

Proposal for a Council Regulation amending Regulation (EEC) No 1365/75 as regards the budgetary and financial rules applicable to the European Foundation for the Improvement of Living and Working Conditions and access to the Foundation's documents and repealing Regulation (EEC) No 1417/76

(2002/C 331 E/11)

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(Submitted by the Commission on 17 July 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 279 and 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The provisions of Council Regulation (EEC) No 1365/75 of 7 May 1990 on the creation of a European Foundation for the Improvement of Living and Working Conditions should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof. Pursuant to that Article, the European Foundation for the Improvement of Living and Working Conditions must adopt a Financial Regulation in conformity with the framework Financial Regulation adopted by the Commission. Consequently, Council Regulation (EEC) No 1416/76 must be repealed with effect from the entry into force of the Financial Regulation adopted by the Administrative Board of the Foundation.

(2) The general principles and limits governing right of access to documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾.

(3) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(4) Appropriate provisions should therefore be included in Regulation (EEC) No 1365/75 to make Regulation (EC) No 1049/2001 applicable to the European Foundation for the Improvement of Living and Working Conditions, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(5) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the Director and to harmonise the rules for all the Community bodies for which re-appointment is possible,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1365/75 is amended as follows:

1. Article 8(3) is replaced by the following:

‘3. The director and deputy director shall be appointed for a maximum period of five years. The term of office of the director may be extended for one further period not exceeding five years. The term of office of the deputy director may be extended for further periods not exceeding five years each.’

2. Articles 13, 14, 15 and 16 are replaced by the following:

‘Article 13

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

Article 14

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

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

Article 15

1. Each year the Administrative Board, on the basis of a draft drawn up by the Director, shall produce a statement of estimates of revenue and expenditure for the Foundation for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be transmitted by the Administrative Board to the Commission by 31 March at the latest.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

The statement of estimates shall be transmitted by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the Communities.

2. The budgetary authority shall determine the appropriations available for the subsidy to the Foundation.

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

3. The Administrative Board shall adopt the Foundation's budget before the beginning of the budget year, adjusting it to the subsidy granted by the budgetary authority. The budget as thus adopted shall be transmitted by the Commission to the budgetary authority.

Article 16

1. The financial rules applicable to the Foundation shall be adopted by the Administrative Board after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of the Financial Regulation applicable to the general budget of the European Communities unless specifically required for the Foundation's operation and with the Commission's prior consent.

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

3. The Commission's internal auditor shall exercise the same powers over the Foundation as over Commission departments.

4. 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 within the meaning of Article 128 of the general Financial Regulation.

5. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Foundation's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be transmitted to the European Parliament and the Council.

6. 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 Agency's final accounts under his own respon-

sibility and transmit them to the Administrative Board for an opinion.

7. The Administrative Board of the Foundation shall deliver an opinion on the Foundation's final accounts.

8. The Director of the Foundation shall, by 1 July at the latest following each financial year, transmit these final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Administrative Board's opinion.

9. The final accounts shall be published.

10. The Foundation's Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Administrative Board.

11. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N+2, give a discharge to the Director of the Foundation in respect of the implementation of the budget for year N.'

3. The following Article 18a is inserted:

'Article 18a

Regulation (EC) No 1049/2001 of the European Parliament and of the Council (*) shall apply to documents held by the Foundation.

The Administrative Board shall adopt practical arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Foundation under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.

(*) OJ L 145, 31.5.2001, p. 43.'

Article 2

Regulation (EEC) No 1417/76 is repealed with effect from entry into force of the financial regulation adopted by the Administrative Board pursuant to Article 16(1) of Regulation (EEC) No 1365/75, as amended by this Regulation.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

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