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THE EUROPEAN UNION**

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Subject : Proposal for a Regulation of the European Parliament and of the Council  
establishing a European Training Foundation (recast)

- Council position prior to an informal trialogue aimed at reaching a first reading agreement with the EP
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In the light of the Permanent Representatives Committee's examination of the above proposal at its meeting on 19 March 2008, delegations will find attached a revised compromise text, the aim of which is to serve as a basis for future discussions with the European Parliament with a view to reaching a first reading agreement.

Changes to the Commission proposal appear **in bold underlined** and between   (in accordance with the special software used for recasts). Changes to the previous compromise text in 7530/08 appear in **bold italics underlined**.

2007/0163 (COD)

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new

Proposal for a

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Ⓔ 1360/90

new

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a European Training Foundation**

**(recast)**

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<sup>1</sup> Changes to the Commission proposal appear **in bold underlined** and between  (in accordance with the special software used for recasts).

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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Ⓔ 1360/90 (adapted)

new

Having regard to the Treaty establishing the European Economic Community, and in particular Article ~~235~~ 150 thereof,

Having regard to the proposal from the Commission <sup>2</sup>,

~~Having regard to the opinion of the European Parliament,~~

Having regard to the opinion of the European Economic and Social Committee <sup>3</sup>,

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new

Having regard to the opinion of the Committee of the Regions<sup>4</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>5</sup>,

Whereas:

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<sup>2</sup> ~~OJ No C 86, 4. 4. 1990, p. 12.~~ OJ C [...], [...], p. [...].

<sup>3</sup> ~~Opinion delivered on 25 April 1990 (not yet published in the Official Journal)~~ OJ C [...], [...], p. [...].

<sup>4</sup> OJ C [...], [...], p. [...].

<sup>5</sup> OJ C [...], [...], p. [...].

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new

- (1) Council Regulation (EEC) No 1360/90 of 7 May 1990 establishing a European Training Foundation has been substantially amended several times<sup>6</sup>. Since further amendments are to be made, it should be recast in the interests of clarity.

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Ⓔ 1360/90 (adapted)

new

- (2) ~~Whereas~~ The European Council meeting at Strasbourg on 8 and 9 December 1989 called upon the Council to adopt, at the beginning of 1990, the necessary decisions for the establishment of a European Training Foundation for Central and Eastern Europe, acting on a proposal from the Commission<sup>7</sup>. To this end on 7 May 1990 the Council adopted Regulation (EEC) No 1360/90 which established the said Foundation.

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<sup>6</sup> OJ L 131, 23.5.1990, p. 1. Regulation as last amended by the Council Regulation (EC) No 1648/2003 of 18 June 2003 (OJ L 245, 29.9.2003, p. 22).

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new

- (3) Pursuant to a decision taken by common agreement between the representatives of the Governments of the Member States meeting at Head of State and Government level in Brussels on 29 October 1993<sup>7</sup>, the Foundation has its seat in Turin, Italy.

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Ⓔ 1360/90 (adapted)

- (4) ~~Whereas~~ On 18 December 1989 the Council adopted Regulation (EEC) No 3906/89<sup>8</sup> on economic aid to the Republic of Hungary and the Polish People's Republic which provides for aid in areas including training to support the process of economic and social reform in Hungary and Poland;

- (5) ~~Whereas~~ The Council may have subsequently extended such aid to other countries of Central and Eastern Europe under a relevant legal act

- (6) ~~Whereas the process of economic and social reform will contribute to the development of mutually beneficial economic and commercial relationships between the countries of Central and Eastern Europe and the Community; whereas these intensified relationships will also contribute to a harmonious development of economic activities within the Community;~~

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<sup>7</sup> OJ C 323, 30.11.1993, p. 1.

<sup>8</sup> OJ No L 375, 23. 12. 1989, p. 11.

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new

Council

(7) On 27 July 1994 the Council adopted Regulation (EC) No 2063/94<sup>9</sup> amending Regulation (EEC) No 1360/90 with a view to including in the activities of the European Training Foundation the States receiving assistance under the Regulation (Euratom, EC) No 2053/93 (TACIS Programme).

(8) On 17 July 1998 the Council adopted Regulation (EC) No 1572/98<sup>10</sup> amending Regulation (EEC) No 1360/90 with a view to including in the activities of the European Training Foundation the Mediterranean non-member countries and territories which are beneficiaries of the financial and technical measures to accompany the reform of their economy and social structures pursuant to Regulation (EC) No 1488/96.

(9) On 5 December 2000 the Council adopted Regulation (EC) No 2666/2000<sup>11</sup> on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia amending Regulation (EEC) No 1360/90 with a view to including in the activities of the European Training Foundation the Western Balkan States covered by the Regulation.

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<sup>9</sup> OJ L 216, 20.08.1994, p. 9.

<sup>10</sup> OJ L 206, 23.07.1998, p. 1.

<sup>11</sup> OJ L 306, 07.12.2000, p. 1.

- (10) External assistance programmes related to the countries covered by the activities of the European Training Foundation are to be replaced by new external relations policy instruments, mainly the instrument established by Council Regulation (EC) No 1085/2006 establishing an Instrument for Pre-Accession Assistance<sup>12</sup> and the instrument established by Regulation (EC) No 1638/2006 of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument (ENPI)<sup>13</sup>.
- (11) Through supporting human [...] **capital** development in the context of its external relations policy, the EU contributes to economic development in these States by providing the skills necessary to foster productivity and employment and supports social cohesion by promoting civic participation.
- (12) In the context of these States' efforts to reform their economic and social structures, the development of human [...] **capital** is essential for attaining long-term stability and prosperity and in particular for achieving socio-economic equilibrium.

