

ANNEX IV

Draft Council Resolution

**COUNCIL RESOLUTION
CONCERNING
GUARANTEES FOR THE CONTINUED PAYMENT
OF THE CERN PERSONNEL'S PENSION RIGHTS
IN THE EVENT OF THE DISSOLUTION OF THE ORGANIZATION**

The Council,

CONSIDERING :

the Organization's undertaking to guarantee payment of the statutory benefits becoming due to the members and beneficiaries of the CERN Staff Insurance Scheme, hereinafter referred to as "the Scheme", until the expiry of the entitlement of the last beneficiary, as set out in Article II.11.4 of the Rules of the Scheme;

CONSIDERING :

the Convention establishing CERN dated 1st July 1953, revised on 17 January 1971, hereinafter referred to as "the Convention";

the Agreement dated 11 June 1955 between the Swiss Federal Council and CERN defining the legal status of CERN in Switzerland;

the Agreement dated 13 September 1965 between France and CERN defining the latter's legal status in France, as revised on 16 June 1972, and the Social Security Agreement made between the same parties on 30 December 1970;

the CERN Staff Rules and Regulations (1980 edition);

the Rules of the CERN Staff Insurance Scheme (1984 edition);

CONSIDERING ALSO :

the experts' report CERN/CC/1342 dated 24 October 1979 and the fourth report of the Chairman of the Working Group on Pensions (CERN/FC/2946/Rev.) dated 30 May 1986;

the recommendations of CCEC dated 22 and 23 April 1986 and of the Finance Committee dated 25 June 1986;

HEREBY AGREES :

ARTICLE 1
Guarantee steps

1. By way of preparation for the position should the Organization be dissolved, as provided for by Article XIV of the Convention, the steps set out below may be taken to implement the undertaking to guarantee payment of the benefits becoming due to the members and beneficiaries of the Scheme until the expiry of the rights of the last beneficiary.
 - (a) The establishment of the Scheme as a Foundation under Swiss law;
 - (b) The re-integration of the members of the Organization's personnel into the national social security systems of the Member States.
2. The steps set out above shall not prejudice any other proposal which may be found suitable for providing such guarantees.
3. The documents attached to this resolution (Draft Constitution of the Foundation of the CERN Insurance Scheme, Draft Agreement concerning Integration into the French Social Security Systems) constitute models for the implementation of decisions to be taken at the appropriate time before the Organization is dissolved.

ARTICLE 2
Foundation

1. Before the procedure for dissolving the Organization is begun and at a time decided by the Council, the Scheme shall be set up as a Foundation under the provisions of articles 80 et seq. of the Swiss Civil Code. Its seat shall be in Geneva and it shall be the Organization's successor in all matters concerning the management and resources of the Organization's pension scheme.
2. The Foundation may be set up along the lines of the draft Constitution forming Appendix A to this Resolution, taking into consideration all the relevant provisions being in force at the time of its creation.
3. The special status applicable to the Foundation in Switzerland shall be determined by article 20 of the Status Agreement between the Swiss Federal Council and CERN to be amended.

ARTICLE 3
Integration Agreement

The Organization shall undertake to conclude an agreement with each Member State which is prepared to do so to allow members of the Scheme who so wish to be integrated into a national social security system, along the lines set out in the specimen Agreement attached to this Resolution as Appendix B.

ARTICLE 4
Balance of the Scheme

At the time when the steps set out in Article 1 are taken, the accounts shall be closed, an actuarial Balance Sheet shall be drawn up and the Scheme shall be brought into actuarial balance.

ARTICLE 5
Relations between CERN and ESO

Prior to any dissolution of CERN an agreement shall be concluded between the latter and the European Southern Observatory (ESO) on the measures to be taken to guarantee payment of statutory pension rights acquired by members of the ESO staff who are members or beneficiaries of the Staff Insurance Scheme.

