



**Council of the European Union**  
**General Secretariat**

Brussels, 9 November 2018

**Mr Thomas HÄNDEL**

Chair, Employment and Social Affairs Committee

**Subject:** Proposal for a Regulation of the European Parliament and of the Council establishing the European Foundation for the improvement of living and working conditions (Eurofound), and repealing Council Regulation (EEC) No 1365/75

Dear Mr Händel,

Following the informal meeting between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty on the Functioning of the European Union (TFEU), in the same form set out in the compromise package contained in the Annex to this letter, subject to revision by the legal linguists of both institutions, the Council would, in accordance with Article 294, paragraph 4 TFEU, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this dossier at first reading.

Yours sincerely,

**Mr Thomas OBERREITER**  
Chairman of the Permanent Representatives  
Committee (Part 1)

copy to: **Ms Marianne THYSSEN**, Commissioner  
**Mr Enrique CALVET CHAMBON**, EP Rapporteur



Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
establishing the European Foundation for the improvement of living and working conditions  
(Eurofound), and repealing Council Regulation (EEC) No 1365/75**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

Whereas:

- (1) The European Foundation for the improvement of living and working conditions ("Eurofound") was established by Regulation (EEC) No 1365/75<sup>4</sup> to contribute to the planning and establishment of better living and working conditions through action designed to increase and disseminate knowledge likely to assist this development. *In doing so, the Agency should also take account of the medium- and long-term perspectives of these policies. Eurofound provides Union institutions and bodies, Member States and social partners with specialised and added value information in its area of expertise.*

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> **Position of the European Parliament of ... [(OJ ...)/(not yet published in the Official Journal)] and decision of the Council of ....**

<sup>4</sup> **Council Regulation (EEC) No 1365/75 of the Council of 26 May 1975 on the creation of a European Foundation for the improvement of living and working conditions (OJ L 139, 30.5.1975, p. 1).**

- (2) Since *it was established* in 1975, Eurofound has played an important role in supporting the improvement of living and working conditions throughout the [...] Union. At the same time the concepts and significance of living and working conditions have evolved under the influence of societal developments and fundamental changes in the labour markets. ***Consequently, the terminology used to describe the objectives and tasks of Eurofound in Regulation (EEC) No 1365/75 should be adapted.***
- (3) Regulation (EEC) No 1365/75 has been amended several times. Since further amendments are to be made, it should [...] be replaced and repealed in the interest of clarity.
- (4) ***The rules governing the Agency should, to the extent possible and taking into account its tripartite nature, be established in accordance with the principles of the Joint statement of the European Parliament, the Council of the European Union and the European Commission on decentralised agencies of 19 July 2012 [...].***
- (5) As the three [...] tripartite agencies, ***namely*** Eurofound, the European Agency for Safety and Health at Work (EU-OSHA) and the European Centre for the Development of Vocational Training (CEDEFOP), address issues related to the labour market, working environment, [...] vocational education and training, and skills, close coordination among ***them*** is required. ***The agencies should therefore complement one another in their work where they have similar fields of interest, while boosting tools that function well, such as Memoranda of Understanding. They should exploit ways to enhance efficiency and synergies and avoid any duplication in their activities between each other and between them and the Commission.*** In addition, where relevant, the Agency should seek to ***cooperate efficiently*** with the [...] in-house research capacities ***of Union institutions and external specialised bodies.***
- (5x) ***The European Commission should consult the main stakeholders including members of the Management Board and members of the European Parliament during the evaluation.***
- (5y) ***The Agency should continue its production of surveys in order to secure the continuity of comparative analyses and trends in living and working conditions and labour market developments in the Union.***