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<sup>12</sup> OJ L 210, 31.7.2006, p. 82.

<sup>13</sup> OJ L 310, 9.11.2006, p. 1.

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CE 1360/90 (adapted)

new

Council

- (13) ~~Whereas~~ ~~†~~ The European Training Foundation could make an important contribution , in the context of EU external relations policies, to ~~the effective provision of training assistance to the countries of Central and Eastern Europe eligible for economic aid to support the process of reform~~ improving human [...] capital development, in particular education and training in a lifelong learning perspective ~~‡~~
- (14) ~~Whereas~~ ~~†~~ For its contribution, the European Training Foundation will need to call upon the experience gained within the ~~Community in the area of vocational training~~ European Union ~~in implementing a common policy for vocational~~ in relation to education and training in a lifelong learning perspective and upon its institutions ~~concerned with training~~ involved in this activity ~~‡~~
- (15) ~~Whereas~~ ~~†~~ There exist in the Community and in third countries, including the countries ~~of Central and Eastern Europe~~ covered by the activities of the European Training Foundation , regional and/or national, public and/or private facilities which can be called upon to collaborate in the effective provision of aid in the area of ~~training~~ human [...] capital development, in particular education and training in a lifelong perspective ~~‡~~

- (16) ~~Whereas~~ The status and structure of the European Training Foundation should facilitate a flexible response to the specific and differing requirements of the individual countries to be assisted, and allow it to carry out its functions in close cooperation with the existing national and international ~~facilities~~ **bodies** .
- (17) ~~Whereas~~ The European Training Foundation should be endowed with legal personality, while maintaining a close corporate relationship with the Commission and respecting the overall political **and operational** responsibilities of the Community and its institutions.
- (18) ~~Whereas~~ The European Training Foundation should have close links with the European Centre for the Development of Vocational Training, with the Trans-European Mobility Scheme for University Studies (Tempus) and any other schemes instituted by the Council to provide aid in the area of training to the countries ~~of Central and Eastern Europe~~ **covered by its activities** .
- (19) ~~Whereas~~ The European Training Foundation should be open to the participation of countries which are not members of the Community and which share the commitment of the Community and the Member States to the provision of aid to ~~Central and Eastern Europe~~ **Europe** the countries covered by the activities of the European Training Foundation in the ~~training~~ **field** of human [...] **capital** development, in particular **education and training in a lifelong perspective,** under arrangements to be laid down in agreements between the Community and themselves.

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new

Council

- (20) The Commission and **all** the Member States should be represented within a Governing Board in order to control effectively the functions of the Foundation. [...]
- (21) In order to guarantee the full autonomy and independence of the Foundation, it should be granted an autonomous budget whose revenues come [...] **primarily** from a contribution from the Community. The Community budgetary procedure should be applicable as far as the Community contribution and any other subsidies chargeable to the general budget of the European Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors.
- (22) The Foundation is a body set up by the Communities in the sense of Article 185(1) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>14</sup> (hereinafter "the Financial Regulation") and should adopt its financial rules accordingly.

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<sup>14</sup> OJ L 248, 16.09.2002, p.1.

- (23) Commission 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<sup>15</sup> should apply to the Foundation.
- (24) In order to combat fraud, corruption and other unlawful activities the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>16</sup> should apply without restriction to the Foundation.
- (25) 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<sup>17</sup> documents should apply to the Foundation.
- (26) 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<sup>18</sup> should apply to the processing of personal data by the Foundation.

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<sup>15</sup> OJ L 357, 31.12.2002, p. 72.

<sup>16</sup> OJ L 136, 31.5.1999, p.1

<sup>17</sup> OJ L 145, 31.5.2001, p.43

<sup>18</sup> OJ L 8, 12.1.2001, p.1

(27) Since the objectives of the action to be taken, namely [...] **assistance to third countries in the field of** human [...] **capital** development, [...] cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiary as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(28) [...]

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Ⓔ 1360/90

(29) ~~Whereas the Treaty does not provide, for the action concerned, powers other than those of Article 235,~~

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Ⓔ 1360/90 (adapted)

~~HAS~~ HAVE ADOPTED THIS REGULATION:

*Article 1*

Subject matter and scope **Objectives**

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Ⓔ 2666/2000 Art. 16 (adapted)

new

Council

This Regulation hereby establishes the European Training Foundation (hereinafter referred to as the «Foundation»), whose objective shall be to contribute to the development of the vocational training systems of , in the context of EU external relations policies, to improving human  **capital** development,  in the following countries :

~~the countries of Central and Eastern Europe designated as eligible for economic aid by the Council in Regulation (EEC) No 3906/89 or in any subsequent relevant legal act,~~

~~the new independent States of the former Soviet Union and Mongolia which are the beneficiaries of the programme to assist economic reform and recovery pursuant to Regulation (Euratom, EC) No 1279/96 or any subsequent relevant legal act,~~

~~the Mediterranean non member countries and territories which are the beneficiaries of the financial and technical measures to accompany the reform of their economic and social structures pursuant to Regulation (EC) No 1488/96 or any subsequent relevant legal act,~~  
~~and~~

~~the countries which are beneficiaries under Regulation (EC) No 2666/2000<sup>19</sup> or any subsequent relevant legal act.~~

~~Those countries shall be hereinafter referred to as the «eligible countries».~~

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<sup>19</sup> ~~OJ L 306, 7.12.2000, p. 1.~~

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new

Council

- a) the countries eligible for support under Council Regulation (EC) No 1085/2006 **establishing an instrument for Pre-Accession Assistance** and subsequent related legal acts;
- b) the countries eligible for support under Regulation (EC) No 1638/2006 **laying down general provisions establishing a European Neighbourhood and Partnership Instrument** and subsequent related legal acts;
- c) other countries designated by decision of the Governing Board on a proposal from the Commission [...], **which are covered by a Community instrument or international agreement that includes a component of human capital development,** and as far as available resources allow.

