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INFORMATION NOTE

Subject : Proposal for a Regulation of the European Parliament and of the Council
 establishing a European Training Foundation (recast)
 - Outcome of the European Parliament's first reading
 (Strasbourg, 19 to 22 May 2008)

I. INTRODUCTION

The Rapporteur, Mr Bernard LEHIDEUX (ALDE - FR), presented a report consisting of nine amendments (amendments 1-9) to the proposal for a Regulation on behalf of the Committee on Employment and Social Affairs.

In accordance with the provisions of Article 251(2) of the EC Treaty and the joint declaration on practical arrangements for the co-decision procedure¹, a number of informal contacts took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for a second reading and conciliation.

¹ OJ C 145, 30.6.2007, p. 5.

In this context, the Rapporteur and the Chair of Committee, Jan ANDERSSON (PES-SE) tabled one compromise amendment on behalf of the Committee on Employment and Social Affairs (amendment 11/rev). This compromise amendment 11/rev had been agreed during the informal contacts referred to above.

In addition, Mr Philip BUSHILL-MATTHEWS (EPP/ED-UK) and Ms Gabriele STAUNER (EPP/ED-DE) tabled one amendment (amendment 10) on behalf of the EPP/ED political group. This amendment introduces a new wording of Article 7 on the composition of the Governing Board of the European Training Foundation. This amendment was not in line with the agreement reached during the informal contacts referred to above and contradicts the compromise amendment 11/rev.

II. DEBATE

During the debate, which took place in the morning of 22 May 2008, the Rapporteur:

- underlined the positive effects and the importance of the European Training Foundation in Turin for the strengthening of vocational training, especially in EU partner countries;
- spoke in favour of the extended geographical mandate of the Foundation;
- supported the compromise reached with the Council and the Commission on the selection of the Director and the composition of the Governing Board. The EP had wanted more, namely a full voting membership in the Governing Board. However, at the present time, that wish could not be realised. He nevertheless supported the compromise reached and asked his colleagues in the plenary to vote in favour of the complete amendment 11 and not to endanger the agreement with the Council and the Commission.

Speaking on behalf of the EPP/ED political group, Ms Gabriele STAUNER (EPP/ED – DE):

- explained that her group tabled amendment 10 in order to make the work in the Governing Board more efficient;

- stressed that the new wording of Article 10 aims at reducing the number of members in the Governing Board and to give full voting rights to the experts appointed by the EP. That implies that not every Member State would be represented in the Governing Board. The Member States' representation should be organised by rotation, following the rules in the Lisbon Treaty on the appointment of Commissioners;
- asked for support for amendment 10 in the plenary vote.

Speaking on behalf of the PES political group, Mr Ole CHRISTENSEN (PES – DK):

- supported the Rapporteur and the compromise reached with the Council and Commission;
- stressed the importance of vocational training for the goals of the Lisbon Strategy;
- made a link to the discussion on "flexicurity".

Speaking on behalf of the ALDE political group, Ms Renate WEBER (ALDE - RO):

- supported the extended geographical mandate of the European Training Foundation;
- stressed the importance of the Foundation as an instrument of EU external policy and the need for vocational training in order to improve access to learning and social inclusion in EU partner countries.

Speaking on behalf of the Greens/EFA political group, Mr Sepp KUSSTATSCHER (Greens/EFA - IT):

- stressed the importance of the practical support by the ETF for the partner countries of the European Union;
- argued in favour of sending three experts appointed by the EP to the Governing Board but with full voting rights.

Commissioner Louis MICHEL:

- supported the extended geographical mandate of the European Training Foundation and the impact on the vocational training in the partner countries of the European Union;

- rejected the demand of some political groups to have full members of the Governing Board with full voting rights appointed by the EP. He stressed that the role of the European Parliament is not to take part in administrative decisions of the Agencies but to control them and to create law. He insisted that the separation of powers be respected.