- (5a) *It is also important that Eurofound works closely with related bodies at international, Union and national level.***
- (5a) *The tripartite nature of Eurofound, EU-OSHA and Cedefop is a highly valuable expression of a comprehensive approach based on the social dialogue between the social partners and Union and national authorities, which is extremely important for the purpose of finding joint and sustainable social and economic solutions.***
- (5b) *In order to streamline the decision-making process in the Agency and to contribute to enhancing efficiency and effectiveness, a two-level governance structure should be introduced. To that end, the Member States, the national employers and employees organisations and the Commission should be represented in a Management Board vested with the necessary powers, including the power to adopt the budget and approve the programming document. In the programming document, containing the Agency's multi-annual programming and its annual work program, the Management Board should lay down the strategic priorities of the Agency's activities. Moreover, the rules adopted by the Management Board for the prevention and management of conflicts of interests should include measures for detecting potential risks at an early stage.***
- (5c) *In order for the Agency to function properly, the Member States, the European employers and employees organisations and the Commission should ensure that persons to be appointed to the Management Board have appropriate knowledge in the field of social and work-related policies with a view to making significant and strategic decisions, and to overseeing the Agency's activity.***
- (5d) *The Executive Board should be set up with the task of preparing the meetings of the Management Board in an appropriate manner and supporting its decision-making and monitoring processes. In assisting the Management Board, the Executive Board should, where necessary, because of urgency, take certain provisional decisions on behalf of the Management Board. The rules of procedure of the Executive Board should be adopted by the Management Board.***

- (5e) *The Executive Director should be responsible for the overall management of the Agency according to the strategic direction set by the Management Board, including day-to-day administration, financial and human resources management. The Executive Director should exercise the powers entrusted to him/her. These powers may be suspended under exceptional circumstances, such as conflicts of interest or a serious failure to comply with obligations under the Staff Regulations.*
- (5f) *The principle of equality is a fundamental principle of Union law. It requires that equality between women and men must be ensured in all areas, including employment, work and pay. All parties should aim to achieve a balanced representation between men and women on the Management Board. This aim should also be pursued by the Management Board with regard to its Chairperson and Deputy Chairpersons taken together as well as by the groups representing the governments, employers' organisations and employees' organisations in the Management Board with regard to the designation of alternates to attend the meetings of the Executive Board.*
- (5g) *The Agency operates a liaison office in Brussels. The possibility of operating that office should be maintained.*
- (6) *The new financial provisions and provisions for programming and reporting governing the Agency replacing those found in Regulation (EEC) No 1365/75 should be aligned with Commission Delegated Regulation (EU) No 1271/2013<sup>5</sup>. According to this Regulation, the Agency should undertake both ex-ante and ex-post evaluations for all programmes and activities which entail significant spending. These evaluations should be taken into account by the Agency in its multi-annual and annual programming.*

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<sup>5</sup> Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42),

- (6a) *In order to ensure its full autonomy and independence and to enable it properly to perform its objectives and tasks assigned in accordance with this Regulation, Eurofound should be granted an adequate and autonomous budget with revenue stemming essentially from a contribution from the general budget of the Union. The Union budgetary procedure should be applicable to Eurofound as far as the Union contribution and any other subsidies chargeable to the general budget of the Union are concerned. Eurofound's accounts should be audited by the European Court of Auditors.*
- (7) The provisions concerning Eurofound's staff set out in Regulation (EEC) No 1365/75 should be aligned with the Staff Regulations of Officials of the European Union ("Staff Regulations") and the Conditions of Employment of Other Servants of the European Union ("*Conditions of Employment of Other Servants*"), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68<sup>6</sup>.
- (8) The Agency should take the necessary measures to ensure *the* safe handling and processing of confidential information. Where required, Eurofound *should* adopt security rules as set out in Commission Decision (EU, Euratom) 2015/443<sup>7</sup> and Commission Decision (EU, Euratom) 2015/444<sup>8</sup>.
- (8a) *The translation services required for the agency should be provided by the Translation Centre of the Bodies of the European Union (Translation Centre). The agency should work together with the Translation Centre to establish indicators for quality, timeliness and confidentiality, to identify clearly the agency's needs and priorities, and create transparent and objective procedures for the translation process.*
- (9) It is necessary to provide for transitional budgetary provisions and transitional provisions on the Management Board, Executive Director and staff to ensure continuation of activities of the Agency pending the entry into force of this Regulation,

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<sup>6</sup> Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

<sup>7</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

<sup>8</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

HAVE ADOPTED THIS REGULATION:

## Chapter I

### Objectives and tasks of the Agency

#### *Article 1 - Establishment and objectives of the Agency*

1. The European Foundation for the improvement of living and working conditions ("Eurofound"), is hereby established as a [...] Union Agency.
2. The objective of the Agency shall be to increase and disseminate knowledge to ***provide support to*** the Commission, other ***Union*** institutions and bodies, Member States and social partners in shaping and implementing policies aimed at the improvement of living and working conditions, in ***devising*** employment policies and in promoting the dialogue between management and labour. ***To this end, the Agency shall enhance and disseminate knowledge, provide evidence and services for policy making, including research-based conclusions, and facilitate knowledge sharing among and between Union and national actors.***