Appendix A to Council Resolution

**CONSTITUTION OF THE FOUNDATION
OF THE STAFF INSURANCE SCHEME OF THE EUROPEAN ORGANIZATION
FOR NUCLEAR RESEARCH (CERN)**

The Council of the European Organization for Nuclear Research (CERN),

CONSIDERING :

- the Convention for the Establishment of a European Organization for Nuclear Research (CERN) dated 1st July 1953, amended on 17 January 1971;
- the Agreement between the Swiss Federal Council and the European Organization for Nuclear Research dated 11 June 1955, determining the legal status of the Organization in Switzerland, and especially its article 20, as amended;
- the Rules of the CERN Staff Insurance Scheme (edition dated 1st January 1984), as amended on the date of establishment of the Foundation, hereinafter referred to as "the Rules of the Scheme";
- the Resolution of the CERN Council (CERN/....) dated, concerning the establishment of a Foundation of the Staff Insurance Scheme in the event of the dissolution of the Organization;

HEREBY DECIDES :

**ARTICLE I
Denomination**

The Organization shall set up the CERN Staff Insurance Scheme, hereinafter referred to as "the Scheme", as a Foundation, governed by this Constitution and by articles 80 et seq. of the Swiss Civil Code (CCS), with the registered style of "Foundation of the CERN Staff Insurance Scheme".

ARTICLE II
Seat

The seat of the Foundation shall be in Geneva.

ARTICLE III
Purposes

The purposes of the Foundation shall be to ensure the continuity of the administration and management of the Scheme on the dissolution of the Organization in order to honour the rights of the members and beneficiaries of the Scheme until the expiry of the entitlement of the last beneficiary.

ARTICLE IV
Applicable provisions

1. The Foundation shall apply this Constitution and the Rules of the Scheme in force, except, however, for the provisions of Article II, 1 to 10, and Article II. 11, with the exception of Nos 1, 2, 3, 5, 6, 10, 12, and Article II.12 of the latter concerning the organisation and administration of the Scheme, and those of Article 17, which shall be replaced by the provisions of this Constitution.
2. In the event of a conflict between the provisions of this Constitution and those of the Rules of the Scheme, the former shall take precedence.

ARTICLE V
Closed fund

The Scheme shall be managed as a closed fund. From the moment of its establishment as a Foundation, it shall no longer have any active members but shall have beneficiaries, who shall become beneficiaries of the Foundation and of whom a list shall be drawn up.

ARTICLE VI
Partial transfers

If, in the cases provided for by Article 16 of the Rules of the Scheme, only a part of the transfer value may be paid into another insurance scheme, the residual rights conferred by the untransferred portion shall remain acquired in the form of a deferred pension, notwithstanding the provisions of article 16.4 of said Rules.

ARTICLE VII

Bodies

The main bodies of the Foundation shall be the Board of the Foundation, hereinafter referred to as "the Board", and the Administrator.

ARTICLE VIII

The Board

1. The Board shall be the supreme body of the Foundation, which it shall run. It shall perform the duties previously incumbent upon the Scheme's bodies. It shall ensure the stability of the Scheme, supervise its administration and management and lay down the policy for investing the Scheme's assets in accordance with Article III above.
2. The Board shall consist of eleven members appointed for four years and eligible for re-appointment.
 - a) Five members shall be appointed by the CERN Council when the Foundation is established and subsequently by the body responsible for CERN's liquidation. Once the latter's task has been completed, they shall be appointed by the Federal authorities.
 - b) Five other members shall be appointed by the members and beneficiaries of the Scheme.
 - c) The Chairman of the Board, who shall not be one of the above-mentioned members, shall be elected by them by a two-thirds majority of all said members for a period of four (4) years. He shall be eligible for re-election.
3. The body responsible for CERN's liquidation may appoint an observer to attend the meetings of the Board.
4. The Board shall draw up its own internal rules of procedure and shall appoint a secretary. It shall set up the necessary subsidiary bodies and appoint the persons authorised to make undertakings on the Foundation's behalf. It shall lay down its internal regulations after submitting them to the Foundation's supervisory body for approval. In the same way, it shall lay down any other rules which are deemed necessary and take all the necessary steps in pursuit of the Foundation's purposes.

The Board's discussions shall be legally valid only if, besides the Chairman, at least six other members are present, three of the members appointed as set out under a) and three as set out under b) of § 2 above. Its decisions shall be taken by a simple majority of the members present and voting.

