

COUNCIL RESOLUTION

supplementing the

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

The Council,

CONSIDERING:

CERN's undertaking to guarantee the payment of the statutory rights acquired by the members and beneficiaries of the Pension Fund, hereinafter referred to as "the Fund", until the cessation of the rights of the last beneficiary as set out in the third paragraph of Article I.3.03 of the Rules of the Fund, which states:

"In the event of the dissolution of CERN, its Council will, without prejudice to other systems providing equivalent guarantees, set up a Foundation under Swiss law to succeed the Fund in order to guarantee the rights acquired as at the date of dissolution ...";

CONSIDERING:

the same undertaking made by the European Southern Observatory (ESO) in accordance with the social co-operation agreements dated 1st July 1968 and 1st July 1983 between CERN and ESO;

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 latter's legal status in Switzerland;

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

the Agreement between CERN and ESO (the European Southern Observatory) dated 1st July 1968, concerning the admission of ESO to the CERN Pension Fund;

CERN's Staff Rules and Regulations;

the Rules of the Fund;

CONSIDERING ALSO:

- the adoption by the Council at its Session on 26 and 27 June 1986 (CERN/1628) of the *"Resolution concerning guarantees for the continued payment of the CERN personnel's pension rights in the event of the dissolution of the Organization"* appended to the fourth report by the Chairman of the Working Group on CERN Pensions (CERN/FC/2946/Rev.), recommending among other things the setting-up of a Foundation under Swiss law to which the Pension Fund is to be transferred in the event of the dissolution of the Organization;
- document CERN/CC/2117, entitled *"Guarantees concerning pension payments in the event of the dissolution of the Organization"*;
- the letter from the Federal Department of Foreign Affairs dated 24 October 1995, accompanying the draft exchange of letters concerning the tax situation of the Foundation in Switzerland between the Swiss Federal Council and CERN which the Federal Department of Foreign Affairs undertakes to submit to the Federal Council following the establishment of the Foundation;
- the opinion of the Governing Board of the Fund dated

HEREBY DECIDES:

ARTICLE 1
Constitution of the Foundation

1. Prior to the dissolution of the Organization as provided for in Article XIV of the Convention, the Council shall, pursuant to the Council Resolution dated 26 and 27 June 1986, establish a Foundation intended to succeed the CERN Pension Fund before the aforesaid dissolution.
2. The Foundation shall be established in accordance with the attached draft "Deed of Constitution of the Foundation to which the Pension Fund of the European Organization for Nuclear Research (CERN) is to be transferred", subject to the necessary amendments to be made to that draft at the appropriate time.

ARTICLE 2
Balancing of the Fund

1. The Organization shall bring the Fund into actuarial and financial balance in accordance with Article 4 of the Council Resolution dated 26 and 27 July 1986 before the Fund is transferred to the Foundation.
2. To this end, the Governing Board of the Pension Fund shall, at the request of the Council of the Organization, draw up a liquidation actuarial balance sheet for the Pension Fund.
3. In the event of a deficit, the Organization shall remedy it, pursuant to the Council Resolution dated 26 and 27 June 1986, by paying to the Foundation the sum needed to balance the Fund.

ARTICLE 3
Benefits of the Foundation

The maintenance of the level of benefits to be paid by the Foundation after the dissolution of the Organization and the preservation of the purchasing power of the beneficiaries shall be examined by the Task Force on Integration. Its recommendations shall be submitted to Council.

ARTICLE 4
Administrative expenses of the Foundation

The Foundation's administrative expenses between the date of its establishment and the effective date of the dissolution of the Organization shall be borne by the Organization.

DEED OF CONSTITUTION
OF THE
"FOUNDATION OF THE PENSION FUND OF THE EUROPEAN
ORGANIZATION FOR NUCLEAR RESEARCH (CERN)"

Before me, the undersigned,, Notary in Geneva,

HAVE APPEARED:

-, President of the CERN Council,
-, Director-General of CERN,
-, Chairman of the Governing Board of the CERN Pension Fund,
-, Administrator of the CERN Pension Fund,

Acting herein for and on behalf of the European Organization for Nuclear Research (CERN);

Who:

in their capacities, hereby declare that they are establishing a Foundation under the provisions of Articles 80 *et seq.* of the Swiss Civil Code and, in particular, Article 89bis, § 6;

The Founders, acting on behalf of the Organization and its Member States;

CONSIDERING:

That CERN, an intergovernmental Organization established by the Convention dated 1st July 1953, revised on 17 January 1971, has its own social security scheme and that that scheme incorporates a Pension Fund, hereinafter referred to as "the Fund", intended to insure its members and beneficiaries against the economic consequences of disability, old age and death;

That the Member States of CERN have undertaken by Council Resolutions dated 26 June 1986 and to guarantee the continuation of the payment of the personnel's pension rights in the event of the dissolution of the Organization, especially through the establishment of a Foundation under Swiss law;

That the Rules of the Fund, which, in particular, define the rights and obligations of the members and beneficiaries of the Fund shall be incorporated into the Pension Rules of the aforementioned Foundation, subject to the structural adjustments necessitated by the dissolution of CERN;

The Agreement between CERN and ESO (the European Southern Observatory) dated 1st July 1968 concerning the admission of ESO to the CERN Pension Fund;

HAVE DRAWN UP THIS CONSTITUTION:

ARTICLE I

Name

The Foundation shall be established under the name: "Fondation Caisse de Pensions de l'Organisation européenne pour la Recherche nucléaire (CERN)"*, hereinafter referred to as "the Foundation".

ARTICLE II

Seat, Supervision

The seat of the Foundation shall be in Geneva. It shall be subject to supervision by the Federal Social Insurance Office (OFAS - *Office fédéral des Assurances sociales*).

ARTICLE III

Purposes and Resources

1. The purpose of the Foundation shall be to ensure implementation of the social providence rights of those insured under the CERN pension scheme as defined by the Foundation's Pension Rules, the content of which is described in the preamble, from the date of the dissolution of the Organization to the cessation of the rights of the last insured person.
2. The Foundation shall also have the purpose of protecting the insured persons against the effects of inflation on their purchasing power.

* The Foundation of the Pension Fund of the European Organization for Nuclear Research (CERN).

3. In order to fulfil its purposes, the Foundation shall take all the steps deemed necessary to preserve the rights of the insured persons set out in paragraph 1 above in collaboration with all the authorities concerned, both within and without CERN.

ARTICLE IV

Bodies

The bodies of the Foundation shall be:

- the Council of the Foundation, hereinafter referred to as "the Council",
- the Investment Committee,
- the Audit Body.

ARTICLE V

Operation of the Council

1. The Council shall be the supreme body of the Foundation.
2. The Council shall:
 - appoint the Administrator of the Foundation and vote the annual operating budget;
 - draw up the Pension Rules provided for in Article III in accordance with the obligations set out in the above preamble;
 - supervise and monitor the management of the Foundation;
 - define the policy for the investment of the Foundation's assets and monitor its application;

- decide annually on the adjustment of benefits designed to preserve the purchasing power of the insured persons while being careful to maintain the stability of the Foundation, taking account of the variations in the cost of living in Geneva and the Foundation's financial position.
3. The Council shall meet at least four times a year.
 4. The Council shall decide on its internal operation. It shall appoint the other bodies and the people empowered to commit the Foundation. It shall issue its own Internal Regulations. It shall also issue any other Regulations considered necessary and take all the steps needed to implement the Foundation's purposes. The Administrator of the Foundation provided for in Article IX hereunder shall be the secretary of the Council.

ARTICLE VI

Composition of the Council

1. The Council shall be a joint body consisting of eleven members. After the dissolution of the Organization they shall be appointed for renewable terms of office of four years; they shall comprise:
 - four members appointed by the States which were members of CERN at the time of dissolution;
 - one member appointed by the Council of ESO or the States which were members of ESO at the time of the dissolution of CERN;
 - five members elected by the persons insured by the Foundation according to electoral regulations issued in accordance with Article V.4 above;

- a Chairman appointed by the Swiss Confederation, who shall have a casting vote in the event of a tie in voting and shall be selected from outside the membership listed above.
2. Two Vice-Chairmen shall be selected from among the members listed above, for a four-year term of office. They shall be eligible for re-appointment.
 3. In order to ensure continuity between the Pension Fund and the Foundation, during the period preceding the appointments and elections needed for the appointment of the Council provided for in paragraph 1 above, the Council of the Foundation shall consist of:
 - a) two members appointed by the CERN Council, at least one of whom shall be a member of that Council;
 - b) two staff members of CERN representing the Director-General of CERN and appointed by him;
 - c) a staff member of ESO appointed by its Director-General;
 - d) four members elected from among the members of the Fund;
 - e) one staff member of CERN representing that Organization's Staff Association and appointed by it;
 - f) one observer who shall be a beneficiary of the Fund, appointed by the Governing Board with the consent of the CERN Staff Association.