#### *Article 2 – Tasks*

1. The Agency shall perform the following tasks with respect to ***the policy areas referred to in Article 1(2), while fully respecting the responsibilities of the Member States:***
  - a) analyse developments and provide comparative analyses of policies, institutional frameworks and practices ***in Member States and, where relevant, other*** countries;
  - (b) ***collect data, for instance by means of surveys, and*** analyse trends in living and working conditions, ***employment*** and labour market developments;
  - (c) analyse the developments in industrial relation systems and in particular social dialogue at ***Union*** level and in the Member States;
  - (d) undertake or commission studies and carry out research on relevant socio-economic developments and related policy issues;



- (da) carry out where relevant and at the request of the Commission pilot projects and preparatory actions;**
- (e) provide forums for exchange of experiences and information between governments, social partners and stakeholders at national level, *including through evidence-based information and analysis*;**
- (f) manage and make available tools and datasets to policymakers, social partners, academia and other stakeholders.**
- (fa) establish a strategy for relations with third countries and international organisations concerning matters for which the Agency is competent;**

- 1a. When new studies are needed, and before taking policy decisions, the EU institutions should take into account the Agency's expertise and any studies that it has conducted in the area concerned or that it is able to conduct, in accordance with the Financial Regulation.**
- 2. In carrying out its tasks, the Agency shall maintain a close dialogue particularly with specialised bodies, whether public or private, national or international, *with* public authorities, *with academic and research bodies* and with workers' and employers' organisations, *and with national tripartite bodies, where they exist*. The Agency, without prejudice to its own *objectives and purposes* shall *cooperate* with other [...] Union agencies [...], in particular *with Cedefop and EU-OSHA [...]*, promoting *synergies* and complementarity *with* their activities, *while avoiding duplication of efforts*.**
- 2a. The Agency may conclude cooperation agreements with other relevant Union agencies in order to facilitate and promote cooperation with them.**

## Chapter II

### Organisation of the Agency

#### *Article 3 – Administrative and management structure*

The Agency's administrative and management structure shall comprise:

- (a) a Management Board, which shall exercise the functions set out in Article 5;
- (b) an Executive Board which shall exercise the functions set out in Article 10;
- (c) an Executive Director, who shall exercise the responsibilities set out in Article 11.

### SECTION 1: MANAGEMENT BOARD

#### *Article 4 – Composition of the Management Board*

1. The Management Board shall be composed of:

- (a) one member representing the Government from each Member State;
- (b) one member representing the employers' organisations from each Member State;
- (c) one member representing the employees' organisations from each Member State;
- (d) three members representing the Commission;
- (e) *one independent expert appointed by the European Parliament;*

*Each of the members referred to in points (a)-(d) shall have the right to vote.*

The members referred to in points (a), (b) and (c) shall be appointed by the Council on the basis of lists of *the designated* candidates submitted by the Member States, the European employers' and employees' organisations respectively. The Commission shall appoint the members *referred to in point (d)*. *The responsible committee of the European Parliament shall appoint the expert referred to in point (e).*

2. Each member of the Management Board shall have an alternate. The alternate shall represent the member in his/her absence. The alternates shall be appointed *in accordance with the procedure provided for* in paragraph 1.
3. Members of the Management Board and their alternates shall be *designated and* appointed in light of their knowledge in the field of social and work-related policies, taking into account *their relevant skills such as* managerial, administrative and budgetary skills *and expertise in the Agency's core tasks, in order to effectively carry out an oversight role*. All parties represented in the Management Board shall to limit turnover of their representatives, in order to ensure continuity of the board's work. *All parties shall aim to achieve a balanced representation between men and women on the Management Board*.
- 3a. *Each member and alternate member shall sign a written statement declaring that he/she is not in a situation of conflict of interest when taking office and shall update it when there is a change of circumstances in that regard. The Agency shall publish the statements and updates on its website.*
4. The term of office for members and their alternates shall be four years. That term shall be *renewable*. Upon the expiry of their term of office or in the event of their resignation, members shall remain in office until their appointments are renewed or until they are replaced.
5. Within the Management Board, the representatives of governments, employers' organisations and employees' organisations shall each form a group. Each group shall designate a coordinator in order to enhance the efficiency of *the* deliberations within and between the groups. The coordinators of the employers' and employees' groups shall be representatives of their respective organisations at European level and *may* be designated from among the appointed *Management* Board members.

