Director.

3. This Regulation shall not affect the rights and obligations of staff engaged under Regulation (EEC) No 1365/75. Their employment contracts may be renewed under this Regulation in accordance with the Staff Regulations and Conditions of Employment of Other Servants.

Article 34 - Transitional budgetary provisions

The discharge procedure in respect of the budgets approved on the basis of Article 16 of Regulation (EEC) No 1365/75 shall be carried out in accordance with the rules established therein.

CHAPTER VII
FINAL PROVISIONS

Article 35 – Repeal

Regulation (EEC) No 1365/75 is repealed as from [date of application of this Regulation] and all references to the repealed Regulation shall be construed as references to this Regulation.

Article 36 - Maintenance in force of the internal rules adopted by the Agency

Internal rules adopted by the Governing Board on the basis of Regulation (EEC) No 1365/75 shall remain in force after [date of application of this Regulation], unless otherwise decided by the Management Board in the application of this Regulation.

Article 37 – Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

   It shall apply from [date of application].

   However, Articles 32, 33, 34 shall apply from [the date of entry into force of this Regulation].

   This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*