III. VOTE

At the vote, which took place on 22 May 2008, the plenary adopted amendment 10 and the relevant part of amendment 11/rev (i.e. with the exception of the wording on Article 7). The amendments adopted do not correspond to what was agreed between the three institutions and are therefore not acceptable to the Council.

The text of the amendments adopted and the European Parliament's legislative resolution are annexed to this note.

European Training Foundation (recast) *I**

European Parliament legislative resolution of 22 May 2008 on the proposal for a regulation of the European Parliament and of the Council establishing a European Training Foundation (recast) (COM(2007)0443 – C6-0243/2007 – 2007/0163(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0443),
 - having regard to Article 251(2) and Article 150 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0243/2007),
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹,
 - having regard to the letter of 24 January 2008 from the Committee on Legal Affairs to the Committee on Employment and Social Affairs pursuant to Rule 80a(3) of its Rules of Procedure,
 - having regard to Rules 80a and 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A6-0131/2008),
- A. whereas, according to the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission, the proposal in question includes no substantive amendment other than those identified as such in the proposal and whereas, as regards the unchanged provisions of existing texts, the proposal contains a straightforward codification of those texts without a change in substance,
1. Approves the Commission proposal as amended below and as adapted to the recommendations of the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

¹ OJ C 77, 28.3.2002, p. 1.

Position of the European Parliament adopted at first reading on 22 May 2008 with a view to the adoption of Regulation (EC) No .../2008 of the European Parliament and of the Council establishing a European Training Foundation (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

- (1) Council Regulation (EEC) No 1360/90 of 7 May 1990 establishing a European Training Foundation has been substantially amended several times⁴. Since further amendments are to be made, it should be recast in the interests of clarity.
- (2) 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. To this end on 7 May 1990 the Council adopted Regulation (EEC) No 1360/90 which established the said Foundation.
- (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 1993⁵, the Foundation has its seat in Turin, Italy.
- (4) On 18 December 1989 the Council adopted Regulation (EEC) No 3906/89⁶ on economic aid to the Republic of Hungary and the Polish People's Republic which *provided* for aid in areas including training to support the process of economic and social reform in Hungary and Poland.

¹ OJ C ...

² OJ C ...

³ *Position of the European Parliament of 22 May 2008.*

⁴ OJ L 131, 23.5.1990, p. 1. Regulation as last amended by || Regulation (EC) No 1648/2003 || (OJ L 245, 29.9.2003, p. 22).

⁵ OJ C 323, 30.11.1993, p. 1.

⁶ OJ L 375, 23. 12. 1989, p. 11.

- (5) The Council has subsequently extended such aid to other countries of Central and Eastern Europe under relevant legal acts.
- (6) On 27 July 1994 the Council adopted Regulation (EC) No 2063/94¹ 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).
- (7) On 17 July 1998 the Council adopted Regulation (EC) No 1572/98² 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.
- (8) On 5 December 2000 the Council adopted Regulation (EC) No 2666/2000³ 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.
- (9) 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 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance⁴ and the instrument established by Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument (ENPI)⁵.
- (10) 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.
- (11) 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.

¹ OJ L 216, 20.08.1994, p. 9.

² OJ L 206, 23.07.1998, p. 1.

³ OJ L 306, 7.12.2000, p. 1. *Regulation as last amended by Regulation (EC) No 2112/2005 (OJ L 344, 27.12.2005, p. 23).*

⁴ OJ L 210, 31.7.2006, p. 82.

⁵ OJ L 310, 9.11.2006, p. 1.

- (12) The European Training Foundation could make an important contribution, in the context of EU external relations policies, to improving human *capital* development, in particular education and training in a lifelong learning perspective.
- (13) For its contribution, the European Training Foundation will need to call upon the experience gained within the European Union in relation to education and training in a lifelong learning perspective and upon its institutions involved in this activity.
- (14) There exist in the Community and in third countries, including the countries 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 human *capital* development, in particular education and training in a lifelong perspective .
- (15) 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 bodies.
- (16) 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.
- (17) 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 covered by its activities.
- (18) 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 the countries covered by the activities of the European Training Foundation in the 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.
- (19) ***The European Parliament***, the Commission, and ***all*** the *Member States* should be represented within a Governing Board in order to ***oversee*** effectively the functions of the Foundation.■
- (20) 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.