Coordinators who are not appointed *Management* Board members within the meaning of paragraph 1 shall take part in Management Board meetings without the right to vote.

## *Article 5 – Functions of the Management Board*

### 1. The Management Board shall:

- (a) give the ***strategic orientations*** for the Agency's activities;
- (aa) adopt each year, ***by a majority of two-thirds of members with the right to vote and in accordance with Article 6***, the Agency's programming document, ***containing the Agency's multi-annual programming and its annual work programme for the following year***;
- (b) adopt, by a majority of two-thirds of members ***with the right to vote***, the annual budget of the Agency and exercise other functions in respect of the Agency's budget pursuant to Chapter III;
- (c) adopt the consolidated annual activity report together with its assessment on the Agency's activities and send these ***by 1 July*** each year to the European Parliament, the Council, the Commission and the [...] Court of Auditors. The consolidated annual activity report shall be made public;
- (d) adopt the financial rules applicable to the Agency in accordance with Article 17;
- (e) adopt an anti-fraud strategy, proportionate to fraud risks taking into account the costs and benefits of the measures to be implemented;
- (f) adopt rules for the prevention and management of conflicts of interest in respect of its members and independent experts, ***as well as for seconded national experts and other staff not employed by the Agency as referred to in Article 20***;
- (g) adopt and regularly update the communication and dissemination plans based on an analysis of needs ***and reflect this in the Agency's programming document***;
- (h) adopt its rules of procedure;

- (i) *[...] exercise*, in accordance with paragraph 2, with respect to the staff of the Agency, the powers:

- *of the Appointing Authority conferred by the Staff Regulations of Officials of the European Union, and*

- *of the Authority Empowered to Conclude a Contract of Employment conferred by the Conditions of Employment of Other Servants [...],*

("the appointing authority powers");

- (j) adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;
- (k) appoint the Executive Director and where relevant extend the term of office or remove the Executive Director from office in accordance with Article 19;
- (l) appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment of other servants, who shall be totally independent in the performance of his/her duties;
- (la) *lay down the rules of procedure of the Executive Board;*
- (lb) *establish and dissolve Advisory Committees in accordance with Article 12, and adopt their Rules of Procedure;*
- (m) monitor adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office (OLAF).

*[...]*

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

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

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

#### ***Article 6 –Multi-annual and annual programming***

1. Each year, the Executive Director shall, in ***accordance*** with Article 11(5)c, draw up a programming document containing multiannual and annual programming in ***accordance*** with Article 32 of the ***Delegated Regulation*** (EU) No 1271/2013<sup>9</sup> [...].
2. ***The Executive Director shall put forward the draft*** programming document referred to in paragraph 1 ***to the Management Board***. ***Following approval by*** the Management Board, the draft programming document shall be sent to the Commission, the European Parliament and the Council no later than 31 January each year, as well as any later updated version of that document. ***The Management Board shall adopt the programming document referred to in paragraph 1, taking into account the opinion of the Commission.***

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

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<sup>9</sup> Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

5. The multi-annual programme shall set out overall strategic programming including objectives, expected results and performance indicators, ***avoiding programming overlaps with other agencies***. It shall also set out resource programming including multi-annual budget and staff. It shall include a strategy for relations with third countries and international organisations.

***The multi-annual programme*** shall also set out resource programming including multi-annual budget and staff. It shall include a strategy for relations with third countries and international organisations referred to in Article 29, the actions linked to this strategy, and a specification of associated resources.

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

- (a) detailed objectives and expected results including performance indicators;
- (b) [...] a description of the actions to be financed, ***including planned measures that aim to increase efficiency***;
- (c) an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management [...];
- (d) ***possible actions for relations with and international organisations referred to in Article 30***. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year.

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

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

[...]

6. The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 28.

Where new *activities* are conferred upon the Agency *to fulfil its tasks laid down in Article 2 of this Regulation*, this shall be taken into account in its resource and financial programming, *without prejudice to the powers of the Budgetary Authority*.

#### *Article 7 – Chairperson of the Management Board*

1. The Management Board shall elect a Chairperson and three Deputy Chairpersons as follows:
  - (a) one from among the members representing Member States;
  - (b) one from among the members representing employers' organisations;
  - (c) one from among the members representing employees' organisations; and
  - (d) one from among the members representing the Commission.

