

REGULATION (EC) No 1339/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 December 2008
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 Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) 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.
- (2) Council Regulation (EEC) No 1360/90 of 7 May 1990 establishing a European Training Foundation ⁽³⁾ has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.
- (3) On 18 December 1989 the Council adopted Regulation (EEC) No 3906/89 on economic aid to the Republic of Hungary and the Polish People's Republic ⁽⁴⁾ which provided for aid in areas including training to support the process of economic and social reform in Hungary and Poland.
- (4) The Council subsequently extended such aid to other countries of Central and Eastern Europe under relevant legal acts.
- (5) On 27 July 1994 the Council adopted Regulation (EC) No 2063/94 ⁽⁵⁾ amending Regulation (EEC) No 1360/90, with a view to including in the activities of the European Training Foundation the States receiving assistance under Regulation (Euratom, EEC) No 2053/93 of 19 July 1993 concerning the provision of technical assistance to economic reform and recovery in the independent States of the former Soviet Union and Mongolia ⁽⁶⁾ (the TACIS Programme).
- (6) On 17 July 1998 the Council adopted Regulation (EC) No 1572/98 ⁽⁷⁾ 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 economic and social structures pursuant to Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership ⁽⁸⁾.
- (7) On 5 December 2000 the Council adopted Regulation (EC) No 2666/2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia ⁽⁹⁾ 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 Regulation (EC) No 2666/2000.
- (8) External assistance programmes relating 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 Assistance (IPA) ⁽¹⁰⁾ 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 ⁽¹¹⁾.

⁽¹⁾ Opinion of 22 October 2008 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 22 May 2008 (not yet published in the Official Journal), Council Common Position of 18 November 2008 (OJ C 310 E, 5.12.2008, p. 1) and Position of the European Parliament of 16 December 2008 (not yet published in the Official Journal).

⁽³⁾ OJ L 131, 23.5.1990, p. 1.

⁽⁴⁾ OJ L 375, 23.12.1989, p. 11.

⁽⁵⁾ OJ L 216, 20.8.1994, p. 9.

⁽⁶⁾ OJ L 187, 29.7.1993, p. 1.

⁽⁷⁾ OJ L 206, 23.7.1998, p. 1.

⁽⁸⁾ OJ L 189, 30.7.1996, p. 1. Regulation repealed by Regulation (EC) No 1638/2006.

⁽⁹⁾ OJ L 306, 7.12.2000, p. 1.

⁽¹⁰⁾ OJ L 210, 31.7.2006, p. 82.

⁽¹¹⁾ OJ L 310, 9.11.2006, p. 1.

- (9) By supporting human capital development in the context of its external relations policy, the European Union contributes to economic development in these countries by providing the skills necessary to foster productivity and employment and supports social cohesion by promoting civic participation.
- (10) In the context of the efforts of these countries 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.
- (11) 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.
- (12) In order to make its contribution, the European Training Foundation will need to call upon the experience gained within the EU in relation to education and training in a lifelong learning perspective and upon those of its institutions which are involved in this activity.
- (13) 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 learning perspective.
- (14) 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 enable it to carry out its functions in close cooperation with existing national and international bodies.
- (15) 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.
- (16) The European Training Foundation should have close links with the European Centre for the Development of Vocational Training (Cedefop), 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.
- (17) The European Training Foundation should be open to the participation of countries which are not Member States 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 learning perspective, under arrangements to be laid down in agreements between the Community and themselves.
- (18) All Member States, the European Parliament and the Commission should be represented on a Governing Board in order to oversee effectively the functions of the Foundation.
- (19) In order to guarantee the full autonomy and independence of the Foundation, it should be granted an autonomous budget the revenues of which come primarily from a Community contribution. 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.
- (20) The Foundation is a body set up by the Communities within the meaning of Article 185(1) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ (hereinafter referred to as the 'Financial Regulation') and should adopt its financial rules accordingly.
- (21) 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 ⁽²⁾ (hereinafter referred to as the 'Framework Financial Regulation') should apply to the Foundation.
- (22) 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.
- (23) 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 ⁽⁴⁾ should apply to the Foundation.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽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.