ARTICLE IX
The Administrator

1. The Administrator shall be the executive official of the Foundation. Within his terms of reference defined by the Board, he shall administer the Foundation and manage its assets. He shall be assisted by a deputy and the necessary staff.
2. The Administrator and his deputy shall be appointed by the Board for a set period and shall be answerable to it. Their appointments may be renewed. They shall attend the meetings of the Board and its subsidiary bodies ex officio.

ARTICLE X
Information and meeting

1. The Board of the Foundation shall call a General Information Meeting for the beneficiaries every year at the Foundation's registered offices in order to inform them about the Scheme's management and present to them the annual accounts and the management report provided for by Article XIV and XV below.
2. The members and beneficiaries of the Scheme shall, if necessary, elect their representatives on the Board of the Foundation at this Meeting.

ARTICLE XI
Experts, Advisors

The Board shall appoint a consulting actuary and a medical consultant.

ARTICLE XII
Assets, resources, capital allotment

1. The Foundation's assets shall comprise :
 - the Scheme's movable property and real estate;
2. The Foundation's resources shall consist of :
 - the return on the investment of assets;
 - gifts and legacies which are compatible with the Foundation's purposes;
 - any other income connected with the Foundation's operations.

ARTICLE XIII
Accounts

The financial year shall begin on the first of January and end on the thirty-first of December every year. A balance sheet and profit and loss account shall be drawn up as at 31 December of each year.

ARTICLE XIV
Management report

The Foundation shall draw up a management report for each financial year. The report shall be forwarded to the Supervisory Authority specified in Article XVI below.

ARTICLE XV
Supervisory Authority

The Foundation shall be under the supervision of the Swiss Confederation.

ARTICLE XVI
Audit

After approval by the Board, the accounts for the financial year shall be forwarded for auditing to the Federal Financial Inspectorate and then submitted to the Supervisory Authority.

ARTICLE XVII
Guarantee and adjustment of benefits

1. The Foundation shall guarantee the benefits acquired by virtue of the Rules of the Scheme.
2. In order to enable the Foundation to fulfill its mission according to Article III above, the Board may, if necessary, make approaches to the States which had been members of the Organization at the time of its dissolution, via the Supervisory Authority.
3. Every year, the Board shall examine the matter of the adjustment of benefits with reference to the variation in the cost of living, taking the financial position of the Foundation into account.

ARTICLE XVIII
Changes to the Foundation

By a two-thirds majority of its members and with the agreement of the Supervisory Authority, the Board may amend this Constitution, convert the Foundation into legal form or decide to transfer it to or merge it with another provident institution if such is found essential to safeguard the rights of the members and beneficiaries of the Scheme.

ARTICLE XIX
Succession

The Foundation shall succeed the Organization in all matters concerning the statutory responsibilities of the Staff Insurance Scheme.

ARTICLE XX
Legal status

The special legal status of the Foundation in Switzerland shall be determined by the Agreement made between the Federal Council and CERN dated (attached hereto).

ARTICLE XXI
Appeals and jurisdiction

1. The Foundation shall draw up an internal procedure for appeals against individual decisions taken by the Administrator concerning the members and beneficiaries of the Scheme.
2. The final decision taken by the Foundation following the above-mentioned appeal procedure may be referred to

ARTICLE XXII
Dissolution

1. Subject to the provisions of Article XIX above, the Foundation shall be dissolved on the expiry of the entitlement of the last beneficiary.
2. On dissolution, the Board, with the agreement of the Supervisory Authority, shall decide upon the distribution of the remaining assets among the States which had been members of the Organization at the time of the latter's dissolution, in accordance with the scale of contributions in force at the time of the Organization's dissolution.

ARTICLE XXIII
Entry into force

This Constitution shall enter into force on a date to be decided by the CERN Council.