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

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

#### *Article 8 – Meetings of the Management Board*

1. The Chairperson shall convene meetings of the Management Board.
2. The Executive Director of the Agency shall take part in the deliberations, without the right to vote.
3. The Management Board shall hold one ordinary meeting a year. In addition, it shall meet on the initiative of its Chairperson, at the request of the Commission or at the request of at least one-third of its members.



4. The Management Board may invite any person whose opinion may be of interest to attend its meetings as an observer. *EEA–EFTA States may be represented in the Management Board meetings with observer status, if the EEA Agreement foresees their participation in the Agency's activities.*
5. The Agency shall provide the secretariat for the Management Board.

#### *Article 9 – Voting rules of the Management Board*

1. Without prejudice to *points (aa) and (b) of Article 5(1), the second subparagraph of Article 7(1) and Article 19(7)*, the Management Board shall take decisions by majority of members with *the right to vote*.
2. Each member *with the right to vote* shall have one vote. In the absence of a member *with the right to vote*, his/her alternate shall be entitled to exercise his/her right to vote.
3. The Chairperson shall take part in the voting.
4. The Executive Director shall take part in the deliberations, *without the right to vote*.
5. The Management Board's rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member.

### **SECTION 2: EXECUTIVE BOARD**

#### *Article 10 – Executive Board*

1. The Management Board shall be assisted by an Executive Board.
2. The Executive Board shall:
  - (a) prepare decisions to be adopted by the Management Board;
  - (b) monitor, together with the Management Board, adequate follow-up to the findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of OLAF;

- (c) without prejudice to the responsibilities of the Executive Director, as set out in Article 11, [...] advise him/her, *where necessary*, in the implementation of the decisions of the Management Board, with a view to reinforcing supervision of administrative and budgetary management.
3. Where necessary, because of urgency, the Executive Board may take certain provisional decisions on behalf of the Management Board, including the suspension of the delegation of the appointing authority powers, *in accordance with the conditions referred to in Article 5(2)*, and budgetary matters.
4. The Executive Board shall be composed of the Chairperson of the Management Board, the three Deputy Chairpersons, the coordinators of the three groups referred to in Article 4(5) and one representative of the Commission. Each group referred to in Article 4(5) may designate up to two alternates to attend the meetings of the Executive Board, in the absence of the full members. The Chairperson of the Management Board shall also be the Chairperson of the Executive Board. The Executive Director shall take part in the meetings of the Executive Board, *without* the right to vote.
5. The term of office of members of the Executive Board shall be two years. That term shall be *renewable*. The term of office of members of the Executive Board shall end when their membership of the Management Board ends.
6. The Executive Board shall meet three times a year. In addition, it shall meet on the initiative of *the* Chairperson or [...] at the request of its members. *Each coordinator shall make the best effort to inform members of his or her own group, after each meeting, of the content of the discussion, in a timely and transparent manner.*

[...]

### SECTION 3: EXECUTIVE DIRECTOR

#### *Article 11 – Responsibilities of the Executive Director*

1. The Executive Director shall ***be responsible for the management of the Agency in accordance with the strategic direction set by the Management Board and*** shall be accountable to the Management Board.
2. Without prejudice to the powers of the Commission, the Management Board, and the Executive Board, the Executive Director shall be independent in the performance of the duties and shall neither seek nor take instructions from any government *or* any other body.
3. The Executive Director shall report to the European Parliament on the performance of his/her duties when invited to do so. The Council may invite the Executive Director to report on the performance of his/her duties.
4. The Executive Director shall be the legal representative of the Agency.
5. The Executive Director shall be responsible for the implementation of the tasks assigned to the Agency by this Regulation, in particular [...]:
  - (a) the day-to-day administration of the Agency, ***including exercising the powers entrusted to him/her in respect of staff matters, in accordance with Article 5(2);***
  - (b) implementing decisions adopted by the Management Board;
  - (ba) ***in accordance with the decision referred to in Article 5(2), taking decisions with regard to the management of human resources;***
  - (bb) ***taking decisions with regard to the Agency's internal structures and, where necessary, their amendment, taking into account the needs relating to the Agency's activities and sound budgetary management;***
  - (bc) ***selecting and appointing the Deputy Director who shall support the Executive Director in carrying out the Agency's functions and activities;***