The countries under a), b) and c) are hereinafter designated as the "partner countries".

**For the purpose of this Regulation, human capital development shall be defined as 'work, which contributes to the lifelong development of each individual's skills and competences through the improvement of vocational education and training systems.'**

**In order to achieve its objective, the Foundation may provide assistance to partner countries on:**

- **facilitating adaptation to industrial changes, in particular through vocational training and retraining;**
- **improving initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market;**
- **facilitating access to vocational training and encouraging mobility of instructors and trainees and particularly young people,**
- **stimulating cooperation on training between educational establishments and firms;**
- **developing exchanges of information and experience on issues common to the training systems of the Member States;**
- **increasing the adaptability of workers, particularly through increased participation in education and training in a lifelong learning perspective;**
- **designing, introducing and implementing reforms in education and training systems, in order to develop employability and labour market relevance.**

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Ⓔ 1360/90

~~The Foundation shall in particular:~~

~~— seek to promote effective cooperation between the Community and the eligible countries in the field of vocational training,~~

~~— contribute to the coordination of assistance provided by the Community, its Member States and the third countries referred to in Article 16.~~

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Ⓔ 1572/98 Art. 1.2

~~Article 2~~

~~Scope~~

~~Following the general guidelines established at Community level, the Foundation shall work in the training field, covering initial and continuing vocational training as well as retraining for young people and adults, including in particular management training.~~

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Ⓔ 1360/90 (adapted)

*Article ~~32~~*

**Functions**

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Ⓔ 1572/98 Art. 1.3 (adapted)

For the purpose of achieving the objectives set out in Article 1, the Foundation ~~shall~~, within the limits of the powers conferred on the ~~the~~ GGoverning BBoard and following the general guidelines established at Community level , shall have the following functions :

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Ⓔ 1360/90

- ~~(a) provide assistance in the definition of training needs and priorities through the implementation of measures of technical assistance in the training field, and through cooperation with the appropriate designated bodies in the eligible countries;~~
- ~~(b) act as a clearing house to provide the Community, its Member States and the third countries referred to in Article 16, together with the eligible countries and all other interested parties, with information on current initiatives and future needs in the training field, and provide a framework through which offers of assistance can be channelled;~~

~~(c) on the basis of (a) and (b);~~

- ~~— examine the scope for joint ventures of training assistance including pilot projects, for the setting up of specialized multinational teams for specific projects and for identifying operations which could be cofinanced;~~
- ~~— fund the design and the preparation of such projects, the implementation of which may be financed by contributions from one or several countries, together with the Foundation, or, in exceptional cases, from the Foundation on its own;~~

- ~~— implement, at the request of the Commission or of the eligible countries in cooperation with the governing board, vocational training programmes agreed on by the Commission and one or more of the eligible countries as part of the Community policy of assistance to these countries, using multidisciplinary teams of specialists in close collaboration with the competent authorities in the countries involved and drawing actively on the experience of Community vocational training programmes; in the selection of projects to be managed by the Foundation, priority will be given to projects of an innovative value and - for the candidate countries for accession - to projects which relate directly to the Community's programmes in the field of vocational training;~~

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☒ 1360/90

~~(d) for activities and projects which are funded by the Foundation: arrange for the appropriate public and/or private bodies with a proven training record and the necessary expertise to design, prepare, implement and/or manage projects on a flexible, decentralized basis;~~

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☒ 1572/98 Art. 1.5

~~(e) confer on the governing board the power to lay down tendering procedures for projects funded or co-financed by the Foundation, taking due account of the procedures established pursuant to Regulation (EEC) No 3906/89, in particular Article 7 thereof, pursuant to Regulation (Euratom, EC) No 1279/96, in particular Articles 6 and 7 thereof, Regulation (EC) No 1488/96, in particular Article 8 thereof, or in any subsequent relevant legal act;~~

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☒ 1360/90

~~(f) in collaboration with the Commission, assist in the monitoring and evaluation of the overall effectiveness of training assistance to the eligible countries;~~

~~(g) disseminate information and encourage exchanges of experience, through publications, meetings, and other appropriate means;~~

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new

Council

- a) provide information, policy analysis and advice on human [...] **capital** development issues and their links with sector policy objectives in the partner countries;
- b) support relevant stakeholders in partner countries to build capacity in human [...] **capital** development;
- c) facilitate the exchange of information and experience among donors engaged in human [...] **capital** development reform in partner countries ;
- d) support the delivery of Community assistance to partner countries in the field of human [...] **capital** development;
- e) disseminate information and encourage networking and exchanges of experience and good practice between the European Union and partner countries and amongst partner countries on human [...] **capital** development issues;
- f) at the Commission's request, contribute to the analysis of the overall effectiveness of training assistance to the partner countries;

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☒ 1360/90 (adapted)

- (h) g) ~~within the general framework of this Regulation,~~ undertake such other tasks as may be agreed between the ~~G~~Governing ~~B~~Board and the Commission , within the general framework of this Regulation .

*Article ~~43~~*

**General provisions**

1. The Foundation shall have legal personality. It shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. It shall be non-profit making.