Appendix B to Council Resolution

**AGREEMENT CONCERNING INTEGRATION
INTO THE FRENCH SOCIAL SECURITY SYSTEMS**

The French government, represented by

of the first part,

and

the European Organization for Nuclear Research (CERN), hereinafter referred to as "the Organization", represented by

of the other part,

WISHING, in the event of the dissolution of the Organization, to promote means of ensuring that the pension rights of the members of its personnel who are members of its Staff Insurance Scheme, hereinafter referred to as "the Scheme", continue to be honoured;

CONSIDERING the CERN Staff Rules and Regulations (1980 ed.) and the Rules of the CERN Staff Insurance Scheme (1984 ed);

CONSIDERING the social security scheme of the Organization as defined by the Staff Rules and Regulations (Ch. V) and by the Rules of the Staff Insurance Scheme of the Organization,

CONSIDERING the Agreement made on 13 September 1965 between France and the Organization establishing the latter's legal status in France, as revised on 16 June 1972, hereinafter referred to as "the Status Agreement", and the Social Security Agreement dated 30 December 1970 between the same parties;

CONSIDERING the Resolution of the CERN Council dated

HEREBY AGREE :

ARTICLE 1
Purposes

1. In the event of dissolution of the Organization and within the meaning of the Rules, the members of the Scheme may, at their request, be integrated or re-integrated into the French social security systems, i.e. for retirement, old age, disability and survivors benefits, as such schemes are defined by the French Social Security Code, provided that rights are bought back in compliance with the conditions set out below.

Such integration or re-integration shall constitute a transfer from one system to another. It shall not rule out the possibility of remaining a member of the CERN Staff Insurance Scheme, provided that the conditions of the host scheme are complied with.

2. This facility shall also apply to those to whom the Scheme is paying a pension, hereinafter referred to as the beneficiaries.
3. Survivors (widowers, widows and orphans) of members or beneficiaries of the Scheme shall be treated in the same way as its members and beneficiaries.
4. Persons referred to in §§ 1 and 2 of this Article who apply to take advantage of the provisions of this Agreement shall hereinafter be referred to as "applicants".

ARTICLE 2
Methods of application

The parties shall determine, by an exchange of letters to be appended to this Agreement, the methods of application of the latter and in particular the host scheme(s) into which application for integration or re-integration is made, the competent authorities and the procedure for application for integration or re-integration.

ARTICLE 3
Deadline for applications

Applications for integration or re-integration must, except in special circumstances, reach the competent French authorities within two years from the date of dissolution of the Organization.

ARTICLE 4
Conversion of rights

1. The pension rights of a member or beneficiary of the Scheme who is integrated or re-integrated into a French social security scheme shall be determined by the French legislation in force on the basis of the same treatment as the ordinary members of that scheme.
2. The host social security system shall determine, in accordance with the applicant's period of service at CERN, the actuarial equivalent to be paid so that the applicant may obtain retirement, old age, disability or survivors' rights corresponding to that period.
3. The amount of the actuarial equivalent shall be communicated by the French authorities to the Scheme, which shall pay the amount out of the statutory rights accumulated in the Scheme by the applicant.

ARTICLE 5
Non-transferable rights

If the amount corresponding to the value of the statutory rights of the applicant acquired during his/her period of service at CERN exceeds the amount corresponding to the actuarial equivalent transferable to the French host social security system, the applicant shall determine with the Scheme the use to be made of the part of his/her statutory rights not transferred to the host scheme.

ARTICLE 6
Inadequate actuarial equivalence

If the amount of the applicant's statutory rights in the Scheme is inadequate to cover the actuarial equivalent to be paid into the French host scheme for his/her period of service at CERN, either he/she shall make up the amount paid by the Scheme him/herself up to the actuarial equivalent needed for membership of the new system, or he/she shall become member of the host scheme with rights corresponding to the amount available.

ARTICLE 7
Succession

The Scheme shall be the Organization's successor with respect to all the latter's rights and obligations under this Agreement, from the date of the dissolution of the Organization.

ARTICLE 8
Disputes

Any dispute which may arise between the French government and the Organization concerning the application of this Agreement which cannot be settled through direct negotiations shall, unless the parties agree on another method of settlement, be submitted to an arbitration tribunal at the request of either of the parties, in the conditions set out in Article XX of the Status Agreement.

ARTICLE 9
Entry into force

This Agreement shall enter into force on the date of its signature by the parties.

.....,

(place) (date)

For the French government :

For the Organization :