- (21) 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 Communities¹ (hereinafter "the Financial Regulation") and should adopt its financial rules accordingly.
- (22) 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 Communities² should apply to the Foundation.
- (23) 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)³ should apply without restriction to the Foundation.
- (24) 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 Commission⁴ documents should apply to the Foundation.
- (25) 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 data⁵ should apply to the processing of personal data by the Foundation.
- (26) 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 subsidiarity 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.

¹ OJ L 248, 16.9.2002, p. 1. *Regulation as last amended by Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).*

² OJ L 357, 31.12.2002, p. 72.

³ OJ L 136, 31.5.1999, p. 1.

⁴ OJ L 145, 31.5.2001, p. 43

⁵ OJ L 8, 12.1.2001, p. 1

(27) This Regulation **observes** the fundamental rights ■ recognised ■ by the Charter of Fundamental Rights of the European Union¹, in particular ■ Article 43 **thereof**,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

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

- (a) the countries eligible for support under || 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 **the basis of a proposal supported by two-thirds of its members and a Commission opinion, and 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" that 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;**

¹ OJ L 303, 14.12.2007, p. 1.

- *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.*

Article 2

Functions

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

- (a) provide information, policy analysis and advice on human **capital** development issues ■ in the partner countries;
- (b) *promote knowledge and analysis of skills needs in national and local labour markets;*
- (c) support relevant stakeholders in partner countries to build capacity in human **capital** development;
- (d) facilitate the exchange of information and experience among donors engaged in human **capital** development reform in partner countries ;
- (e) support the delivery of Community assistance to partner countries in the field of human **capital** development;
- (f) 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;
- (g) at the Commission's request, contribute to the analysis of the overall effectiveness of training assistance to the partner countries;
- (h) undertake such other tasks as may be agreed between the Governing Board and the Commission, within the general framework of this Regulation.

Article 3

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.
2. The Foundation shall have its seat in Turin, Italy.
3. The Foundation shall cooperate with the other relevant Community bodies, 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 *and complementarity* between the activities of the two agencies.
4. ***Representatives of the social partners at European level 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.***
5. ■ 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.
6. 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.

Article 4

Transparency

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.

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.

Article 6

Remedies

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.

Article 7

Governing Board

1. The Foundation shall have a Governing Board consisting of **■** representatives of the Member States *following the rotation stipulations of the Treaty of Lisbon regarding the appointment of Commissioners, three* representatives of the Commission, as well as *three experts appointed by the European Parliament. 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 *and alternates 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, the European Parliament and the Commission █ shall endeavour to ***achieve*** a balanced representation of men and women on the Governing Board.

3. The term of office of representatives shall be five years. It shall be renewable once.
4. The Governing 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.
5. The Governing Board shall adopt its Rules of Procedure.

Article 8

Voting rules and tasks of the Chairperson

1. The representatives of the Member States █ on the Governing Board shall each have one vote. ***The representatives of the Commission shall have one vote between them.***

█

Decisions of the Governing Board shall require a two-thirds majority of the members of the board ***entitled to vote***, except in the ***cases*** referred to in ***paragraphs 2 and 3.***

2. The Governing Board shall determine, by a unanimous decision of its members ***entitled to vote***, 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.
3. The Chairperson shall convene the Governing Board at least ***once*** a year. ***Further meetings may be convened*** at the request of █ a ***simple*** majority of the members of the Board ***entitled to vote.***

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

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.

Article 10

Director

1. The Director of the Foundation shall be appointed by the Governing Board ***for a period of five years*** on ■ the basis of a list of ***at least three*** candidates ***submitted*** by the Commission ■ . Before being appointed, the candidate selected by the Governing Board ***shall*** be invited to make a statement before the competent committee(s) of the European Parliament and answer questions put by its/their members.