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new

2. The Foundation shall have its seat in Turin, Italy.

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Ⓔ 1572/98 Art. 1.6 (adapted)

new

3. The Foundation shall cooperate with the other relevant Community bodies, ~~in particular Cedefop~~, with the support of the Commission. The Foundation shall cooperate, in particular, with the European Centre for the Development of Vocational Training (Cedefop) in the framework of a joint annual work programme annexed to the annual work programme of each agency with the objective of promoting synergy between the activities of the two agencies.

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Ⓔ 1360/90

Council

~~2. Representatives of the social partners at European level which are already active in the work of the Community institutions, and international organizations active in the training field, may be associated with the work of the Foundation, notably as provided for in Articles 5 (8) and 6 (1) and~~

~~(2).~~ **3a. Representatives of the social partners at European level which are already active in the work of Community institutions, and international organisations active in the training field, may, where appropriate, be invited to participate in [...] the work of the Foundation. [...]**

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new

Council

4. [...] The Foundation shall be subject to the administrative control of the European Ombudsman, pursuant to the conditions set out in Article 195 of the EC Treaty.

5. The Foundation may establish co-operation agreements with other relevant bodies active in the human [...] **capital** development field in the EU and internationally. The Governing Board shall adopt such agreements on the basis of a draft submitted by the Director after the Commission has delivered its opinion. The working arrangements contained therein must comply with Community law.

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Ⓔ 1648/2003 Art. 1.1 (adapted)

*Article 4~~a~~*

~~Access to documents~~

Transparency

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new

Council

1. The Foundation shall act with a high level of transparency and comply with the provisions under paragraphs 2 to 4.

2. The Foundation shall make public [...] **within six months of setting up its Governing Board :**

a) its own Rules of Procedure and those of the Governing Board;

b) its annual activity report.

3. The Governing Board may [...] authorise representatives of interested parties, in appropriate cases, to attend meetings of the Foundation's bodies in the capacity of observers.

4. Regulation (EC) No 1049/2001 shall apply to documents held by the Foundation.

The Governing Board shall adopt the practical arrangements for applying the said Regulation.

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new

*Article 5*

**Confidentiality**

1. Without prejudice to Article 4 (4), the Foundation shall not divulge to third parties confidential information it has received for which confidential treatment has been requested and is justified.
2. The members of the Governing Board and the Director shall be subject to the confidentiality requirement referred to in Article 287 of the EC Treaty.
3. The information gathered by the Foundation in accordance with its basic act shall be subject to Regulation (EC) No 45/2001.

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Ⓔ 1648/2003 Art. 1.1 (adapted)

new

~~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<sup>20</sup> shall apply to documents held by the Foundation.~~

~~2. The 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 1648/2003 amending Regulation (EEC) 1360/90 of 18 June 2003 establishing a European Training Foundation<sup>21</sup>.~~

### Article 6

#### Remedies

~~3.~~ Decisions taken by the Foundation pursuant to 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.

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<sup>20</sup> ~~OJ L 145, 31.5.2001, p. 43.~~

<sup>21</sup> ~~OJ L 245, 29.9.2003, p. 22.~~

*Article ~~5~~7*

**Governing ~~b~~Board**

~~1. The Foundation shall have a governing board consisting of one representative of each Member State and three representatives of the Commission.~~

~~An alternate member may represent or accompany each member of the governing board; when accompanying a member, the alternate member shall attend without having the right to vote.~~

~~2. The representatives of the Member States shall be appointed by the Member States concerned.~~

~~The Commission shall appoint the members who are to represent it.~~

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new

Council

1. The Foundation shall have a Governing Board consisting of [...] **one representative from each Member State** [...] **and three** representatives of the Commission.

**In addition** [...] three representatives of the partner countries **may attend meetings of the Governing Board as observers** .

Representatives may be replaced by alternates appointed at the same time.

2. [...] **The Member States and the Commission shall each appoint their own representatives to the Governing Board.**

[...]

The representatives of the partner countries shall be appointed by the Commission **on the basis of a list of candidates proposed by those countries and of their experience and expertise in the Foundation's areas of work.** .

The [...] **Member States** and the [...] **Commission** shall endeavour to [...] **achieve** a balanced representation of men and women on the Governing Board.

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☒ 1360/90 (adapted)

new

Council

3. The term of office of representatives shall be ~~three~~ five years. It shall be renewable once .

4. The ~~g~~Governing ~~b~~Board shall be chaired by one of the representatives of the Commission. The term of office of the Chairperson shall expire when their respective membership of the Governing Board ceases. ~~The chairman shall not vote.~~

5. The ~~g~~Governing ~~b~~Board shall adopt its ~~r~~Rules of ~~p~~Procedure.

[...]

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☒ 1572/98 Art. 1.8 (adapted)

new

Council

#### Article 8

### Voting rules and tasks of the Chairperson

1. The representatives of the Member States [...] on the ~~g~~Governing ~~b~~Board shall each have one vote. **The representatives of the Commission shall have one vote between them.**

[...]

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© 1360/90 (adapted)

new

Council

Decisions of the ~~g~~Governing ~~b~~Board shall require a two-thirds majority of the members of the board, except in the cases referred to in paragraphs ~~52~~ **and 3** .

~~5.2~~. The ~~g~~Governing ~~b~~Board shall determine, by a unanimous decision of its members, the rules governing the languages of the Foundation, taking into account the need to ensure access to, and participation in, the work of the Foundation by all interested parties.

~~6.3.~~ The ~~chairman~~ Chairperson shall convene the ~~G~~Governing ~~b~~Board at least [...] ~~once~~ a year ~~. Further meetings may be convened~~ [...] at the request of [...] a ~~simple~~ [...] ~~simple~~ majority of the ~~b~~Board.