The members of the Council of the Foundation shall be the people composing the latest Governing Board of the Pension Fund, subject to the provisions relating to the renewal of terms of office contained in the Rules of the Pension Fund prior to the dissolution of CERN.

ARTICLE VII

The Investment Committee

The operations and composition of the Investment Committee shall be defined in Regulations issued by the Council of the Foundation.

ARTICLE VIII

The Audit Body

1. The Council shall appoint an Audit Body (an auditor or trustee) recognised under the provisions of the Federal Act concerning occupational providence for old age, survivors and disability (LPP) dated 25 June 1982, and shall set its term of office.
2. The Audit Body shall examine the balance sheet and accounts of the Foundation. It shall submit a written report to the Council which shall discuss it at its next meeting.

ARTICLE IX

The Administrator

1. The Administrator, who shall be responsible to the Council, shall be appointed by it for a fixed period. His term of office may be renewed. He shall attend the meetings of the Council and those of the other bodies *ex officio*, but without the right to vote.
2. The Administrator shall implement the Council's decisions and administer the Foundation, with special regard to the management of its assets. He shall be assisted by the necessary staff.

3. Under the authority of the Council, the Administrator shall be responsible in particular for:
 - a) applying this Constitution and the texts to which it refers;
 - b) managing the investments in accordance with the investment policy laid down by the Council, taking account of the recommendations of the Investment Committee and the Audit Body and applying the relevant legal provisions;
 - c) keeping the Foundation's accounts;
 - d) proposing the Council's annual operating budget;
 - e) after consultation with the Investment Committee, proposing to the Council any major change in the distribution of investments;
 - f) submitting the accounts and the annual management report to the Council for approval.

ARTICLE X

Consulting experts

The Council shall appoint a consulting actuary (expert) and a medical consultant.

ARTICLE XI

General meeting of insured persons

1. The Council shall call a General Meeting of Insured Persons every year at the seat of the Foundation to inform them of its management.
2. The Council shall lay down the rules of procedure for the General Meeting.

ARTICLE XII

Capital and Assets of the foundation

1. CERN shall endow the Foundation with an initial capital of 50,000 (fifty thousand) Swiss francs for the accomplishment of its purposes. This capital may be increased by the Council at any time.
2. The Foundation's resources shall also include:
 - the movable assets and real estate allocated to the CERN pension scheme;
 - the debts recognised by CERN, especially those needed to balance its pension scheme;
 - payments from former CERN Member States to the pension scheme;
 - the yield from the investment of the assets;
 - gifts and bequests compatible with the purposes of the Foundation;
 - any other income related to the operations of the Foundation.
3. The Foundation's assets shall not be diverted from the purpose of providence for the insured persons.

ARTICLE XIII**Keeping and closing of the accounts**

1. The financial year shall be the same as the calendar year. The Foundation's accounts shall therefore be closed on the thirty-first of December every year, on which date the Administrator shall draw up a balance sheet and a profit and loss account and submit them to the Council.
2. After having been audited, the accounts for the financial year shall be submitted to the Council for approval and then forwarded to the Supervisory Authority specified in Article II above.

ARTICLE XIV**Management report**

The Foundation shall draw up a management report for each financial year. This report shall be submitted to the Supervisory Authority specified in Article II above and made available to any insured person who so requests.

ARTICLE XV**Amendments to the Constitution**

On a majority of two thirds of its members, the Council may submit a proposal to the Supervisory Authority to amend this Constitution or decide to merge the Foundation with another provident institution if such appears essential to safeguard the rights of the Foundation's insured persons.

ARTICLE XVI

Appeals and Jurisdiction

1. The Council shall establish an internal procedure for appeals against individual actions taken by the Administrator with regard to the Foundation's insured persons.
2. Any insured person may institute an action against a position taken up by the Foundation before the competent court at the place where the Foundation has its seat under the provisions of Article 73 LPP.

ARTICLE XVII

Termination of the Foundation

1. Subject to the provisions of Article XV above, the Foundation shall cease to exist *de jure* on the cessation of the rights of the last beneficiary.
2. At that time the Supervisory Authority shall decide on the distribution of the remaining assets among the States which were Members of the Organization at the time of its dissolution in accordance with the scale of contributions obtaining at the time of CERN's dissolution.

Enacted in Geneva on

- The President of the CERN Council
- The Director-General of CERN
- The Chairman of the Governing Board of the CERN Pension Fund
- The Administrator of the CERN Pension Fund