- (24) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾ should apply to the processing of personal data by the Foundation.
- (25) Pursuant to a Decision of 29 October 1993, taken by common agreement between the representatives of the Governments of the Member States, meeting at Head of State and Government level, on the location of the seats of certain bodies and departments of the European Communities and of Europol ⁽²⁾, the Foundation is to have its seat in Turin, Italy.
- (26) Since the objective of this Regulation, namely assisting 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 that objective.
- (27) This Regulation respects the fundamental rights recognised by the Charter of Fundamental Rights of the European Union, in particular Article 43 thereof,

HAVE ADOPTED THIS REGULATION:

Article 1

Objective and scope

1. The European Training Foundation (hereinafter referred to as the 'Foundation') is hereby established. The objective of the Foundation 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 and subsequent related legal acts;
- (b) the countries eligible for support under Regulation (EC) No 1638/2006 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 an element of human capital development, and as far as available resources allow.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

⁽²⁾ OJ C 323, 30.11.1993, p. 1.

The countries referred to in points (a), (b) and (c) shall be designated as the 'partner countries'.

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

3. In order to achieve its objective, the Foundation may provide assistance to partner countries in:

- (a) facilitating adaptation to industrial changes, in particular through vocational training and retraining,
- (b) improving initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market,
- (c) facilitating access to vocational training and encouraging the mobility of instructors and trainees and particularly young people,
- (d) stimulating cooperation on training between educational establishments and firms,
- (e) developing exchanges of information about and experience in issues common to the training systems of the Member States,
- (f) increasing the adaptability of workers, particularly through increased participation in education and training in a lifelong learning perspective,
- (g) 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 objective set out in Article 1(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) to provide information, policy analyses and advice on human capital development issues in the partner countries;
- (b) to promote knowledge and analysis of skills needs in national and local labour markets;

- (c) to support relevant stakeholders in partner countries in building capacity in human capital development;
- (d) to facilitate the exchange of information and experience among donors engaged in human capital development reform in partner countries;
- (e) to support the delivery of Community assistance to partner countries in the field of human capital development;
- (f) to disseminate information and encourage networking and the exchange of experience and good practice between the EU and partner countries and amongst partner countries in human capital development issues;
- (g) to contribute, at the Commission's request, to the analysis of the overall effectiveness of training assistance to the partner countries;
- (h) to 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 and shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under its laws. The Foundation may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. The Foundation 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 of the two agencies with the objective of promoting synergy and complementarity between their activities.
4. Representatives of the social partners at European level which are already active in the work of Community institutions, and international organisations active in the training field, may, where appropriate, be invited to participate in the work of the Foundation.
5. The Foundation shall be subject to the administrative review of the European Ombudsman, pursuant to the conditions set out in Article 195 of the Treaty.

6. The Foundation may establish co-operation agreements with other relevant bodies active in the human capital development field in the EU and worldwide. 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, in particular, with paragraphs 2 to 4.
 2. The Foundation shall make public within six months of setting up its Governing Board:
 - (a) the rules of procedure of the Foundation and those of the Governing Board;
 - (b) the annual activity report of the Foundation.
 3. In appropriate cases, the Governing Board may authorise representatives of interested parties 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 practical arrangements for applying that 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 obligation of professional secrecy referred to in Article 287 of the Treaty.
3. The information gathered by the Foundation in accordance with its establishing 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 one representative of each Member State, three representatives of the Commission, as well as three non-voting 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 their alternates on the Governing Board.

The representatives of the partner countries shall be appointed by the Commission from a list of candidates proposed by those countries on the basis 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 his or her 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 shared vote.

Decisions of the Governing Board shall require a two-thirds majority of its members 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, 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 Governing Board entitled to vote.