The ~~Chairman~~ Chairperson shall be responsible for informing the board of other Community activities relevant to their work and ~~of the~~ Commission's expectations ~~from~~ concerning the Foundation's activities in the forthcoming year.

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Ⓔ 1572/98 Art. 1.9

~~7. On the basis of a draft submitted by the director of the Foundation, the governing board, in consultation with the Commission, shall examine the preliminary draft annual work programme for the following year by 30 November at the latest. The final adoption of the work programme shall take place at the beginning of each year, within the framework of a three-year on-going perspective. Where necessary, the programme may be adapted during the year using the same procedure in order to ensure greater effectiveness of Community policies.~~

~~The projects and activities in the annual work programme shall be accompanied by an estimate of the necessary expenditure and by allocations of staff and budgetary resources.~~

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Ⓔ 1360/90

~~8. The governing board shall approve, as necessary and on a case-by-case basis, the setting up of *ad hoc* sectoral working parties involving all the countries or organizations contributing to the finance of the different projects concerned as well as other interested parties, including where appropriate representatives of social partners.~~

~~9. The Governing Board shall adopt the Foundation's annual report 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. The report shall also be forwarded to the Member States and, for information, to the eligible countries.~~

~~10. The Foundation shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures.~~

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new

### *Article 9*

#### **Powers of the Governing Board**

The Governing Board shall have the following functions and powers:

- a) Appoint and, where necessary, dismiss the Director of the Foundation in accordance with the provisions of Article 10.5;
- b) exercise disciplinary authority over the Director;

- c) adopt the Foundation's annual work programme on the basis of a draft submitted by the Director of the Foundation after the Commission has delivered its opinion, in accordance with the provisions of Article 12;
- d) draw up an annual estimate of expenditure and revenue for the Foundation and forward it to the Commission;
- e) adopt the Foundation's definitive budget and establishment plan following completion of the annual budget procedure, in accordance with the provisions of Article 16;
- f) adopt the Foundation's annual activity report, in accordance with the procedure laid down in Article 13 and send to the institutions and the Member States;
- g) adopt the Foundation's Rules of Procedure on the basis of a draft submitted by the Director after the Commission has delivered its opinion;
- h) adopt the financial rules applicable to the Foundation on the basis of a draft submitted by the Director after the Commission has delivered its opinion, in accordance with the provisions of Article 19;
- i) adopt the procedures for applying Regulation (EC) No 1049/2001, in accordance with the provisions of Article 4 of this Regulation.

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☒ 1360/90

~~Article 6~~

**Advisory forum**

~~1. The Foundation shall have an advisory forum appointed by the governing board.~~

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☒ 1572/98 Art. 1.10

~~The members of the forum shall be selected from experts among training and other circles concerned in the work of the Foundation, taking into account the need to ensure the presence of representatives of the social partners, of the Commission, of those international organisations active in the provision of training assistance, and of the eligible countries and territories.~~

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☒ 1360/90

~~There shall be appointed two experts from each of the Member States, from each of the eligible countries and from the social partners at European level.~~

~~2. The governing board shall seek nominations for appointment from:~~

~~— each of the Member States,~~

~~— each of the eligible countries,~~

~~— the Commission,~~

~~— the social partners at European level which are already active in the work of the Community institutions, and~~

~~— relevant international organisations.~~

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~~3. The term of office of the members of the advisory forum shall normally be for three years, subject to regular review by the governing board.~~

~~4. The task of the advisory forum shall be to deliver opinions to the governing board either at the request of the board or on its own initiative concerning the annual work programme of the Foundation referred to in Article 5 (7).~~

~~All opinions shall be communicated to the governing board.~~

~~5. The director of the Foundation shall be the chairman of the advisory forum.~~

~~The advisory forum shall draw up its rules of procedure, subject to the approval of the governing board.~~

~~6. The advisory forum shall be convened by its chairman once a year.~~

*Article ~~7~~10*

~~The dDirector~~

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Ⓔ 1572/98 Art. 1.12

new

1. The ~~d~~dDirector of the Foundation shall be appointed by the ~~g~~GGoverning ~~b~~BBoard on ~~a proposal from the Commission for a period of five years. This term of office may be extended once for a period which may not exceed five years.~~ the basis of a list of candidates proposed by the Commission, for a period of five years. Before being appointed, the candidate selected by the Governing Board may be invited to make a statement before the competent committee(s) of the European Parliament and answer questions put by its/their members.

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new

Council

In the course of the 9 months preceding the end of this period, the Commission shall undertake an evaluation **,on the basis of a prior evaluation by external experts,** [...] **which** shall assess in particular:

- the performance of the Director;

- the Foundation's duties and requirements in the coming years.

The Governing Board, acting on a proposal by the Commission, taking into account the evaluation report and only in those cases where it can be justified by the duties and requirements of the Foundation, may extend the term of office of the Director once for not more than three years.

The Governing Board shall inform the European Parliament about its intention to extend the Director's term of office. Within a month before the extension of his/her term of office, the Director may be invited to make a statement before the competent committee(s) of the European Parliament and answer questions put by its/their members.

If the term of office is not extended, the Director shall remain in office until the appointment of his/her successor.

2. The Director shall be appointed on the basis of merit, administrative and management skills and expertise and experience in the field of work of the Foundation.