- (c) preparing the programming document and submitting it to the Management Board after consulting the Commission;
- (d) implementing the programming document and reporting to the Management Board on its implementation;
- (e) preparing the consolidated annual report on the Agency's activities and presenting it to the Management Board for assessment and adoption;
- (ea) *establishing an effective monitoring system to enable the regular evaluations referred to in Article 28 to be carried out and a reporting system to summarise their results;***
- (i) *preparing draft financial rules applicable to the Agency;***
- (j) *preparing the Agency's draft statement of estimates of revenue and expenditure, as part of the Agency's programming document; and implementing the Agency's budget;***
- (f) preparing an action plan following-up conclusions of internal or external audit reports and evaluations, as well as investigations by [...] OLAF and reporting on progress twice a year to the Commission and regularly to the Management Board and the Executive Board;
- (fa) *aiming at ensuring gender balance within the Agency;***
- (g) protecting the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative and financial penalties;
- (h) preparing an anti-fraud strategy for the Agency and presenting it to the Management Board for approval;

*[...]*

*[...]*

*(jc) cooperating with other Union agencies, where relevant, and concluding cooperation agreements with them.*

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

#### SECTION 4: ADVISORY COMMITTEES

##### *Article 12 – Advisory Committees*

1. Advisory Committees *may be* established by the Management Board in line with the policy priority areas outlined in the Agency's programming documents.
2. Advisory Committees are operational bodies aimed at ensuring the quality of the research produced by the Agency, as well as a wide ownership of the projects and of the results, by participating in the implementation of the Agency's programmes and providing advice and new inputs.
3. In liaison with the Management Board and the Executive Board Advisory Committees carry out the following main functions related to research projects:
  - (a) give advice on their design and implementation;
  - (b) monitor progress of implementation;
  - (c) evaluate findings;
  - (d) advise on the dissemination of results.

4. *[...]* The coordinators of the groups referred to in Article 4(5) shall oversee the nomination and participation of the members of the Advisory Committees in accordance with the Rules of Procedure.
5. The Management Board decides on the dissolution of Advisory Committees, in line with the priorities outlined in the Agency's programming documents.

### **Chapter III**

#### **Financial provisions**

##### *Article 13 - Budget*

1. Estimates of all revenue and expenditure for the Agency shall be prepared each financial year ***and shall be shown in the Agency's budget. The financial year*** shall correspond to the calendar year.
2. The Agency's budget shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other resources, the Agency's revenue shall comprise:
  - (a) a contribution from the Union entered in the general budget of the European Union;
  - (b) any voluntary financial contribution from the Member States;
  - (c) charges for publications and any service provided by the Agency;
  - (d) any contribution from third countries participating in the work of the Agency, as provided for by Article 30.
4. The expenditure of the Agency shall include staff remuneration, administrative and infrastructure expenses and operational expenditure.

#### *Article 14 – Establishment of the budget*

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

*The provisional draft estimates shall be based on the objectives and expected results of the annual programming document referred to in Article 6(1) and shall take into account the financial resources necessary to achieve those objectives and expected results, in accordance with the principle of performance-based budgeting.*

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

*[...]*

4. The Commission shall send the draft estimate to the *European Parliament and the Council* ("the budgetary authority"), together with the draft general budget of the Union. *The draft estimates shall also be made available to the Agency.*
5. On the basis of the draft estimate, the Commission shall enter in the draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 *TFEU*.
6. The budgetary authority shall authorise the appropriations for the contribution *from the Union budget* to the Agency.
7. The budgetary authority shall adopt the Agency's establishment plan.
8. The Agency's budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the Union. Where necessary, it shall be adjusted accordingly.

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

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

*Article 15 – Implementation of the budget*

1. The Executive Director shall implement the Agency's budget.
2. Each year the Executive Director shall send to the budgetary authority all information relevant to the findings of evaluation procedures.

*Article 16 – Presentation of accounts and discharge*

1. [...] The Agency's accounting officer shall send the provisional accounts *for the financial year (Year N)* to the Commission's Accounting Officer and to the [...] Court of Auditors *by 1 March of the following financial year (year N + 1)*.
2. [...] The Agency shall send *a* report on the budgetary and financial management *for year N* to the European Parliament, the Council, *the Commission* and the [...] Court of Auditors *by 31 March of year N + 1*.
- 2a. [...] The Commission's accounting officer shall send the Agency's provisional accounts *for year N*, consolidated with the Commission's accounts, to the [...] Court of Auditors *by 31 March of year N + 1*.
3. On receipt of the [...] Court of Auditors' observations on the Agency's provisional accounts *for year N*, pursuant to Article 148 of the [...] Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council<sup>10</sup>, the *accounting officer* shall draw up the Agency's final accounts *for that year* under his/her own responsibility. *The Executive Director shall* submit them to the Management Board for an opinion.