The Chairperson shall be responsible for informing the Governing Board of other Community activities relevant to its 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) to appoint and, where necessary, dismiss the Director in accordance with Article 10(5);
- (b) to exercise disciplinary authority over the Director;
- (c) to adopt the Foundation's annual work programme on the basis of a draft submitted by the Director after the Commission has delivered its opinion, in accordance with Article 12;
- (d) to draw up an annual estimate of expenditure and revenue for the Foundation and forward it to the Commission;
- (e) to adopt the Foundation's draft establishment plan and the definitive budget following completion of the annual budget procedure, in accordance with Article 16;
- (f) to adopt the Foundation's annual activity report, in accordance with the procedure laid down in Article 13 and send it to the Community institutions and the Member States;
- (g) to 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) to 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 Article 19;
- (i) to adopt the procedures for applying Regulation (EC) No 1049/2001, in accordance with 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 from 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 last nine months of that five-year period, the Commission shall, on the basis of a prior evaluation by external experts, undertake an evaluation 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 of its intention to extend the Director's term of office. In the 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) to prepare, on the basis of general guidelines established by the Commission, the draft annual work programme, the draft estimate of expenditure and revenue of the Foundation, its draft rules of procedure and those of the Governing Board, its draft financial rules, and the work of the Governing Board and of any ad hoc working parties convened by the Governing Board;
- (b) to participate, without the right to vote, in meetings of the Governing Board;
- (c) to implement the decisions of the Governing Board;
- (d) to implement the Foundation's annual work programme and respond to requests for assistance from the Commission;

(e) to perform the duties of authorising officer, in accordance with Articles 33 to 42 of the Framework Financial Regulation;

(f) to implement the Foundation's budget;

(g) to put in place an effective monitoring system to enable the regular evaluations referred to in Article 24 to be carried out and, on this basis, prepare a draft annual activity report;

(h) to present the annual activity report to the European Parliament;

(i) to manage all staff-related matters, and in particular exercise the powers provided for in Article 21;

(j) to define the Foundation's organisational structure and submit it to the Governing Board for approval;

(k) to represent the Foundation before the European Parliament and the Council in accordance with Article 18.

5. The Director shall be accountable for his/her actions to the Governing Board, which may, on a proposal from the Commission, remove the Director from office before his/her term of office has expired.

*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 be consistent with the objective, scope and functions of the Foundation defined in Articles 1 and 2.

2. The annual work programme shall be drafted within the framework of a four-year multiannual work programme in cooperation with the Commission services and with regard to the priorities of external relations with the countries and regions concerned and on the basis of experience acquired in education and training within the Community.

3. The projects and activities set out 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 annual 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 by 30 November of the preceding year at the latest. The final adoption of the annual work programme shall take place at the beginning of the financial year in question.

6. Where necessary, the annual work 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 annual activity report shall contain financial and management information indicating the results of operations by reference to the annual work programme and to the objectives set, the risks associated with those operations, the use made of the resources provided and the way the internal control system has functioned.

3. The Governing Board shall draft an analysis and an assessment of the draft annual activity report on the previous financial year.

4. The Governing Board shall adopt the 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 Court of Auditors and the European Economic and Social Committee by 15 June of the following year at the latest. This report shall also be forwarded to the Member States and, for information, to the partner countries.

5. The Director shall present the Foundation's annual activity report to 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 the provision of 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. The 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 Union, 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, on the basis of a draft drawn up by the Director, the Governing Board 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.

3. The estimate shall be forwarded by the Commission to the European Parliament and the Council (hereinafter together 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 of the Foundation shall be adopted by the Governing Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it 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 the Foundation's 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 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 budgetary and financial management for that financial year. The report on 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 Director shall send the Court of Auditors a reply to its observations by 30 September following each financial year 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 called for by the observations accompanying the decision giving the discharge.

Article 18

European Parliament and Council

Without prejudice to the controls referred to in Article 17 and, in particular the budgetary and discharge procedures, the European Parliament or the Council may ask at any time to hear 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 the Framework Financial Regulation 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 the accounts of the Foundation 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 and the Commission 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 regulations

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

2. The Foundation shall exercise over its staff the powers devolved to the Appointing Authority.

3. 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.

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

⁽¹⁾ OJ L 136, 31.5.1999, p. 15.

*Article 22***Liability**

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

2. In the case of non-contractual liability, the Foundation shall, in accordance with the general principles common to laws of the Member States, make good any damage caused by the Foundation or its servants in the performance of their duties.

The Court of Justice of the European Communities 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 Member States of the 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(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 of 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 regulations referred to in Article 21 of this Regulation.

2. The participation of third countries in ad hoc working parties may be decided upon as necessary by the Governing Board, without an agreement as referred to in paragraph 1.