3. The Director shall be the legal representative of the Foundation.

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☒ 1572/98 Art. 1.12 (adapted)

4. The ~~Director shall be responsible for~~ shall have the following functions and powers :

~~the preparation and organisation of the work of the governing board, of any *ad hoc* working parties convened by the governing board and, in particular, for the preparation of the draft annual work programme of the Foundation, taking into account the general guidelines established at Community level,~~

~~the day to day administration of the Foundation,~~

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☒ 1648/2003 Art. 1.3

~~the preparation of the draft estimate of the Foundation's revenue and expenditure and the execution of its budget,~~

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☒ 1572/98 Art. 1.12

~~the preparation and publication of reports specified under this Regulation,~~

~~all staff matters,~~

~~undertaking the tasks with which he is charged pursuant to Article 3 and those set out in the annual work programme referred to in Article 5(7),~~

~~implementing the governing board's decisions and the guidelines set down for the Foundation's activities.~~

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new

- a) prepare, on the basis of general guidelines established by the Commission, the annual work programme, the draft estimate of expenditure and revenue of the Foundation, its Rules of Procedure and those of the Governing Board, its financial rules and the work of the Governing Board, and any *ad hoc* working parties convened by the Governing Board;
- b) take part, without the right to vote, in meetings of the Governing Board;
- c) implement the decisions of the Governing Board;
- d) implement the Foundation's annual work programme and respond to requests for assistance from the Commission;
- e) perform the duties of authorising officer, in accordance with Articles 33 to 42 of Commission Regulation (EC, Euratom) No 2343/2002;
- f) implement the Foundation's budget;
- g) put in place an effective monitoring system to allow the regular evaluations referred to in Article 24 to be carried out and, in this basis, prepare a draft annual report on the Foundation's activities;
- h) present the report to the European Parliament;
- i) manage all staff-related matters, and in particular exercise the powers provided for in Article 21;
- j) define the Foundation's organisational structure and submit it to the Governing Board for approval;
- k) represent the Foundation before the European Parliament and the Council in accordance with the provisions of Article 18.

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1360/90

new

~~2.5. The Director shall be accountable for his/her actions to the Governing Board for his activities and shall attend its meetings~~, which may remove the Director from his/her duties before his/her term of office has expired on a proposal of the Commission.

~~3. The director shall be the legal representative of the Foundation.~~

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new

Council

### *Article 11*

#### **Public interest and independence**

The members of the Governing Board and the Director shall act in the public interest and independently of any external influence. To this end they shall make a written declaration of commitment and a written declaration of interests every year.

## Article 12

### **Annual work programme**

1. The annual work programme shall comply with the subject matter, scope and functions of the Foundation as defined in Articles 1 and 2 of this Regulation.
2. It shall be drafted within the framework of a four-year [...] **multiannual work programme** in cooperation with the Commission services and with regard to **both** the external relations priorities for the countries and regions concerned **and the education and training policies of the Community** .
3. The projects and activities in the annual work programme shall be accompanied by an estimate of the necessary expenditure and by allocations of staff and budgetary resources.
4. The Director shall submit the draft work programme to the Governing Board after the Commission has delivered an opinion on it.
5. The Governing Board shall adopt the draft annual work programme for the following year by 30 November at the latest. The final adoption of the work programme shall take place at the beginning of each year.
6. Where necessary, the programme may be adapted during the year using the same procedure in order to ensure greater effectiveness of Community policies.

### *Article 13*

#### **Annual activity report**

1. The Director shall report to the Governing Board on the performance of his/her duties in the form of an annual activity report.
2. The report shall contain financial and management information indicating the results of operations by reference to the **annual work programme and to the** objectives set, the risks associated with [...] **those** operations, the use made of the resources provided and the way the internal control system functioned.
3. The Governing Board shall draft an analysis and an assessment of the annual activity report on the previous financial year.
4. The Governing Board shall adopt the Director's annual activity report and forward it together with its analysis and an assessment to the **competent bodies in the** European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors by 15 June at the latest. The report shall also be forwarded to the Member States and, for information, to the partner countries.

*Article ~~8~~14***Links with other Community actions**

The Commission, in cooperation with the ~~g~~Governing ~~b~~Board and, where appropriate, in accordance with the procedures set out in Article 9 of Regulation (EEC) No 3906/89, Article 8 of Regulation (Euratom, EC) No 1279/96 and Article 11 of Regulation (EC) No 1488/96 or in any subsequent relevant legal act, shall ensure consistency and, where necessary, complementarity between the work of the Foundation and other actions at Community level, both within the Community and in assistance to the eligible partner countries, with particular reference to actions under the Tempus programme and to the other programmes and actions for training that are implemented at Community level, including Med-Campus.

*Article ~~9~~15*

**Budget content**

1. Estimates of all the revenue and expenditure of the Foundation shall be prepared for each financial year and shall be shown in the budget of the Foundation, which shall include an establishment plan, and each financial year shall correspond to the calendar year.
2. The revenue and expenditure shown in the budget of the Foundation shall be in balance.
3. The revenue of the Foundation shall comprise, without prejudice to other types of income, a subsidy from the general budget of the European Communities, payments made as remuneration for services performed as well as finance from other sources.
4. The budget shall also include details of any funds made available by the ~~eligible~~ partner countries themselves for projects benefiting from financial assistance from the Foundation.

*Article ~~1016~~*

**Budgetary procedure**

1. Each year the 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 Governing Board to the Commission by 31 March at the latest.

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new

2. The Commission shall examine the estimate, having regard to the proposed limits of the overall amount available for external actions, and enter in the preliminary draft general budget of the European Union the resources it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget of the European Union (hereinafter referred to as "the general budget").