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<sup>10</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).



4. The Management Board shall deliver an opinion on the Agency's final accounts *for year N*.
5. The Agency's accounting officer shall, by 1 July of *year N + 1*, send the final accounts *for year N* to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.
6. The final accounts *for year N* shall be published in the *Official Journal of the European Union* by 15 November of [...] *year N + 1*.
7. The Executive Director shall send *to the [...]* Court of Auditors, *by 30 September of year N + 1*, a reply to *the observations made in its annual report*. The Executive Director shall also send *the* reply to the Management Board.
8. The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for *year N*, in accordance with *Article 109(3) of Commission Delegated Regulation (EU) No 1271/2013*.
9. On a recommendation from the Council acting by a qualified majority, the European Parliament shall, before 15 May of *year N + 2*, give a discharge to the Executive Director in respect of the implementation of the budget for *year N*.

#### *Article 17 – Financial rules*

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

## Chapter IV

### Staff

#### *Article 18 – General provisions*

1. The Staff Regulations and the Conditions of Employment of Other Servants and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of the Agency.
2. The Management Board shall adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations.

#### *Article 19 – Executive Director*

1. The Executive Director shall be a member of staff and shall be engaged as a temporary agent of the Agency under Article 2(a) of the Conditions of Employment of Other servants.
2. The Executive Director shall be appointed by the Management Board, from a list of candidates proposed by the Commission, following an open and transparent selection procedure.

***The selected candidate shall be invited to make a statement before the European Parliament and to answer questions from Members of Parliament. This exchange of views shall not unduly delay the appointment.***

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

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

4. The Management Board, [...] *taking* into account the assessment referred to in paragraph 3, may extend the term of office of the Executive Director once *and* for no more than five years.
5. An Executive Director whose term of office has been extended shall not participate in another selection procedure for the same post at the end of the overall period.
6. The Executive Director may be removed from office only upon a decision of the Management Board [...]. *When taking such a decision, the Management Board shall take into account the Commission's assessment of the Executive Director's performance in office, as referred to in paragraph 3.*
7. The Management Board shall reach decisions on appointment, extension of the term of office or removal from office of the Executive Director on the basis of a two-thirds majority of its members *with the right to vote*.

*Article 20 – Seconded national experts and other staff*

1. The Agency may make use of Seconded national experts or other staff not employed by the Agency.
2. The Management Board shall adopt a decision laying down rules on the secondment of national experts to the Agency.

**Chapter V**

**General Provisions**

*Article 21 – Legal status*

1. The Agency shall be a body of the Union. It shall have legal personality.
2. In each of the Member States the Agency shall enjoy the most extensive legal capacity accorded to legal persons under *national* law. It may, in particular, acquire and dispose of movable and immovable property and be party to legal proceedings.

3. The seat of the Agency shall be Dublin, Ireland.
4. The Agency may establish *a liaison office in Brussels to further the Agency's cooperation with the relevant Union institutions, [...]* in accordance with Article 11(6).

*Article 22 – Privileges and immunities*

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

*Article 23 – Language arrangements*

1. The provisions laid down in Regulation No 1<sup>11</sup> shall apply to the Agency.
3. The translation services required for the functioning of the Agency shall be provided by the Translation Centre of the bodies of the European Union.

*Article 24 – Transparency*

**-1. The Agency shall act with a high level of transparency.**

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>12</sup> shall apply to documents held by the Agency.
- 1a.** The Management Board shall, within six months of the date of its first meeting, adopt the detailed rules for applying Regulation (EC) No 1049/2001.

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<sup>11</sup> OJ 17, 6.10.1958, p. 385.

<sup>12</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

2. The processing of personal data by the Agency shall be subject to ***Regulation (EU) 2016/679 of the European Parliament and of the Council***<sup>13</sup>. The Management Board shall, within six months of the date of its first meeting, establish measures for the application of Regulation (EC) No 45/2001 by the Agency, including those concerning the appointment of a Data Protection Officer of the Agency. Those measures shall be established after consultation of the European Data Protection Supervisor.