In the course of the *nine* 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.
4. The Director shall have the following functions and powers:
 - (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 || 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.
5. The Director shall be accountable for his/her actions to the Governing Board, which may remove the Director from his/her duties before his/her term of office has expired on a proposal of the Commission.

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 the external relations priorities for the countries and regions concerned ***and on the basis of experience acquired in education and training within 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*** 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 of 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.
5. ***The Director of the Foundation shall present the Foundation's annual report before the relevant committees of the European Parliament and preparatory bodies of the Council.***

Article 14

Links with other Community actions

The Commission, in cooperation with the Governing Board, shall ensure consistency and complementarity between the work of the Foundation and other actions at Community level, both within the Community and in assistance to the partner countries.

Article 15

Budget

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 partner countries themselves for projects benefiting from financial assistance from the Foundation.

Article 16

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.
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").
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.
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 and the establishment plan shall be adopted by the Governing Board. They shall become definitive after final adoption of the general budget. 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.

Article 17

Budget implementation and control

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 Financial Regulation.
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.
3. The Director shall implement the budget of the Foundation.
4. On receipt of the Court of Auditors' observations on the Foundation's provisional accounts, pursuant to Article 129 of the 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 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 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.
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 ■ for a hearing with the Director on any subject relating to the Foundation's activities.

Article 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 ■ Regulation (EC, Euratom) No 2343/2002 unless specifically required for the Foundation's operation and with the Commission's prior consent.
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 *between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF)*¹. The Governing Board shall ■ adopt the necessary measures to help OLAF carry out *such* internal investigations.

Article 20

Privileges and immunities

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

Article 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 Governing 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.

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

Article 22

Liability

1. The contractual liability of the Foundation shall be governed by the law applicable to the contract in question.

¹ *OJ L 136, 31.5.1999, p. 15.*

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.

Article 23

Participation of third countries

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 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 300 of the Treaty.

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 ad hoc working parties may be decided as necessary by the Governing Board without the need for an agreement.

Article 24

Evaluation

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.
2. The Commission shall, in consultation with the Governing Board, 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. The evaluation shall be carried out *by* external experts. The Commission shall present the results of the evaluation to the European Parliament, the Council and the European Economic and Social Committee.

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

Article 25

Review

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.

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.

Article 27

Entry into force

This Regulation shall enter into force on the 20th day following that 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.

Done at

For the European Parliament

For the Council

The President

The President

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

Regulation (EEC) No 1360/90	This Regulation
Article 1 introductory words	Article 1 introductory words
Article 1 end of introductory words	—
Article 1 first to fourth indent	—
Article 1 second sentence	—
—	Article 1 end of introductory words
—	Article 1 <i>(a)</i> to <i>(c)</i>
—	Article 1 second sentence
Article 2	—
Article 3 introductory words	Article 2 introductory words
Article 3 a) to g)	—
—	Article 2 <i>(a)</i> to <i>(f)</i>
Article 3 h)	Article 2 <i>(g)</i>
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 <i>subparagraph</i>
Article 4a(2)	Article 4(4) second <i>subparagraph</i>
–	Article 5
Article 4a(3)	Article 6
Article 5(1)	Article 7(1)
Article 5(2)	Article 7(2) first and second <i>subparagraphs</i>
–	Article 7(2) third and fourth <i>subparagraphs</i>
Article 5(3)	Article 7(3)
Article 5(4) first <i>subparagraph</i>	Article 7(4) first sentence
–	Article 7(4) second sentence
Article 5(4) second <i>subparagraph</i>	Article 7(5)
Article 5(4) third and fourth <i>subparagraphs</i>	Article 8(1) first <i>subparagraph</i>
–	Article 8(1) second <i>subparagraph</i>
Article 5(4) last <i>subparagraph</i>	Article 8(1) last <i>subparagraph</i>
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 <i>subparagraphs</i>
–	Article 10(2)
Article 7(2)	Article 10(5) first sentence
Article 7(3)	Article 10(3)
–	Article 10(4) points <i>(a)</i> to <i>(k)</i>
–	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