~~2.3.~~ 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. The Commission shall examine the estimate, having regard to the vocational training priorities in the eligible countries and to the overall financial orientations on economic aid to these countries. 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.~~

~~It shall establish on this basis, and within the proposed limits of the overall amount to be made available for economic aid to the eligible countries, the annual contribution for the budget of the Foundation to be included in the preliminary draft general budget of the European Union.~~

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 and the establishment plan shall be adopted by the Governing Board. ~~It~~ They shall become ~~final following~~ definitive after final adoption of the general budget of the European Union. ~~Where appropriate, it~~ If necessary the budget and the establishment plan shall be adjusted accordingly.

6. The 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 Governing Board within a period of six weeks from the date of notification of the project.

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☒ 1360/90

*Article ~~11~~17*

### **Budget implementation and control**

~~1. The director shall implement the budget of the Foundation.~~

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☒ 1648/2003 Art. 1.5

~~1.~~ 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.

~~3.2.~~ 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 that financial year shall also be forwarded to the European Parliament and the Council.

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new

3. The Director shall implement the budget of the Foundation.

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Ⓔ 1648/2003 Art. 1.5 (adapted)

4. 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 /her own responsibility and forward them to the Governing Board for an opinion.

5. The Governing Board shall deliver an opinion on the Foundation's final accounts.

6. 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 Governing Board's opinion.

7. The final accounts shall be published.

8. The Foundation's Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He /she shall also send ~~this~~ that reply to the Governing Board.

9. 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.

10. 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 in respect of the implementation of the budget for year N.

new

Council

11. The Director shall take all appropriate steps required, if necessary, by the observations accompanying the decision giving discharge.

#### *Article 18*

#### **European Parliament and Council**

Without prejudice to the controls referred to above and, in particular the budgetary and discharge procedures, the European Parliament or the Council may ask at any time, and [...] **at least once a year - notably on** publication of the Foundation's annual activity report [...] for a hearing with the Director on any subject relating to the Foundation's activities.

*Article ~~12~~19*

**Financial Rules**

1. The financial rules applicable to the Foundation shall be adopted by the Governing Board after the Commission has been consulted. They may not depart from Commission 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<sup>22</sup>~~ unless specifically required for the Foundation's operation and with the Commission's prior consent.

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new

Council

2. In accordance with Article 133(1) of the Financial Regulation, the Foundation shall apply the accounting rules adopted by the Commission's accounting officer so that its accounts can be consolidated with those of the Commission.

3. Regulation (EC) No 1073/1999 shall apply to the Foundation in its entirety.

4. The Foundation shall [...] **respect** the Interinstitutional Agreement of 25 May 1999<sup>23</sup> **concerning internal investigations by the European Anti-Fraud Office (OLAF)**.

The Governing Board shall [...] adopt the necessary measures to help OLAF carry out **such** internal investigations.

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<sup>22</sup> ~~OJ L 357, 31.12.2002, p. 72, with Corrigendum in OJ L 2, 7.1.2003, p. 39~~

<sup>23</sup> OJ L 136, 31.5.1999, p. 15

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CE 1360/90

*Article ~~13~~20*

### **Privileges and immunities**

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

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CE 2063/94 Art. 1.8 (adapted)

new

*Article ~~14~~21*

### **Staff rules**

The staff of the Foundation shall be governed by the rules and regulations applicable to the officials and other servants of the European Communities.

The Foundation shall exercise over its staff the powers devolved to the appointing authority.

The ~~g~~Governing ~~b~~Board shall, in agreement with the Commission, adopt the appropriate implementing rules in accordance with the arrangements provided for in Article 110 of the Staff Regulations of Officials of the European Communities and Article 127 of the Conditions of Employment of Other Servants of the European Communities.

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new

The Governing Board may adopt provisions to allow national experts from Member States or partner countries to be employed on secondment to the Foundation.

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Ⓔ 1360/90 (adapted)

*Article ~~1522~~*

### **~~Legal~~ Liability**

1. The contractual liability of the Foundation shall be governed by the law applicable to the contract in question.
2. In the case of non-contractual liability, the Foundation shall, in accordance with the general principles common to 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 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.

### Participation of third countries

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Ⓔ 1572/98 Art. 1.15 (adapted)

new

Council

1. The Foundation shall be open to the participation of countries which are not members of the European Community and which share the commitment of the Community and the Member States to the provision of aid in the ~~training field to the eligible~~ human [...] **capital development** field to the partner countries defined in Article 1, under arrangements to be laid down in agreements between the Community and themselves, following the procedure laid down in Article ~~228~~ 300 of the Treaty.

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Ⓔ 1360/90

new

The agreements shall, *inter alia*, specify the nature and extent of and the detailed rules for the participation by these countries in the work of the Foundation including provisions on financial contributions and staff. Such agreements may not provide for third countries to be represented on the Governing Board with voting rights or contain provisions not in accordance with the Staff rules set out in Article 21 above.

2. Participation of such countries in ~~the~~ *ad hoc* working parties ~~provided for in Article 5 (8)~~ may be decided as necessary by the ~~G~~Governing ~~B~~Board without the need for an agreement.

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Ⓔ 1572/98 Art. 1.16 (adapted)

new

*Article ~~17~~24*

~~Monitoring and e~~**valuation procedure**

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new

1. In accordance with Article 25(4) of the framework Financial Regulation, the Foundation shall regularly carry out *ex ante* and *ex post* evaluations of its activities where these necessitate significant expenditure. The Governing Board shall be notified of the results of these evaluations.