#### *Article 25 – Combating fraud*

1. In order to facilitate ***the fight against*** fraud, corruption and ***any other illegal*** activities under Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>14</sup>, ***by ...*** [six months from the date of application of this Regulation], ***the Agency*** shall accede to the Interinstitutional Agreement of 25 May 1999 ***between the European Parliament, the Council of the European Union and the Commission of the European Communities*** concerning internal investigations by [...] OLAF<sup>15</sup> and ***shall*** adopt appropriate provisions applicable to all employees of the Agency using the template set out in the Annex to that Agreement.
2. The [...] Court of Auditors shall have the power of audit, on the basis of documents, and ***of on-the-spot inspections***, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.

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<sup>13</sup> ***Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).***

<sup>14</sup> ***Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).***

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

3. OLAF may carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant ***agreement or grant decision*** or a contract funded by the Agency, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96<sup>16</sup>.
4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the [...] Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

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

The Agency shall adopt own security rules equivalent to the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in [...] Decisions (EU, Euratom) 2015/443<sup>17</sup> and 2015/444<sup>18</sup>, when required. The security rules of the Agency shall cover, inter alia and where appropriate, provisions for the exchange, processing and storage of such information.

*Article 27 - Liability*

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

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<sup>16</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

<sup>17</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

<sup>18</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.
3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the performance of their duties.
4. The Court of Justice of the European Union shall have jurisdiction *relating to* compensation for damages referred to in paragraph 3.
5. The personal liability of its staff towards the Agency shall be governed by the provisions laid down in the Staff Regulations or *in the* Conditions of Employment *of Other Servants* applicable to them.

#### *Article 28 – Evaluation*

- 1. *In accordance with Article 29(5) Commission Delegated Regulation (EU) No 1271/2013, the Agency shall carry out ex-ante and ex-post evaluations of those programmes and activities which entail significant spending.*
1. *By ... [5 years after the entry into force of this Regulation], and every 5 years thereafter, the Commission shall ensure that an evaluation is carried out in compliance with the Commission guidelines to assess the Agency's performance in relation to its objectives, mandate and tasks. The Commission shall consult members of the Management Board and other main stakeholders during its evaluation.* The evaluation shall, in particular, address the possible need to *amend* the mandate of the Agency, and the financial implications of any such *amendments*.
3. The Commission shall report to the European Parliament, the Council and the Management Board *on* the evaluation's findings. The findings of the evaluation shall be made public.

#### *Article 29 – Administrative inquiries*

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

*Article 30 – Cooperation with third countries and international organisations*

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

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

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

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

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

*Article 31 – Headquarters Agreement and operating conditions*

1. The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State and the facilities to be made available by that Member State together with the specific rules applicable in the host Member State to the Executive Director, members of the Management Board, Agency staff and members of their families shall be laid down in a Headquarters Agreement between the Agency and Member State where the seat is located.
2. The Agency's host Member State shall provide the ***necessary*** conditions to ensure the functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.



## Chapter VI

### Transitional provisions

#### *Article 32 – Transitional provisions concerning the Management Board*

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

#### *Article 33 – Transitional provisions concerning the staff*

1. The Director of the Agency appointed on the basis of Article 8 of Regulation (EEC) No 1365/75 of the Council shall, for the remaining periods of his/her term of office be assigned to the responsibilities of the Executive Director as provided for in Article 11 of this Regulation. The other conditions of his/her contract shall remain unchanged.
- 1a. *In case of an ongoing selection and appointment procedure of the Executive Director at the time of the entry into force of this Regulation, Article 6 of the Regulation (EEC) 337/75 shall apply until the finalisation of that procedure.***
2. This Regulation shall not affect the rights and obligations of staff engaged under Regulation (EEC) No 337/75 [...]. ***Their employment contracts may be renewed under this Regulation in accordance with the Staff Regulations and Conditions of Employment of Other Servants.***

***Any liaison office of the Agency which is operational at the time of entry into force of this Regulation shall be maintained.***

*Article 34 - Transitional budgetary provisions*

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

**Chapter VII**

**Final provisions**

*Article 35 – Repeal*

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

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

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

*Article 37 – Entry into force*

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. It shall apply from [please insert first day of the month following entry into force].

[...] However, Articles 31, 32, 33 shall apply from [the date of entry into force of this Regulation].

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

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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