*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, every four years, 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 light of the objectives, mandate and functions defined in this Regulation. 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 its evaluation, the Commission shall present, where necessary, a proposal for the revision of this Regulation. If the Commission considers 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**

Regulations (EEC) No 1360/90, (EC) No 2063/94, (EC) No 1572/98, (EC) No 1648/2003 and Article 16 of Regulation (EC) No 2666/2000, as listed in Annex I to this Regulation, 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 set out in Annex II to this Regulation.

*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 Strasbourg, 16 December 2008.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
B. LE MAIRE

ANNEX I

Repealed Regulation and successive amendments

| | |
|--|------------------------------|
| Council Regulation (EEC) No 1360/90 | (OJ L 131, 23.5.1990, p. 1) |
| Council Regulation (EC) No 2063/94 | (OJ L 216, 20.8.1994, p. 9) |
| Council Regulation (EC) No 1572/98 | (OJ L 206, 23.7.1998, p. 1) |
| Article 16 of the Council Regulation (EC) No 2666/2000 | (OJ L 306, 7.12.2000, p. 1) |
| Council Regulation (EC) No 1648/2003 | (OJ L 245, 29.9.2003, p. 22) |

ANNEX II

CORRELATION TABLE

| Regulation (EEC) No 1360/90 | This Regulation |
|---|---|
| Article 1 first paragraph | Article 1(1) introductory words |
| Article 1 first to fourth intent | — |
| Article 1 second sentence | — |
| — | Article 1(1) points (a) to (c) |
| — | Article 1(1) second subparagraph |
| — | Article 1(2) to (3) |
| Article 2 | — |
| Article 3 first paragraph | Article 2 first paragraph |
| Article 3 points (a) to (g) | — |
| — | Article 2 points (a) to (f) |
| Article 3 point (h) | Article 2 point (g) |
| Article 4(1) | Article 3(1) |
| — | Article 3(2) |
| Article 4(3) first sentence | Article 3(3) first sentence |
| — | Article 3(3) second sentence |
| Article 4(2) | — |
| — | Article 3(4) and (5) |
| — | Article 4(1) to (3) |
| Article 4a(1) | Article 4(4) first subparagraph |
| Article 4a(2) | Article 4(4) second subparagraph |
| — | Article 5 |
| Article 4a(3) | Article 6 |
| Article 5(1) | Article 7(1) |
| Article 5(2) | Article 7(2) first and second subparagraphs |
| — | Article 7(2) third and fourth subparagraphs |
| Article 5(3) | Article 7(3) |
| Article 5(4) first subparagraph | Article 7(4) first sentence |
| — | Article 7(4) second sentence |
| Article 5(4) second subparagraph | Article 7(5) |
| Article 5(4) third and fourth subparagraphs | Article 8(1) first subparagraph |
| — | Article 8(1) second subparagraph |
| Article 5(4) last subparagraph | Article 8(1) last subparagraph |
| Article 5(5) and (6) | Article 8(2) and (3) |
| Article 5(7) to (10) | — |
| — | Article 9 |
| Article 6 | — |
| Article 7(1) first sentence | Article 10(1) first sentence |
| Article 7(1) second sentence | — |
| — | Article 10(1) second sentence and second to fourth sub-paragraphs |
| — | Article 10(2) |

| Regulation (EEC) No 1360/90 | This Regulation |
|-----------------------------|--|
| Article 7(2) | Article 10(5) first sentence |
| Article 7(3) | Article 10(3) |
| — | Article 10(4) points (a) to (k) |
| — | Article 11 |
| — | Article 12 |
| — | Article 13 |
| Article 8 | 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(1) |
| — | Article 21(2) to (4) |
| Article 15 | Article 22 |
| Article 16(1) | Article 23(1) first subparagraph and first sentence of the second subparagraph |
| — | Article 23(1) last sentence of the second subparagraph |
| Article 16(2) | Article 23(2) |
| — | Article 24(1) |
| Article 17 | Article 24(2) |
| — | Article 24(3) |
| Article 18 | — |
| — | Article 25 |
| — | Article 26 |
| Article 19 | Article 27 |
| — | Annex |