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Ⓔ 1572/98 Art. 1.16 (adapted)

new

Council

2. The Commission shall, in consultation with the ~~a~~Governing ~~b~~Board, ~~establish a monitoring and evaluation procedure of the experience acquired in the work of the Foundation~~ conduct an evaluation of the implementation of this Regulation, the results obtained by the Foundation and its working methods in line with the objectives, mandate and functions defined herein every four years. ~~This procedure should~~ The evaluation shall be carried out [...] **by** external experts. The Commission shall present the ~~first~~ results of this procedure in a report to be ~~submitted~~ of the evaluation to the European Parliament, the Council and the European Economic and Social Committee ~~before 31 December 2000 and thereafter every three years.~~

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new

3. The Foundation shall take all appropriate steps to remedy any problems which may come to light in the process of evaluation.

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CE 1360/90

*Article ~~18~~25*

**Review**

~~This Regulation shall be reviewed by the Council on a proposal from the Commission within five years of its entry into force.~~

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new

Following evaluation, the Commission shall present, where necessary, a proposal for the revision of the provisions of this Regulation. If the Commission feels that the existence of the Foundation is no longer justified with regard to the objectives assigned to it, it may propose that this Regulation be repealed.

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new

*Article 26*

**Repeal**

Council Regulations (EEC) No 1360/90, (EC) No 2063/94, (EC) No 1572/98, (EC) No 1648/2003 and Article 16 of Council Regulation (EC) No 2666/2000, as listed in Annex I, are repealed.

References to the repealed Regulations shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

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Ⓔ 1360/90 (adapted)

new

*Article ~~19~~27*

**Entry into force**

This Regulation shall enter into force on the 20th day following that ~~on which the competent authorities have decided on the seat of the Foundation~~<sup>24</sup> of its publication in the Official Journal of the European Union .

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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<sup>24</sup> ~~The date of entry into force of the Regulation shall be published in the Official Journal.~~

## ANNEX I

### **Repealed Regulation and successive amendments**

#### **Council Regulation (EEC) No 1360/90 of 7 May 1990**

(OJ L 131, 23.5.1990, p. 1)

#### **Council Regulation (EC) No 2063/94 of 27 July 1994**

(OJ L 216, 20.8.1994, p. 9)

#### **Council Regulation (EC) No 1572/98 of 17 July 1998**

(OJ L 206, 23.7.1998, p. 1)

#### **Article 16 of the Council Regulation (EC) No 2666/2000 of 5 December 2000**

(OJ L 306, 7.12.2000, p. 1)

#### **Council Regulation (EC) No 1648/2003 of 18 June 2003**

(OJ L 245, 29.9.2003, p. 22)

**ANNEX II****Correlation table**

<b>Regulation (EEC) No 1360/90</b>	<b>This Regulation</b>
Article 1 introductory words	Article 1 introductory words
Article 1 end of introductory words	–
Article 1 first to fourth intent	–
Article 1 second sentence	–
–	Article 1 end of introductory words
–	Article 1 a) to c)
–	Article 1 second sentence
Article 2	–
Article 3 introductory words	Article 2 introductory words
Article 3 a) to g)	–
–	Article 2 a) to f)
Article 3 h)	Article 2 g)
Article 4(1)	Article 3(1)
–	Article 3(2)
Article 4(3) first sentence	Article 3(3) first sentence
–	Article 3(3) second sentence
Article 4(2)	–
–	Article 3(4) and (5)
–	Article 4(1) to (3)
Article 4a(1)	Article 4(4) first sub-paragraph
Article 4a(2)	Article 4(4) second sub-paragraph
–	Article 5
Article 4a(3)	Article 6
Article 5(1)	Article 7(1)
Article 5(2)	Article 7(2) first and second sub-paragraphs
–	Article 7(2) third and fourth sub-paragraphs
Article 5(3)	Article 7(3)
Article 5(4) first sub-paragraph	Article 7(4) first sentence
–	Article 7(4) second sentence
Article 5(4) second sub-paragraph	Article 7(5)
Article 5(4) third and fourth sub-paragraphs	Article 8(1) first sub-paragraph
–	Article 8(1) second sub-paragraph
Article 5(4) last sub-paragraph	Article 8(1) last sub-paragraph
Article 5(5) and (6)	Article 8(2) and (3)
Article 5(7) to (10)	–
–	Article 9
Article 6	–
Article 7(1) first words	Article 10(1) first words
Article 7(1) end of first sentence and second sentence	–

–	Article 10(1) end of first sentence, second sentence and second to fourth sub-paragraphs
–	Article 10(2)
Article 7(2)	Article 10(5) first sentence
Article 7(3)	Article 10(3)
–	Article 10(4) points a) to k)
–	Article 11
–	Article 12
–	Article 13
Article 8 (partly)	Article 14
Article 9	Article 15
Article 10(1)	Article 16(1)
–	Article 16(2)
Article 10(2)	Article 16(3)
Article 10(3)	–
Article 10(4) to (6)	Article 16(4) to (6)
Article 11(1)	Article 17(3)
Article 11(2) and (3)	Article 17(1) and (2)
Article 11(4) to (10)	Article 17(4) to (10)
–	Article 17(11)
–	Article 18
Article 12	Article 19(1)
–	Article 19(2) to (4)
Article 13	Article 20
Article 14	Article 21 first and second sentences and first words of third sentence
–	Article 21 last words of third sentence and last sentence
Article 15	Article 22
Article 16(1)	Article 23(1) first subparagraph and first sentence of second subparagraph
–	Article 23(1) last sentence of second subparagraph
Article 16(2)	Article 23(2)
–	Article 24(1)
Article 17 (partly)	Article 24(2)
–	Article 24(3)
Article 18	–
–	Article 25
–	Article 26
Article 19	Article 27
-	Annex